

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 01.02.2019

CORAM :

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.28585 of 2013
and
MP.No.1 of 2015

V.Rajaraman ... Petitioner

Vs

1. The District Collector,
Vellore District,
Vellore.
- 2.The Assistant Director of Small
Savings and Ex.Office Personal Assistant,
(Small Savings & Raffles) to the Collection,
Vellore District, Vellore. Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records relevant to the order in Memo RC PA2/9669/10 dated 09.12.2010 passed by the 1st respondent and the consequential order in Na.Ka.PA2/9669/2010 dated 06.07.2013 passed by the 1st respondent and quash the same and thereby direct the respondents to reinstate the petitioner in to service from 09.12.2010 with all consequential monetary and other service benefits.

For Petitioner : Mr.V.Manohar

For Respondents: Mr.B.Anandh, Govt Advocate
R1 & R2

ORDER

The instant writ petition under Article 226 of the Constitution of India is for Writ of Certiorari Mandamus calling for the records relevant to the order in Memo RC PA2/9669/10 dated 09.12.2010 passed by the 1st respondent and the consequential order in Na.Ka.PA2/9669/2010 dated 06.07.2013 passed by the 1st respondent and quash the same and thereby direct the respondents to reinstate the petitioner in to service from 09.12.2010 with all consequential monetary and other service benefits.

2. The writ petitioner was working as a Accountant in Small Savings Scheme in the O/o.Assistant Director of Small Savings, Vellore District. On an allegation that he demanded illegal gratification, the petitioner was arrested in Cr.No.15/2000 dated 08.12.2010 on the file of the Inspector of Police, Vigilance and Anti-Corruption, Vellore. The writ petitioner was placed under suspension under Rule 17(e) of the Tamil Nadu Service (Disciplinary and Appeals) Rules on 09.12.2010. Petitioner filed a writ petition in WP.No.14008 of 2013 praying for consideration of the representation dated 30.08.2012 and 14.12.2012 and direct the respondents to reinstate the petitioner revoking the suspension. This Court by an order dated 08.05.2013 directed the respondents to dispose of the representation of the petitioner. The petitioner's petition has been rejected by an order dated 06.07.2018, wherein the respondents are relied on guidelines of the Government for revocation of pension.

3. The paragraphs 4, 5 and 6 of the order rejecting the representation bringing out the guidelines as under:-

"(iv) If the officers arrested red handed in the act of demand, and or acceptance of bribes are released from suspension and allowed to rejoin duty, the Government's objective of maintaining probity in public administration will be belittled.

(v) It would embarrassing to have a public servant on duty, who is facing trial criminal court or a Tribunal/Departmental enquiry for grave charges which would not only affect the morale of others in service but also would act as disincentive for the public servants, who are committed to honest conduct in public service.

(vi) It is considered that, it is undesirable to keep on duty the individuals facing corrupt charges."

This order is under challenge in the instant writ petition.

4. Mr.V.Manohar, learned counsel appearing on behalf of the petitioner relied on the judgment of the Hon'ble Supreme Court of India in the case of Ajay Kumar Choudhary Vs. Union of India through its Secretary & Another, reported in (2015) 7 SCC 291, and vehemently contended that person cannot be kept under suspension for a long period of time. He was rely on the paragraphs no.13 and 14 of the said judgment. The relevant paragraphs are extracted hereunder:-

"13. 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 Page 16 16 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.

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/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 Page 17 17 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".

5. The learned counsel for the petitioner also place reliance on another judgment of this Hon'ble Court in WP.No.14118 of 2017 and in which this Court has directed the respondent in the writ petition to post the petitioner in the writ petition in a non-sensitive post.

6. In *Ajay Kumar Choudhary Vs. Union of India* through its Secretary & Others, the delinquent was not arrested on account of a criminal case. The delinquent was suspended during the disciplinary proceedings. The ratio of *Ajay Kumar Choudhary Vs. Union of India*, therefore, cannot be made applicable to the facts of the present case. The writ petitioner here has been accused of illegal gratification. The criminal case is still pending. In the circumstances, reliance placed by the respondents on the guidelines issued by the Government cannot be said to be unjustified. The guidelines specifically states on that the Officer is arrested red handed accepting bribe, then such a Officer must not be permitted to perform duty as the Government's objective of maintaining probity in public administration will be belittled.

7. The guidelines have not been challenged. The guidelines are in force. The Authorities are bound to follow the guidelines. Reliance on *Ajay Kumar Choudhary Vs. Union of India* (Supra) cannot be accepted in the instant case. The petitioner is working in the Office of Assistant Director of Small Savings. The department is handling savings of depositors. In such a department, a person who is facing a criminal charge of accepting illegal gratification cannot be permitted to work. As stated in the guidelines, reinstating such an employee facing charges of illegal gratification will affect the morale of others and will also shake the confidence of

depositors. The prayer of the writ petitioner to revoke the suspension therefore cannot be accepted. The writ petition stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Pkn
To

1. The District Collector,
Vellore District,
Vellore.
 - 2.The Assistant Director of Small
Savings and Ex.Office Personal Assistant,
(Small Savings & Raffles) to the Collection,
Vellore District, Vellore.
- +1cc to Mr. V.Manohar, Advocate SR.No. 9037
+1 CC TO GOVERNMENT PLEADER SR.NO. 9779
W.P.No.28585 of 2013
A.SK(14/03/2019)



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