



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.06.2018

CORAM :

WEB COPY

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR**

W.P. (MD) .No.13621 of 2018

K.Thirupathi

... 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

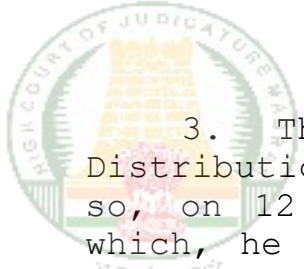
**Prayer:** This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the second respondent to revoke the suspension of the petitioner and reinstate the petitioner in the Post of Assistant Engineer in the light of order passed by the Hon'ble Supreme 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.Dhayalan

### **O R D E R**

The prayer sought for in this writ petition is for a writ of Mandamus, directing the second respondent to revoke the suspension of the petitioner and reinstate the petitioner in the Post of Assistant 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.Dhayalan, learned standing counsel appearing for the respondents.



3. The petitioner was working as Assistant Engineer, Distribution, Mathagupatti under the respondent department. While so, on 12.08.2008, he was caught on a trap case. Pursuant to which, he has been remanded to judicial custody. Therefore, the next day i.e. on 13.08.2008, the respondents placed the petitioner under suspension in view of the said arrest as against the petitioner. According to the respondents, an enquiry to grave charges was contemplated. Insofar as the criminal case is concerned, though charge sheet has been filed, the trial is yet to be over and the same is pending all these years. However, the department has not initiated any separate disciplinary proceedings by framing any charges against the petitioner. However, the fact remains that the petitioner has been under suspension for almost last 10 years and all these period, the petitioner is being paid subsistence allowance without extracting any work from him. It is a settled proposition of law that if a Government Servant is suspended for some longer period, the said suspension order should be reviewed as to whether the suspension shall be continued for further period and if so, by giving reasons for such extension, the suspension can be extended. Herein, the case on hand, for the past 10 years, the petitioner had been under prolonged suspension and within this period, it seems that the respondents have not reviewed the said suspension order.

4. In this regard, recently, I have passed an order in W.P. (MD) No.13601 of 2018, where, I have considered the judgment of this Court, following the dictum of the Hon'ble Supreme Court in **Ajay Kumar Choudhary Vs. Union of India reported in (2015) 7 SCC 291** The relevant portion of the order passed by this Court in W.P.(MD) No.13601 of 2018 is extracted hereunder for ready reference:

"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 pending 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 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."

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."

5. Since the petitioner's case also is similarly placed and the facts also are similar to that of the case referred to above, the said relief granted to the petitioner in that writ petition can be given to this petitioner also.

6. Accordingly, there shall be an order to the following effect:

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(i) That the respondents are directed to review the



suspension made against the petitioner on 13.08.2008, in the light of the aforesaid judgments rendered.

(ii) On such review, the respondents shall take into account that past more than ten 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 re-employment to any non-sensitive place as per the wish of the respondents.

7. With the above direction, this writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar (CS-IV)

**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
- + 1 CC TO Mr.I.PINAYGASH, ADVOCATE IN SR No. 70002

ARUL/TSVN

TE/RP/SAR-4 : 26/10/2018 : 6P/4C

W.P. (MD) .No.13621 of 2018  
27.06.2018