



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.09.2018

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P. (MD) No.19338 of 2018

Dr.D.Balamurali

.. Petitioner

Vs.

1.The Principal Secretary to Government
Health and Family Welfare (K1) Department
Secretariat, Chennai.

2.The Director,
Medical and Rural Health Service,
DMS Complex, Tenampet,
Chennai.

3.The Joint Director of Medical & Rural
Health Service and Family Welfare,
Madurai District @ Usilampatti.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for records relating to impugned order passed by the 1st respondent in G.O.(D)No.1437 dated 14.8.2018 and quash the same and direct the 1st respondent to consider petitioner's review application dated 31.8.2018 consequently reinstate the petitioner as a Senior Civil Surgeon at Government Headquarters Hospital, Usilampatti.

For Petitioner : Mr.V.Sukumar

For Respondents : Mr.R.Sethuraman

Special Govt. Pleader

O R D E R

The petitioner has come forward with this writ petition, challenging the order of suspension, dated 14.08.2018.

2.The case of the petitioner is that he has rendered meritorious service from the date of his appointment, ie 09.10.1997, for which he was awarded by the Government of Tamil Nadu from the year 2005 to 2015. He was also awarded Best Doctor Award in the year 2017 by the Indian Medical Association. Due to private dispute, a criminal case has been registered, apart from the fact that civil disputes are pending. In order to wreck vengeance, based on private dispute, the respondents have been instructed to issue the suspension order, which is illegal. According to the petitioner, he is the only Civil Surgeon available and that the

public would be suffering, if he is placed under suspension.

3. The learned counsel appearing for the petitioner drew the attention of the Court to two judgments. One of the decision is dated 18.03.2011 in W.P.No.22935 of 2009, wherein this Court has interfered with the suspension order on the ground that suspension of an employee cannot be prolonged on the ground of pendency of criminal case that too it is happened due to the quarrel between the relatives for the ancestral property. The another decision is dated 21.08.2018, in Civil Appeal Nos.8427-8428 of 2018 (Arising out of S.L.P.(Civil) Nos.12112-12113 of 2017), wherein, the Supreme Court has observed that "even now the appellant has no case that there is any specific instance or any attempt by the first respondent to tamper with evidence."

4. These two cases may not be applicable to the facts of the case. Firstly, the learned Single Judge of this Court has held that there cannot be any prolonged suspension. Secondly, the Honourable Supreme Court has also observed that no useful purpose would be served by continuing the first respondent under suspension any longer. In the present case, the petitioner has been suspended only on 14.08.2018.

5. The Honourable Supreme Court in **Ajay Kumar Choudhary V. Union of India** reported in **(2015) 7 SCC 291** has held as follows.

"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/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 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."

That apart, the Supreme Court held that suspension order should not extend the period of three months and departmental enquiries should be completed within a period of one year.

6.Hence, in view of the judgment of the Apex Court in **Ajay Kumar Choudhary**, it is clear that the protracted period of suspension and repeated renewal thereof has been critizised by the Apex Court. The Honourable Supreme Court has further held that there is a possibility of the accused trying to adopt delaying tactics. In this case, as the petitioner has been suspended only on 19.08.18 on the ground that criminal proceedings are pending, this Court cannot render any finding except the fact that it is open to the parties to consider whether the suspension can be continued beyond a particular period more particularly in terms of **Ajay Kumar Choudhary case**, which is extracted above.

7.As held by the Apex Court, it is open to the respondent to consider the review petition, filed by the petitioner, dated 31.08.2018 and also transfer him to a different place and post him in a non-sensitive post, in order to get his services utilized for the public. As the criminal court proceedings are very slow, it will not seen the light of the day at the earliest point of time, if the respondent is willing to complete the departmental proceedings, it is open to them to do so, but pending of the criminal case is not a bar for the respondent to issue a charge-sheet and come to a conclusion based on the principle of preponderance of probabilities. Such Enquiry Proceedings should be conducted on day-to-day basis, without being adjourned more than 7 days at any point of time.

8.I do not find any reason to interfere with the order of suspension. Accordingly, this writ petition is dismissed. No costs.

Sd/-

Assistant Registrar(A.S.)

/True Copy/

Sub Assistant Registrar(CS II)

vs

To

1.The Principal Secretary to Government
Health and Family Welfare (K1) Department
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2.The Director,
<https://hcservices.echips.gov.in/hcservices/>
Rural Health Service,
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3.The Joint Director of Medical & Rural
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Madurai District @ Usilampatti.

WIPCOM 1CC TO MR. V. SUKUMAR, ADVOCATE SR 83325
1CC TO THE SPL GOVT PLEADER SR 83340

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