



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2018

CORAM:

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.13601 of 2018

L.Antony

...Petitioner

Vs.

1) The Chief Engineer,
O/o the Chief Engineer,
Distribution TANGEDCO,
K.Pudur,
Madurai 625 007.

2) The Superintending Engineer,
O/o the Superintending Engineer,
Sivagangai Electricity Distribution Circle,
TANGEDCO,
Sivagangai 630 651.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the first respondent to revoke the suspension of the petitioner and reinstate the petitioner in the post of Assistant Executive Engineer in the light of order passed by the Hon'ble Supreme Court in Ajay Kumar Choudhary - vs- Union of India reported in (2015) 7 SCC 291 within the time stipulated by this Court.

For Petitioner : Mr.I.Pinaygash

For Respondents: Mr.S.Dhayalan,
Standing Counsel for TANGEDCO.

O R D E R

The prayer sought for in this Writ Petition is for a Writ of Mandamus, directing the first respondent to revoke the suspension of the petitioner and reinstate the petitioner in the post of Assistant Executive Engineer in the light of order passed by the Hon'ble Supreme Court in Ajay Kumar Choudhary - vs- Union of India reported in (2015) 7 SCC 291 within the time stipulated by this Court.

2. Heard Mr.I.Pinaygash, learned counsel appearing for the petitioner and Mr.S.Dhayalan, learned standing counsel appearing for the respondents.



3. The petitioner was working as Assistant Executive Engineer, (Distribution), Kalayarkoil, Sivagangai Electricity Distribution Circle, Sivagangai District at the respondent organisation. While so, in a trap case, the petitioner was arrested on 11.01.2010 and remanded to judicial custody. Pursuant to the said incident, the respondents passed an order of suspension dated 13.01.2010, by which, the petitioner has been placed under suspension.

4. Since from the date of suspension, the petitioner has been under suspension for the past more than eight years. So far, no review seems to have been made by the respondents on such prolonged suspension as to review, whether how long the suspension of the petitioner is further required to continue. Therefore, the petitioner seems to have given a representation to the respondents to revoke the said suspension, since the prolonged suspension is no more required. It is also the fact that a criminal case under which, the petitioner has been placed under suspension is still pending and is yet to be over.

5. Learned counsel appearing for the petitioner would submit that the law has been well settled in this regard, especially in the judgment made in the matter of **Ajay Kumar Choudhary vs., Union of India through its Secretary and another** reported in (2015) 7 SCC 291. The learned counsel, while relying upon the dictum of the Hon'ble Apex Court in Ajay Kumar Choudhary's case, also relied upon one similar order passed by this Court, where, I had an occasion to consider a similar issue of long pending suspension in **W.P. (MD) No.7562 of 2010** dated 15.12.2016, in the matter of **P.Murugan vs., the Superintending Engineer and others**, where, I have passed the following order:

"4. Since the very impugned order itself is only for suspension that has been stayed by this Court, on the ground that the said order was passed by the Superintending Engineer and he was not the competent authority to suspend the petitioner being the Junior Engineer. Be that as it may, as per the Hon'ble Apex Court order in Ajaykumar case, the authorities concerned have to review the long pending suspension and atleast once in three months, such review has to be made. In the case on hand, the order of suspension was passed on 27.08.2009, though the same has been subsequently stayed by this Court, it seems that no subsequent review has been taken place, regarding the suspension of the petitioner, whether his continuous suspension is required for the smooth conduct of the disciplinary proceedings. No employee can be kept under suspension for such a long period. Therefore, since seven years have passed by, after passing the impugned



order of suspension, this Court is of the considered view that the impugned order can be interfered with, even for the said ground and accordingly, the impugned order is quashed."

6. Learned counsel appearing for the petitioner would further submit that the above said order was appealed by the respondents before the Division Bench of this Court on 14.06.2017 in W.A.(MD) No.659 of 2017 and the Division Bench has passed the following order:

"2. The reason for suspension being a criminal case was registered against the respondent. The writ petition, which was filed in the year 2010, came to be disposed of only in the year 2016. The Writ Court took note of fact that seven years have passed by after passing the order of suspension and set aside the order of suspension and granted liberty to the appellant - Electricity Board to proceed against the respondent by way of disciplinary proceedings in the manner known law. The said order is put to challenge in this appeal.

3. It is admitted by the learned counsel for the appellant - Electricity Board that the trial in the criminal case has been completed. Therefore, we are of the view that it is not conducive for the appellant - Electricity Board in keeping the respondent under suspension and paying full salary without extracting work from him and therefore, while affirming the order passed by the Writ Court, we give liberty to the appellant - Electricity Board to post the respondent in a non-sensitive post at far away place.

4. With the above observations, the writ appeal stands disposed of. No costs. Consequently, connected miscellaneous petition is closed."

7. Similarly a number of orders have been relied upon by the learned counsel appearing for the petitioner. He also relied upon the recent order passed by the learned Judge of this Court at the Principal Seat in W.P.Nos.6741 to 6743 of 2018, dated 18.04.2018, wherein, the learned Judge, considering the similar circumstances, has passed the following order:

"4. Learned counsel for the petitioners would submit that considering that suspension cannot be for indefinite period and any suspension order passed disciplinary proceedings or criminal prosecution is unsustainable and liable to be quashed, the petitioners be reinstated into service, in view of



the settled proposition of law by the Apex Court in the case of *Ajay Kumar Chowdary v. Union of India*, 2015 (7) SCC 291, and, as such, the Writ Petitions are to be allowed.

5. Learned counsel for the respondents, however, though does not dispute that suspension is for indeterminate period and no review has been done, submits that the petitioners having been trapped while taking bribe, taking them into service is not in the interest of the administration. Hence, the Writ Petitions, according to him, are devoid of merit and liable to be dismissed.

6. In *Ajay Kumar Chowdary's* case, cited *supra*, the Apex Court has held in paragraphs 11 and 12 as under :

"11. 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.

12. 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 with these factors are legal ground norms, are inextricable tenets of Common Law Jurisprudence, antedating even the Magna Carta of



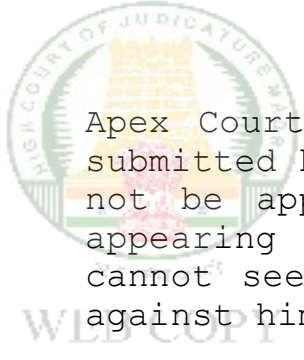
1215, which assures that # "We will sell to no man, we will not deny or defer to any man either justice or right." In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial."

7. Keeping the above principle in mind, if we see the present case, it is not known when the criminal prosecution launched against the petitioners is going to be concluded. Therefore, this Court is of the view that the petitioners have a good case and the prayer made by them in the Writ Petitions deserves to be granted. Accordingly, the respondents are directed to take effective steps to revoke the orders of suspension against the petitioners, giving necessary instructions in this regard to the appropriate authority, and also reinstate the petitioners in posts of similar grade, as they deem just and proper within a period ten days from the date of receipt or production of a copy of this order."

8. By relying upon all these judgements, the learned counsel appearing for the petitioner would submit that, since the petitioner has been placed under prolonged suspension from the year 2010 onwards and there has been no review made by the respondents, as to whether such a prolonged suspension is still required to be continued in the case of the petitioner for acceptable or plausible reasons. In the absence of any such review on the side of the respondents, certainly the case of *Ajay Kumar Chowdary's* cited supra would be applicable to the facts of this case. Therefore, the learned counsel appearing for the petitioner would submit that the said suspension made against the petitioner shall be directed to be revoked.

9. I have heard Mr.S.Dhayalan, learned standing counsel appearing for the respondents, who would submit that, the petitioner is involved in a bribe case. Accordingly, a trap seems to have been set and he has been arrested by the Additional Superintendent of Police, Vigilance and Anti-Corruption, Sivagangai on 11.01.2010 and he was sent to judicial custody. Thereafter, charge sheet was filed by the police and the criminal case is pending against the petitioner.

10. Since a serious offence has been committed by the petitioner and a criminal case is pending against him, where trial is going on, awaiting the decision of the Criminal Court, the respondents have not revoked the suspension made against the petitioner and that is the reason why prolonged suspension is still continued. Therefore, the yard stick fixed by the Hon'ble



Apex Court in the case of Ajay Kumar Choudhary and other cases submitted by the learned counsel appearing for the petitioner, may not be applicable to this case. Therefore, the learned counsel appearing for the respondents would submit that, the petitioner cannot seek for an action of review or to revoke the suspension against him, till the criminal case is completed.

11. I have considered the submissions made by both sides and I have also perused the materials placed before this Court.

12. As it is rightly pointed out by the learned counsel appearing for the petitioner, such act of prolonged suspension to be reviewed periodically, atleast once in three months. This issue has been considered in detail by the Hon'ble Apex Court in the case of Ajay Kumar Choudhary and in that case, a set of directives have been given by the Hon'ble Apex Court to periodically review such kind of prolonged suspension and every time the employer decides to extend the suspension period, the same can be done after recording acceptable/plausible reasons.

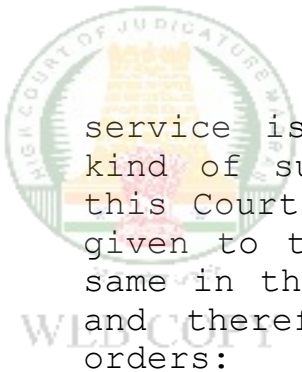
13. The said judgment has been followed in a number of cases by this Hon'ble Court and I had occasions to consider these kind of cases for a number of times. One such order has been extracted in the matter of *P.Murugan vs., the Superintending Engineer and others* in W.P.No.7562 of 2010 cited supra, and it was also confirmed by the judgment of the Division Bench of this Court in W.A.(MD) No.659 of 2017.

14. In the recent order passed by the learned Judge of this Court, as of which is referred above, in W.P.No.6741 of 2018, the learned judge has dealt with the similar situation and ultimately, held that, it is not known when the criminal prosecution launched against the petitioner would be over. Therefore, the Court had taken a view that the prayer sought for to revoke the suspension of the petitioner therein deserved to be granted.

15. In view of the said legal position and the circumstances of the case, where the petitioner's prolonged suspension is for a period of eight years and more, this Court feels that the said prolonged suspension has to come to a halt at one stage.

16. Moreover, for the past eight years, the petitioner has been getting subsistence allowance to the maximum extent without rendering any service to the respondents. In order to avoid this kind of situation, the Courts have taken a view that, the suspension, wherever taken place shall be reviewed periodically, atleast once in three months.

<https://hcservices.courts.gov.in/hcservices> In the case in hand, it has been more than eight years and no review seems to have taken place and the said position still continues that the petitioner without rendering any



service is getting money by way of subsistence allowance. This kind of suspension cannot be permitted to prolong any more and this Court is of the firm view that a suitable direction shall be given to the respondents to review the suspension and revoke the same in the interest of both the employee as well as the employer and therefore, this Court is inclined to pass the following orders:

(i) That the respondents are directed to review the suspension made against the petitioner on 13.01.2010, in the light of the aforesaid judgments rendered.

(ii) On such review, the respondents shall take into account that past more than eight years, the petitioner has been paid with subsistence allowance, without extracting any work and thereby, the Respondent Corporation is spending money on nothing.

(iii) Taking into account of the aforesaid facts and circumstances and the legal position, the respondents shall pass a reasoned order with regard to the revocation of suspension of the petitioner and in such case, the petitioner can be given reemployment to any non-sensitive place as per the wish of the respondents.

18. With these directions and observations, this Writ Petition is ordered as indicated above. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (RTI)

// True Copy //

Sub Assistant Registrar (CS-II)

To

- 1) The Chief Engineer, O/o the Chief Engineer,
Distribution TANGEDCO, K.Pudur, Madurai 625 007.
- 2) The Superintending Engineer, O/o the Superintending Engineer,
Sivagangai Electricity Distribution Circle, TANGEDCO,
Sivagangai 630 651.

STS

BU/RSK/SAR-2 : 24.10.2018 : 7P/3C