

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.12070 OF 2018

ORDER :

This Writ Petition is filed seeking writ of mandamus declaring the action of the respondents in keeping the petitioner under prolonged suspension without there being any review after G.O.Rt.No.326 Revenue (Vigilance.II) Department dated 27.05.2017 as illegal and arbitrary and consequently to direct the respondents to reinstate the petitioner into service by revoking the suspension.

It is the case of the petitioner that he has been appointed as Commercial Tax Officer in the year 2007 and got promoted as Assistant Commissioner of Commercial Tax Officer in the year 2013. That when he worked as Commercial Tax Officer at Bodhan during the period from 21.07.2012 to 03.07.2013, one L.Vijayender, Commercial Tax Officer lodged complaint before the Inspector of Police, Bodhan Police Station on 02.02.2017 stating that some of the employees have misappropriated the funds of the Government. Basing on the said complaint a case in Cr.No.52 of 2017 was registered, however, the name of the petitioner was not mentioned in the said crime. Even in the remand report, the name of the petitioner is not mentioned. While the petitioner was working as Assistant Commissioner (CT) (LTU), Secunderabad Division in the office of the Deputy Commissioner (CT), Secunderabad Division, the 1st

respondent issued G.O.Rt.No.326 Revenue (Vigilance.II) Department dated 27.05.2017 by placing him under suspension under Rule 8(1)(c) of TCS (CCA) Rules on the allegation of absconding by referring to crime No.52 of 2017 of PS Bodhan, which was communicated to the petitioner by the 2nd respondent vide letter No.CCTs Ref.No.V1/23/2107, dated 31.05.2017. Aggrieved by the impugned proceedings, present Writ Petition is filed.

Heard Sri M.Venkat Ram Reddy, learned counsel for the petitioner and learned Government Pleader for Services-II appearing for the respondents.

Learned counsel for the petitioner submits that if the memorandum of charges or charge sheet is not served on the delinquent officer/employee, within three months from the date of suspension order, the suspension has to be revoked in view of judgment of Hon'ble Supreme Court in **Ajay Kumar Choudhary v. Union of India through its Secretary and another**¹. He would submit that the respondent authorities have not reviewed the order of suspension by applying their mind in terms of G.O.Ms.No.86, General Administration (Services.C) Department, dated 08.03.1994. He submits that the petitioner was not arrayed as accused in Cr.No.52 of 2017 and the respondent authorities failed to consider the said aspect, the question of continuing the petitioner under suspension does not arise. In support of his contention, he

¹ (2015) 7 Supreme Court Cases 291

relied on the judgment of Division Bench of this Court reported in **P.Vasantha Lakshmi v. State of Telangana**².

On the other hand, learned Government Pleader for Services-II while placing reliance on the judgment of this Court reported in **Buddana Venkata Murali Krishna v. Sttae of Andhra Pradesh and others**³, submits that mere delay in conclusion of disciplinary proceedings or criminal cases or long period of suspension would not render order of suspension invalid. He submits that mere delay in issuing charge sheet/memorandum of charge on the delinquent employee is not a ground for quashing order of suspension pending enquiry. He also submits that the Division Bench of this Court in the aforesaid judgment has also considered the case of **Ajay Kumar Choudary's case (supra)** and refused to quash the suspension order on the ground of delay.

In this case, it is to be seen that Government formulated guidelines in G.O.Ms.No.86, General Administration (Services.C) Department, dated 08.03.1994, for reviewing order of suspension, which reads as follows:

“3.Keeping the said recommendations, in view, the following further orders are issued for review of suspension orders against the Government Servants:

- i) The order of suspension against a Government Servant shall be reviewed at the end of every six months;
- ii) The appropriate reviewing authority should take a decision regarding continuance or otherwise of the employee concerned under suspension, with reference to the nature of charges, where delays in finalisation, of enquiry proceedings cannot be attributed to the employee or when there is no interference from the employee in facilitating the enquiry.

² 2016 (1) ALD 108 (DB)

³ 2015 (6) ALD 694 (DB)

- iii) An outer limit be provided as two years from the date of suspension, failing which the public servant may have to be reinstated without prejudice to the proceedings being pursued. However, in exceptional cases, considering the gravity of the charges, one could be continued under suspension even beyond a period of two years, especially in cases where there is deliberate delay caused due to non-cooperation of the employee concerned.
- iv) The concerned Principal Secretary/Secretary of the Department should review the suspension cases of their department at an interval of six months with the representative from the ACB, if the proceedings arose out of the investigations conducted by the Anti-Corruption Bureau and make suitable recommendations as to the desirability or otherwise for the further continuance of the officers under suspension.”

In the instant case, the petitioner was suspended pending enquiry by the order dated 27.05.2017, but as on today, it is not reviewed. Therefore, as per the aforesaid G.O.Ms.No.86, dated 08.03.1994, the petitioner is entitled for review of is suspension.

The contention of the learned counsel for the petitioner that when once three months period elapsed and charge sheet is not issued to the petitioner, the order of suspension against the petitioner has to be quashed, cannot be accepted since Division Bench of this Court in **Buddana Venkata Murali**

Krishna’s case (supra), held as follows:

“39. The attention of the Supreme Court in *Ajay Kumar Choudhary’s case (supra)*, was not drawn to its earlier judgments in *Ashok Kumar Aggarwal’s case (supra)*; *Sanjiv Rajan’s case (supra)*; *L.Srinivasan’s case (supra)* and *Deepak Kumar Bhola’s case (supra)*, wherein it was held that mere delay in conclusion of disciplinary proceedings or criminal cases or long period of suspension would not render the order of suspension invalid.

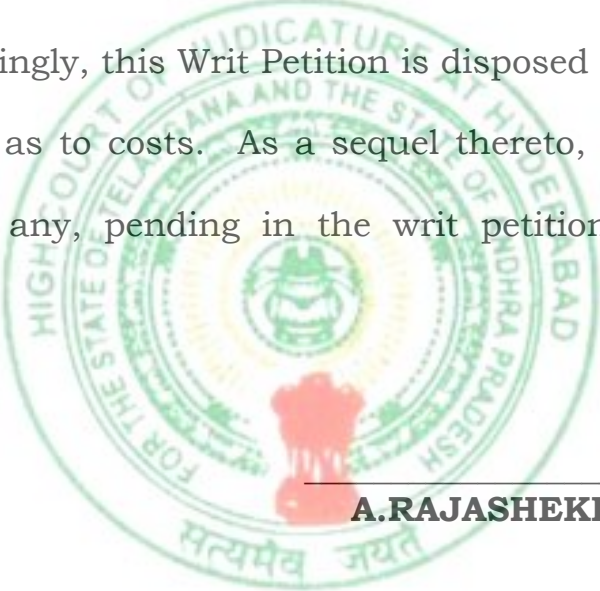
40. This Court may not, therefore, be justified in quashing the order of suspension following the judgment of the Supreme Court in *Ajay Kumar Choudhary’s case (supra)*, as that would require it to ignore the Constitution Bench judgments of the Supreme Court in *Khem Chand’s case (supra)*, *R.P.Kapur’s case (supra)* and *V.P.Girdroniya’s case (supra)*; as also the other judgments of the Supreme Court in *Ashok Kumar Aggarwal’s*

case (supra); Sanjiv Rajan's case (supra); L.Srinivasan's case (supra) and Deepak Kumar Bhola's case (supra). The order of the Tribunal does not, therefore, necessitate interference.”

In view of above judgment of Division Bench of this Court, I do not see any reason to quash the impugned order of suspension against the petitioner by considering the fact that three months period elapsed. However, the respondent authorities are directed to review of the order of suspension against the petitioner in terms of G.O.Ms.No.86, dated 08.03.1994 by applying their mind.

Accordingly, this Writ Petition is disposed of. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

13.04.2018
kvs



A.RAJASHEKER REDDY, J

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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