

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 30.10.2018

CORAM

THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI
W.P.No.26236 of 2018 and
W.M.P.No.30470 of 2018

S.Samraj

....Petitioner

Vs

1. The District Collector,
Krishnagiri District,
Krishnagiri
2. The Inspector of Police,
Vigilance & Anti-Corruption Department,
Dharmapuri-i/c,
Krishnagiri,
Krishnagiri District ... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records relevant to the order dated 08.06.2018 in Roc.No.14159/2018/A1, passed by the 1st respondent herein and quash the same as illegal, improper, unreasonable arbitrary against the principles of the natural justice and thereby direct the 1st respondent to reinstate the petitioner into his service with effect from 08.06.2018 with all backwages.

For Petitioner : Mr.R.Singaravelan,
Senior Counsel

for M/s.N.Elumalai

For Respondents : Mr.D.Suriyanarayanan,
Additional Government Pleader

ORDER

The case of the petitioner is that while he was working as Head Quarters Deputy Tahsildar of Uthangarai Taluk, Krishnagiri District, on a complaint given by one Thiru.Sekar, a case under Section 7 of the Prevention of Corruption Act, 1988 was registered against him by the second respondent vide Crime No.4/2018/AC and consequently he was taken to custody on 06.06.2018. For his such indictment and detention in the said criminal case he was put under suspension in Roc.No.14159/2018/A1 dated 08.06.2018 by the first respondent. Against which he has filed this writ petition seeking a writ of certiorarified mandamus to quash the said order of suspension dated 08.06.2018 and direct the 1st respondent to reinstate the petitioner into his service with effect from 08.06.2018 with all backwages.

2. It appears that inspite of opportunity given, no reply affidavit has been filed.

3. The learned counsel appearing for the petitioner would submit that since the continuance of the petitioner in suspension beyond three months in the absence of charge sheet or a charge memo in a disciplinary proceeding is unsustainable in view of [Ajay Kumar Choudhary Vs. Union of India] reported in 2015 7 SCC Page 291 cited supra, the writ petition be allowed and consequently, the impugned order of suspension be quashed and respondents be directed to take back the petitioner into service.

4. The learned counsel appearing for respondents would submit that the petitioner has no case, inasmuch as, he has been put under suspension being indicted in a criminal case and the case of Ajay Choudhary (supra) was rendered in a different facts and situations. The Government of Tamil Nadu in an executive instructions vide Letter Ms.43/N/2015/3 dated 26.04.2016 of the Personnel and Administrative Reforms (N) Department, have instructed not to apply the aforesaid law laid down in the case of Ajay Choudhary to review/revoke the order of suspension in respect of persons suspended being indicted in anti corruption / criminal cases. Hence, the writ petition filed seeking the relief on the said ground is without any substance.

5. Before addressing the contention of the parties, it would be opposite to mention here that the petitioner has been issued with the order of suspension in this case not as a punishment, but in exercise of the power conferred on the authority under Tamil Nadu Civil Services Discipline and Appeal Rules (hereinafter referred to as the Rules), such rule in 17 (e) (2) empowers the disciplinary authority to deem an employee / Government servant under suspension, if he continues to remain in custody for more than 48 hours. The Rule 17 (e) (1) empowers the disciplinary authority or authority superior to him to keep an employee under suspension against whom disciplinary proceeding is contemplated or pending or a complaint against him in respect of a criminal offense is under investigation or enquiry or trial if it so decides. In other words, when drawl of a disciplinary proceeding is contemplated against a Government Servant for certain delinquency or a disciplinary proceeding is initiated or he is facing an enquiry investigation trial in a criminal case, his suspension is not a must. In such a situation, the disciplinary authority has been given a discretion in the said rule, to suspend such Government Servant or not, but so far as a Government Servant is taken into custody in a criminal case or otherwise and remains in such custody

for more than 48 hours, he is deemed to be under suspension. No discretion has been given to a disciplinary authority to allow such employee to be in duty during the said period. The same is for the reasons that someone being in custody in no circumstances can be treated to be in duty of course with the relaxation of 48 hours. But Rule 17 (e) 6 mandates the authority to have discretion for revocation of such suspension in appropriate cases may it be deemed or actual order of suspension passed against a Government servant and take him back to service. The said rule never mandates that once a Government servant is suspended in the aforesaid circumstances, he shall continue to remain in such state till disposal of the disciplinary proceeding or the criminal prosecution. The aforesaid is a statutory discretion given to the authority concerned for exercise the same in an appropriate manner taking note of the facts and situations. The aforesaid rule is framed under Article 309 of the Constitution of India and as such exercise of the same cannot be made subject to any limitation of any Government order or executive instruction. No Government Order can direct the disciplinary authority not to exercise such power of revocation in any particular circumstances. Therefore, the same should be left open to the authority whether to exercise such power of revocation in a particular case or not. As it appears the Government of Tamil Nadu has given instruction not to exercise the power of revocation of order of suspension in respect of persons suspended being indicted in a criminal case /Anti corruption cases as the same would have demoralized effect on other employees and on cleanliness of the administration.

6. Considering the fact that the Rule under 17 (e) (6) is power given to the authority, at the cost of repetition, it is stated that such an instruction of the Government of Tamil Nadu not to exercise such power in the given situation is non-est in the eye of law and as such, has no binding effect on the authority exercising such power. Such power can be subject to limitation by any other superior legislation or amendment of the said rule.

7. In the case of Ajay Kumar Choudhary cited supra, dealing with the prolong suspension of Government servant, the Apex Court have held as follows :-

8 Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would

render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the Memorandum of Charges, and eventually culminate after even longer delay.

9 Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his Department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement. Indubitably the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of common law jurisprudence, antedating even the Magna Carta of 1215, which assures that - "We will sell to no man, we will not deny or defer to any man either justice or right." In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial. Article 12 of the Universal Declaration of Human Rights, 1948 assures that - "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks". More recently, the European Convention on Human Rights in Article 6 (1) promises that "in the determination of his civil rights and obligations or of any criminal charge against him, everyone

is entitled to a fair and public hearing within a reasonable time...." and in its second sub article that "everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law".

14 We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet is served a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any Department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.

8. The aforesaid law laid down by the Supreme Court is binding on all the authorities in India be executive or judicial. Therefore, considering the same this Court is of the view that the contention advanced by the petitioner is not sustainable. The claim of the petitioner since no charge

sheet has been filed against him in this case, even if more than three months have lapsed, the petitioner appears to have made out a case in his favour and hence, this Court dispose of this writ petition with a direction to the petitioner to file a representation for revocation of suspension, within two weeks of receipt of copy of this order along with a copy of this order to revoke his order of suspension to the respondent concerned. The respondent concerned i.e. the first respondent on receipt of the same shall take an informed and considered decision in accordance with law within a period of four weeks from the date of receipt of copy of this order in the light of law laid down in the case of Ajay Kumar Choudary in exercise of the power under rule 17(e) (6) of the rules without being influenced by any circular or executive instruction not to exercise such power of revocation in respect of persons involved in Anti corruption / vigilance case, inasmuch as such instruction cannot circumscribe the exercise of such statutory power of the Authority under Rule 17 (e) (6).

9. With the aforesaid order, this writ petition stands disposed of. Consequently connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(ccc)
//True Copy//
Sub Assistant Registrar

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To

1. The District Collector,
Krishnagiri District,
Krishnagiri
2. The Inspector of Police,
Vigilance & Anti-Corruption Department,
Dharmapuri-i/c,
Krishnagiri,
Krishnagiri District

W.P.No.26236 of 2018

ASK(15/11/2018)