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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P(MD)No.9480 of 2018

and

W.M.P. (MD) No.8732 of 2018

S.Nivash

... Petitioner

Vs.

1. The District Collector,
Tiruchirapalli.

2. The District Revenue Officer,
Trichy.

3. The District Inspection Cell Officer,
Tiruchirappalli and Revenue
Divisional Officer (i/c)
Lalgudi, Trichy District.

... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records connected with the proceedings issued in Rc.A6/213/2017 dated 09.02.2017 passed by the 3rd respondent and quash the same and consequently direct the respondent to reinstate the petitioner into service with all attendant benefits.

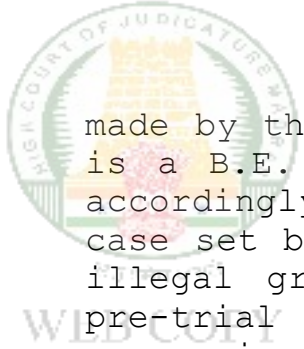
For Petitioner : Mr.S.Ilamvaludhi

For Respondents : Mrs.Srimathy, Spl.G.P.

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus, to call for the records connected with the proceedings issued in Rc.A6/213/2017 dated 09.02.2017 passed by the 3rd respondent and quash the same and consequently direct the respondent to reinstate the petitioner into service with all attendant benefits.

2. The short facts, which are required to be noticed for the disposal of the writ petition, are that the petitioner joined as Village Administrative Officer on 28.04.2015 through the selection



made by the Tamil Nadu Public Service Commission. The petitioner is a B.E. graduate and joined as Village Administrative Officer accordingly. While so, on 09.02.2017, in connection with a trap case set by the DV&AC department, he was arrested for the alleged illegal gratification of Rs.2,000/- and he was imprisoned as a pre-trial prisoner and based on which, he was placed under suspension by the impugned order dated 09.02.2017. Thereafter, no further progress seems to have been made in the said criminal case as admittedly, no charge sheet has so far been filed. Therefore, in view of the said prolonged suspension, the petitioner has challenged the impugned order of suspension in this writ petition.

3.I have heard Mr.S.Ilamvaludhi, learned counsel appearing for the petitioner, who would submit that in order to review this kind of prolonged suspension, the Hon'ble Supreme Court in **Ajay Kumar Choudhary Vs. Union of India (UOI)** reported in **2015(3) CTC 119**, has given mandatory guidelines under which within every three months, the suspension order shall be reviewed and without any plausible reason, beyond three months, suspension could not be extended. The learned counsel would further submit that, in this regard following the judgment of the Hon'ble Supreme Court in **Ajay Kumar Choudhary Vs. Union of India (UOI)** case, the Government issued a letter No.13519/N/2015-1, dated 23.07.2015, whereby mandatory directives were issued to all departments to strictly follow the said guidelines issued by the Hon'ble Supreme Court in the said case cited above.

4.The learned counsel would further submit that in spite of the said mandatory guidelines issued by the Government, pursuant to the order of the Hon'ble Supreme Court, the prolonged suspension on the petitioner from 09.02.2017 has not so far been revoked and therefore, challenge made in the writ petition may be considered.

5.I have heard Mrs.S.Srimathy, learned Special Government Pleader appearing for the respondents, who would submit that it is a trap case conducted by DV & AC department and it is for them to file charge sheet at the earliest point of time. At any rate, since the mandatory guidelines have been issued by the Government to review the suspension once in three months, certainly the case of the petitioner would be considered and accordingly, order would be passed by the respondent, within a time frame.

6.I have considered the said submissions made by both sides.

7.Admittedly, the petitioner was arrested on 09.12.2017 and even after one year, no charge sheet seems to have been filed, it shows that no further progress has been made in the said case. As <https://hcservices.ecourts.gov.in/hcservices/> has been rightly pointed out by the learned counsel for the petitioner that in **Ajay Kumar Choudhary Vs. Union of India (UOI)**



case cited supra, the Hon'ble Supreme Court has given the following mandatory guidelines, which reads thus:

"21. We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet 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 person concerned 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 recognised principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognise that the 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. Pursuant to the said directives issued by the Hon'ble Supreme Court in the said case, the Principal Secretary to Government, Personnel and Administrative Reforms department, vide letter dated 23.07.2015 has given the following directives:

"3) In view of the above, the Hon'ble Supreme Court of India while fixing limitation on the period of suspension directed that,

(i) The currency of a suspension order should not extend beyond three months if within this period the Memorandum of Charges/Charge sheet is not served on the delinquent officer/employee;

(ii) If the Memorandum of Charges/Charge Sheet is served, a reasoned order must be passed for the extension of the suspension.



The Departments of Secretariat and Heads of Departments are therefore requested to follow the directions ordered by the Hon'ble Supreme Court of India on the limitations in the period of suspension in letter and spirit."

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9. In view of the said directives, the currency of a suspension order should not be extended beyond three months, provided if no Memorandum of Charges or Charge sheet is served on the delinquent officer or employee, within the said period of three months. Even if the charges or charge sheet is served, reasoned order shall be passed stating the reasons for the necessity of extension of the suspension. Here in this case on hand, since admittedly no charge sheet was filed and no memorandum of charge has been served on the petitioner, the prolonged suspension on the petitioner beyond one year period is not justifiable as it goes directly against the mandatory guidelines issued by the Government in the letter cited above, which was of course issued pursuant to the directions issued by the Hon'ble Supreme Court in the judgment cited supra.

10. In view of the said legal position, this Court is inclined to interfere with the impugned order of suspension. Resultantly, the following order is passed:

"The impugned order dated 09.02.2017 is quashed and the second respondent is directed to pass orders giving posting to the petitioner to any other station/locality, within a period of two weeks from the date of receipt of a copy of this order".

11. With the above direction, this writ petition is allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar (CS-III)

To

1. The District Collector,
Tiruchirapalli.
2. The District Revenue Officer,
Trichy.



3. The District Inspection Cell Officer,
Tiruchirappalli and Revenue
Divisional Officer (i/c)
Lalgudi, Trichy District.

+ 1 cc TO Mr.S.Ilamvaluthi , Advocate in SR No. 64352
+ 1 cc TO The Special Government Pleader in SR No. 64097

Arul

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