



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE **R.SURESH KUMAR**W.P.(MD)No.9564 of 2018andW.M.P.(MD)Nos.8808 and 8809 of 2018

S.Sakthivel

...Petitioner

-Vs-

The Tahsildar,
Taluk Office,
Bhudalur Taluk,
Thanajvur District.

..Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned order in No.2966/2017/ 2, 21.04.2017 issued by the respondent and quash the same as illegal and consequently direct the respondent to reinstate the petitioner in service, in the light of the judgement of the Hon'ble Apex Court reported in (2015) 7 SCC 291 and Letter No.13519/N/2015-I, dated 23.07.2015 issued by the P & AR (N) Department, Government of Tamil Nadu.

For Petitioner : Mr.S.Venkatesan

For Respondent : Mr.M.Murugan

Government Advocate

ORDER

The prayer sought for in this Writ Petition is for a writ of Certiorarified Mandamus, to call for the records of the impugned order in No.2966/2017/ 2, 21.04.2017 issued by the respondent and quash the same as illegal and consequently direct the respondent to reinstate the petitioner in service, in the light of the Judgement of the Hon'ble Apex Court reported in (2015) 7 SCC 291 and Letter No.13519/N/2015-I, dated 23.07.2015 issued by the P & AR (N) Department, Government of Tamil Nadu.

2.Heard Mr.S.Venkatesan, learned counsel, appearing for the petitioner, and Mr.M.Murugan, learned Government Advocate, who takes notice on behalf of the respondent. By consent of both parties this Writ Petition is taken up for final disposal at the stage of admission itself.



3. The petitioner is the Village Assistant at Sanoorapatti Village, Bhudalur Taluk, Thanjavur District. While he was working as such, by the Department of Vigilance and Anti Corruption, a trap case was filed on 20.04.2017, pursuant to which, the petitioner was arrested and remanded to judicial custody on 20.04.2017. In view of the said judicial confinement, the petitioner was placed under suspension by the impugned order, dated 21.04.2017.

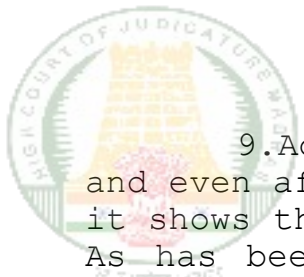
4. Even though the petitioner was suspended a year back, so far, it seems that no charge sheet has been filed in the said DV & AC case and there no departmental proceedings has been initiated. Therefore, against the said prolonged suspension order dated 21.04.2017, the petitioner has moved with the present writ petition before this Court with the aforesaid prayer.

5. I have heard Mr.S.Venkatesan, 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 would 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.

6. The learned counsel would further submit spite 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 21.04.2017 has not so far been revoked and therefore, challenge made against the impugned order dated 21.04.2017 in the writ petition may be considered.

7. I have heard Mr.M.Murugan, learned Government Advocate 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.

8. I have considered the said submissions made by both



9. Admittedly, the petitioner was arrested on 20.04.2017 and even after one year, no charge sheet seems to have been filed, it shows that no further progress has been shown in the said case. As has been rightly pointed out by the learned counsel for the petitioner that in **Ajay Kumar Choudhary Vs. Union of India (UOI)** case as 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."

10. 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."

11. In view of the said directives that 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 served 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.

12. 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 21.04.2017 is quashed and the respondent is directed to pass orders giving post to the petitioner to any other station/locality, within a period of two months from the date of receipt of a copy of this order".

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

Sd/-

Assistant Registrar (T & P)

// True Copy //

Sub Assistant Registrar (CS-I)

To

The Tahsildar,
Taluk Office, Bhudalur Taluk,
Thanajvur District.

+1 CC To MR.S.VENKATESAN, Advocate SR. NO. 63686

+1 CC TO The Special Government Pleader SR.NO. 64246