



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 12.10.2018

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THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.(MD) No.21115 of 2018 &
WMP (MD) Nos.18919 & 18920 of 2018

S.Murugesan

.. Petitioner

versus

1. The Additional Director
General of Police,
Crime, Chennai-600 008.

2. The Superintendent of Police,
IPREC and NIB CID,
Chennai-600 008.

.. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, to call for the records pertaining to the impugned order passed by the first respondent in C.No.A3/000847/2018 C.O.No.45/2018 dated 22.2.2018, placing the petitioner under suspension from service and quash the same.

For Petitioner : Mr.T.Mohan
for M/s.R.Subramanian

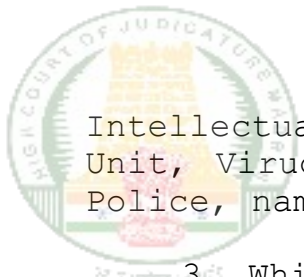
For Respondents: Mr.R.Sethuraman, Spl.G.P.

ORDER

The petitioner has approached this Court, seeking the following relief:

"To issue Writ of Certiorari, to call for the records pertaining to the impugned order passed by the first respondent in C.No.A3/000847/2018 C.O.No.45/2018 dated 22.2.2018, placing the petitioner under suspension from service and quash the same.

2. The petitioner was appointed as a Constable in the Police Department on 16.06.1993. He was promoted as Grade I Constable and then Head Constable subsequently. According to the petitioner, he rendered 25 years of service without any blemish. At the relevant point of time, the petitioner was working as Head Constable in



Intellectual Property Rights Enforcement Cell (IPREC), Virudhunagar Unit, Virudhunagar District from 27.11.2017 under the Inspector of Police, namely, Tmt.Kamali.

3. While the petitioner was working as Head Constable in the said IPREC unit, by the impugned order of the first respondent dated 22.2.2018, he came to be placed under suspension on 22.2.2018 pending enquiry into the departmental charges. Simultaneously a criminal case was also registered by the Department of Vigilance and Anti-corruption under the provisions of the Prevention of Corruption Act, 1988.

4. According to the defacto complainant in the criminal case, the Inspector, namely, Tmt. Kamali, under whom, the petitioner was working, demanded illegal gratification of Rs.5000/- and the said money was supposed to be given to the petitioner. Although the petitioner was placed under suspension on 22.2.2018, subsequently till date no charge memo was issued in the departmental enquiry and no charge sheet was issued in the criminal case.

5. In this regard, the petitioner appeared to have submitted representations on 6.6.2018 and 20.8.2018 seeking for revocation of suspension and since no action was forthcoming from the respondents, the petitioner is before this Court, seeking to assail the suspension order dated 22.2.2018.

6. Mr.T.Mohan, learned counsel appearing for the petitioner would submit that the prolonged suspension of the petitioner is ex facie illegal and contrary in light of the law laid down by the Hon'ble Supreme Court which was followed by the Division Bench of this Court holding that the prolonged suspension is not valid in law, particularly in a case where the charge sheet has not been filed. In this case, admittedly, no charge sheet has been filed either in the departmental proceedings or in the criminal case pending against the petitioner. Therefore, the grievance of the petitioner is squarely covered by the dictum laid down by the Hon'ble Supreme Court of India in "Ajay Kumar Choudhary versus Union of India" reported in (2015) 7 SCC 291. The learned counsel for the petitioner would draw the attention of this Court to the legal finding of the Hon'ble Supreme Court as found in paragraphs 20 and 21 which are extracted as under:

"20. It will be useful to recall that prior to 1973 an accused could be detained for continuous and consecutive periods of 15 days, albeit, after judicial scrutiny and supervision. The Cr.P.C. of 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorise detention of an accused person beyond period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and beyond a period of 60 days where the



investigation relates to any other offence. Drawing support from the observations contained of the Division Bench in *Raghubir Singh vs. State of Bihar*, 1986 (4) SCC 481, and more so of the Constitution Bench in *Antulay*, we are spurred to extrapolate the quintessence of the proviso of Section 167(2) of the Cr.P.C. 1973 to moderate Suspension Orders in cases of departmental/disciplinary inquiries also. It seems to us that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a Memorandum of Charges/Chargesheet has not been served on the suspended person. It is true that the proviso to Section 167(2) Cr.P.C. postulates personal freedom, but respect and preservation of human dignity as well as the right to a speedy trial should also be placed on the same pedestal.

"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/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet 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."



7. The learned counsel appearing for the petitioner would also draw the attention of this Court to an unreported decision of the Hon'ble Supreme Court rendered in Civil Appeal Nos.8427 and 8428 of 2018, wherein, the Hon'ble Supreme Court has held as under in paragraphs 21 to 23:

"21. The first respondent has been under suspension for more than six years. While releasing the first respondent on bail, liberty was given to the investigating agency to approach the Court in case he indulged in tampering with the evidence. Admittedly, no complaint is made by the CBI in that regard. Even now the Appellant has no case that there is any specific instance of any attempt by the first respondent to tamper with evidence.

22. In the minutes of the Review Committee meeting held on 27.6.2016, it was mentioned that the first respondent is capable of exerting pressure and influencing witnesses and there is every likelihood of the first respondent misusing office if he is reinstated as Inspector General of Police. Only on the basis of the minutes of the Review Committee meeting, the Principal Secretary, Home (SC) Department ordered extension of the period of suspension for a further period of 180 days beyond 09.07.2016 vide order dated 06.07.2016.

23. This Court in *Ajay Kumar Choudhary v. Union of India*, (2015) 7 SCC 291 has frowned upon the practice of protracted suspension and held that suspension must necessarily be for a short duration. On the basis of the material on record, we are convinced that no useful purpose would be served by continuing the first respondent under suspension any longer and that his reinstatement would not be a threat to a fair trial. We reiterate the observation of the High Court that the Appellate State has the liberty to appoint the first respondent in a non sensitive post."

8. The Hon'ble Supreme Court has upheld the order passed by the Division Bench of this Court interfering with the prolonged suspension of a Police Officer, following the judgment of the Hon'ble Supreme Court in "*Ajay Kumar case* (cited supra).

9. To bolster his legal arguments further, the learned counsel for the petitioner also relied upon a decision of the Division Bench of this Court dated 13.12.2017 passed in W.A.(MD) No.100 of 2017, wherein, the Division Bench after adverting to various orders passed by the Hon'ble Supreme Court of India including the decision in "*Ajay Kumar case*" (cited supra), interfered with the order of suspension passed against the appellant therein. The operative portion of the order of the learned Division Bench and its



observation as incorporated in paragraphs 7 to 11, are extracted as under:

"7. We are of the opinion that the issue involved in this case has to be decided only based on the decision of the Hon'ble Supreme Court in the case of Ajay Kumar Choudhry Vs. Union of India [2015(2) Scale 432], cited supra, wherein it has been held that the currency of suspension order should not be extended beyond a period of three months, if within this period, the Memorandum of charges/ charge sheet is not served on the delinquent official and if charge memo/sheet is served, a reasoned order must be passed for extension of the suspension. Subsequently, the Government of Tamil Nadu has also issued instructions in Letter No.13519/N/2016-1, P &AR (Per.N) Department, dated 23.07.2015, to all Principal Secretaries to Government, Department of Secretariat and Head of Departments to follow the directions of the Hon'ble Supreme Court on the limitation period of suspension, in letter and spirit.

8. Even, in the instant case, it is seen that though the suspension order was passed on 30.06.2015, till date, charge memo has not been issued. Hence, the appellant cannot be kept under prolonged suspension, as a Division Bench of this Court in the case of Ambigapathy, P.S. Vs. The Director of Public Health & Preventive Medicine [1991 Writ L.R. 273], has held that the prolonged suspension is unreasonable and without any justification.

9. In this regard, one more reliance could be placed on the judgment of this Court dated 08.04.2014 in W.P.No.21014 of 2013 [K.Selvamani Vs. State and another], which is reported in 2014(4) MLJ 79. It is relevant to quote paragraph No.10 of the said order dated 08.04.2014, which reads thus:

"10. In this regard, a reference can be placed to an unreported judgment of this Court in W.P.No.291965 of 2010, etc. batch, dated 02.07.2012 (G.Mathivannan Vs. The Director of Municipal Administration, Chempauk, Chennai), wherein it has been held as follows:

"7. Apart from this, in all these cases, after a period of 6 months, the petitioners are entitled to get 75% of emoluments as subsistence allowance. Instead of keeping them idle and paying 75% of salary by way of allowance, by transferring them to a far away place and posting them in



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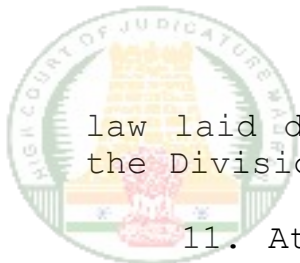
a non-sensitive post, after extracting work, they can be paid salary. However, the same can be done without detriment to the action initiated against them. In the criminal case, some of them or a few of them may be exonerated or they may be punished. But, as on date, not only finality has not been reached but there is no progress. Under such circumstances, in the opinion of this Court, continuance of their suspension is unreasonable following the judgment of the Division Bench.

8. In view of this, the suspension orders passed in all these writ petitions are set aside. However, the respondents are at liberty to post these petitioners in a far away place from the station of occurrence and post them in a non-sensitive post and if for any reason, the authorities are of the opinion that their continuance in service is a hindrance for the action initiated against them, they can re-examine the issue and they are at liberty to take appropriate action."

10. The dictum laid down in the above said order dated 08.04.2014 in W.P.No.21014 of 2013 would clearly show that the delinquent cannot be kept under prolonged suspension irrespective of the gravity of the allegation/charge levelled against him. The dictum laid down in the said order also shows that by paying 75% of emoluments as subsistence allowance, the delinquent cannot be kept idle without extracting work from him. Therefore, we are of the opinion that applying the dictum laid down by the Hon'ble Supreme Court as well as this Court, the Writ Appeal has to be allowed.

11. In fine, the Writ Appeal is allowed and the order of the learned Single Judge dated 23.01.2017 is set aside. Consequently, the impugned orders dated 30.06.2015 and 08.01.2016 are set aside. The respondent is directed to reinstate the appellant in any non-sensitive post at a far away place forthwith. No costs."

10. Therefore, the learned counsel would submit that in the present case, admittedly no review has been done although three months period as prescribed in the "Ajay Kumar case" by the Hon'ble Supreme Court, has expired. Therefore, he would submit that the legal issue raised in the Writ Petition is squarely covered by the



law laid down by the Hon'ble Supreme Court which was followed by the Division Bench of this Court.

11. At this, the learned counsel appearing for the respondents would submit that the petitioner is facing serious charges under the provisions of the Prevention of Corruption Act and therefore, no interference of this Court is required. However, the fact that no charge sheet has been filed both in the departmental proceedings as well as in the criminal case, is not in dispute. The objection as raised by the respondents is well answered in para 20 of its judgment by the Hon'ble Supreme Court in Ajay Kumar case, which is extracted supra, that irrespective of nature of offence, every employee in public employment is entitled to a speedy trial. The law laid down by the Hon'ble Supreme Court in Ajay Kumar case is very clear and suffers from no ambiguity. In fact, the Division Bench of this Court which followed the decision of the Hon'ble Supreme Court, has interfered with the suspension in similar circumstances and as rightly pointed out by the learned counsel for the petitioner, the issue of prolonged suspension, whether such prolonged suspension should be interfered with or not is no more res integra.

12. In the light of the above discussion, this Court is of the considered view that in the absence of charge sheet being filed both in the departmental proceedings as well as in the criminal case, the petitioner is entitled to the benefits as per the decisions of the Hon'ble Supreme Court as well as the learned Division Bench of this Court as aforementioned. Therefore, this Court has no hesitation in allowing the Writ Petition by following the dictum laid down by the Hon'ble Supreme Court as well as the Division Bench of this Court which are binding in nature in regard to the application of the well established legal principles on the subject matter.

13. For the foregoing reasons, the Writ Petition is allowed and the impugned order dated 22.02.2018 passed by the first respondent in C.No.A3/00847/2018 C.O.No.45/2018, is hereby set aside. The respondents are directed to reinstate the petitioner forthwith. Consequently, connected WMPs are closed.

Sd/-

Assistant Registrar(AD-I)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1. The Additional Director
General of Police,
Crime, Chennai-600 008.



2. The Superintendent of Police,
IPREC and NIB CID,
Chennai-600 008.

• 1 CC TO Mr.R.SUBRAMANIAN , ADVOCATE IN SR No. 90680.

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W.P. (MD) No.21115 of 2018
12.10.2010