

IN THE HIGH COURT OF BOMBAY AT GOA***WRIT PETITION NO. 190 OF 2019***

Mr. Menino Amaranti Bosco Coutinho,
Aged 48 years, Indian National,
Son of late Domnigos Leandro Coutinho,
Resident of House No. 2461,
Socrecotto, Cuncolim,
Salcete – Goa.

... Petitioner

Versus

1) The Director of Vigilance,
Government of Goa,
Having Office at
Directorate of Vigilance,
Serra Building,
Near All India Radio,
Altinho, Panaji – Goa.

2) State of Goa,
Through its Chief Secretary,
Having Office at Secretariat,
Porvorim – Goa.

.... Respondents

Mr. Devidas J. Pangam alongwith Mr. Parikshit S. Sawant, Learned
Advocates for the Petitioner.

Mr. Pravin N. Faldessai, Additional Government Advocate for the
Respondent Nos. 1 & 2.

***Coram : M.S. Sonak &
Prithviraj K. Chavan, JJ.***

Date : 26 February 2019.

Oral Judgment (Per M.S. Sonak, J) :

Leave to amend to challenge the Order dated 21.12.2018, extending the period of suspension, during the pendency of the present petition. Amendment to be carried out forthwith.

2. Heard Mr. D. Pangam and Mr. Parikshit Sawant, learned Advocates for the petitioner and Mr. Pravin N. Faldessai, Additional Government Advocate for the Respondents.

3. Considering however, the issue involved in this petition, we grant rule. Further, with the consent and at the request of the learned counsels for the parties, we make rule returnable forthwith.

4. The challenge in this petition is to the continued suspension of the petitioner pending the conduct of disciplinary proceedings. The initial suspension order was issued on 01.01.2018 placing the petitioner under suspension for a period of three months. However, this period of suspension has been extended from time to time, vide orders dated 26.06.2018 and 21.12.2018. Accordingly, the petitioner challenges such extension orders, by which his suspension is continued, even though he is yet to be served any chargesheet in the proposed disciplinary proceedings.

5. The petitioner joined service with the Directorate of Craftsman Training as Vocational Inspector. Thereafter, he was sent on deputation to the Vigilance Department for an initial period of one year, which period was then extended from time to time. Ultimately, by Order dated 30.06.2017, the petitioner was repatriated to his parent Department, now named as Skill Development & Entrepreneurship Department.

6. By Order dated 01.01.2018, the petitioner was placed under suspension, pending disciplinary proceedings proposed against him, in respect of misconduct alleged against him whilst he was in the Vigilance Department. Mr. D. Pangam, learned counsel for the petitioner states that the misconduct alleged against the petitioner relates to his alleged failure to take action in respect of some complaints pending in the Vigilance Department. He points out that, this is not a case where there is any allegation that the petitioner has indulged in any corruption, or otherwise committed any misconduct.

7. The petitioner instituted Writ Petition No. 172/2018 to question the suspension Order dated 01.01.2018. This Court, by Order dated 05.02.2018, did not interfere with the suspension Order

dated 01.01.2018, but granted liberty to the petitioner to institute an appeal against the same, to the appellate authority. Directions were issued to dispose of such appeal within a time bound period.

8. The appeal, was not disposed of within the time bound period. In the meanwhile, the period of suspension was also extended. Accordingly, the petitioner instituted yet another Writ Petition No. 572/2018, which was disposed of by Order dated 09.05.2018, setting out the time schedule for disposal of the petitioner's appeal. Some directions were also issued with regard to reliefs of salary/subsistence allowance.

9. Ultimately, the appellate authority by Order dated 31.05.2018, dismissed the petitioner's appeal. The Orders dated 26.06.2018 and 21.12.2018 were issued extending the period of suspension.

10. From the aforesaid, it is quite clear that the petitioner continues to be under suspension from 01.01.2018. Till date, no chargesheet or charge memorandum in relation to the proposed disciplinary proceedings, has been served upon the petitioner. On the date when the petitioner was placed under suspension, the petitioner

had already been repatriated to his parent Department. The disciplinary proceedings proposed against the petitioner relate to his conduct or misconduct, whilst he was on deputation in the Vigilance Department. This means that, presently, the petitioner is not in the Vigilance Department, and therefore, not in a position to tamper with the evidence, or in any manner interfere with the proposed inquiry.

11. The question therefore is whether the continued suspension of the petitioner, in the facts and circumstances of the present case, is legal and proper?

12. In *Ajay Kumar Choudhary Versus Union of India (Through its Secretary) and Another (2015) 7 SCC 291*, the Hon'ble Apex Court, has explained that, 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.

13. The Hon'ble Apex Court was further constrained to observe that, 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.

14. The Apex Court then referred to some of its earlier rulings in the context of unreasonable delay in conclusion of disciplinary

proceedings and the consequent continuance of suspension of a public servant. Finally, in para 21, this is what the Hon'ble Apex Court observed:

“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/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 person concerned 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 recognised principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognise that the 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.”

15. In the facts of the present case, we find that there is no justification in continuing the suspension of the petitioner any further. In the first place, despite expiry of three months from the date of the initial suspension period, no memorandum of charges/chargesheet, has been served upon the petitioner. No such chargesheet has been served upon the petitioner even during the extended period of suspension. Secondly, the petitioner, already stands transferred from the Vigilance Department to his parent department. The inquiry which is proposed to be held against the petitioner, relates to his conduct or misconduct in the Vigilance Department. Therefore, there can be no apprehension of the petitioner even attempting to tamper with the evidence, or otherwise create any impediment to the conduct of inquiry. Thirdly, such continued suspension, is in breach of the principles laid down by the Apex Court in **Ajay Kumar** (supra) including in particular, the observations and the directions in para 21 of the said ruling.

16. We are also satisfied that the aforesaid aspects, including the principles laid down by the Apex Court in the case of **Ajay Kumar** (supra), were not taken into consideration by the appellate authority

whilst dealing with the appeals instituted by the petitioner. The petitioner, was required to institute almost three writ petitions, only to get his suspension revoked. Accordingly, there is no point in prolonging the agony of the petitioner any further. If any further suspension of the petitioner is permitted, then, the same, would obviously amount to imposition of penalty upon the petitioner, even before the commencement of any disciplinary proceedings or a disciplinary inquiry against him.

17. For all the aforesaid reasons, we quash the Order dated 21.12.2018 extending the period of the petitioner's suspension from 26.12.2018 till 26.03.2019. This means that the suspension of the petitioner shall be deemed and treated to have been revoked with effect from 26.12.2018. The respondents to issue consequential orders and to award consequential benefits to the petitioner on the said basis, within a period of two weeks from today.

18. We however make it clear, that this Order shall not, in any manner, preclude the respondents from initiating disciplinary proceedings if they so choose. We have not, in that sense, examined the merits of the matter, and therefore, nothing in this Order may be construed as any observation on the merits of the matter. Similarly,

the issue of the period of suspension, shall have to be determined by the disciplinary authority, upon conclusion of the inquiry, if at all initiated. If no inquiry is held for an unreasonable period, it shall be open to the petitioner to make representation on the issue of suspension period, and such representation shall be disposed of in accordance with law. The respondents to dispose of such suspension within a period of two months from the date of its receipt.

19. Ld. Additional Government Advocate, on the basis of instructions, makes a statement that the petitioner can report for duties on 01.03.2019. This is, of course, without prejudice to the rights and contentions of the respondents.

20. The Rule is accordingly made absolute in the aforesaid terms. There shall be no order as to costs.

21. All concerned to act on the basis of authenticated copy of this Order.

Prithviraj K. Chavan, J.

M.S.Sonak, J.

Dv*