

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.42265 of 2016

and

W.M.P.No.36160 of 2016

R.Jayalakshmi

... Petitioner

Vs.

1.The Chief Engineer / Distribution,
Tamil Nadu Generation and
Distribution Corporation,
Chennai Region, Chennai - 2

2. The Chief Engineer / Personal,
Tamil Nadu Generation and
Distribution Corporation,
Chennai Region, Chennai - 2

3. The Superintendent Engineer, CEDC,
Tamil Nadu Generation and
Distribution Corporation,
Chengalpattu

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for a Writ of Certiorari and Mandamus, to call for records pertaining to the proceedings memorandum No.219/Adm.2/A.1/F.Sus/2014, dated 28.11.2014, passed by the 3rd respondent herein and to consequentially quash the same and to direct the 3rd respondent herein to grant all consequential service and monetary benefits.

For Petitioner : Mr.Venkatakrisnan for
M.Kempraj

For Respondents: Mr.P.R.Dhilipkumar, Standing Counsel

O R D E R

The instant writ petition is filed for issuance of a writ of certiorari calling for the records pertaining to the proceedings memorandum No.219/Adm.2/A.1/F.Sus/2014, dated 28.11.2014, passed

by the 3rd respondent herein and consequently, quash the same and to direct the 3rd respondent herein to grant all consequential service and monetary benefits.

2. The petitioner was working as Assistant Engineer (O & M), Kelambakkam under the Tamil Nadu Generation and Distribution Corporation under the Office of Superintendent Engineer / CEDC, Chengalpattu. A complaint was given against the petitioner on 26.11.2014 alleging that she has demanded a bribe of Rs.6,000/- for domestic service. On the basis of complaint, a trap proceedings was organized on 26.11.2014. The petitioner was arrested and remanded to Chief Judicial Magistrate, Chengalpattu and was in Judicial custody and subsequently, she was released on bail.

3. The petitioner further submits that the said criminal case has been pending in C.C.No.7 of 2014 before the Chief Judicial Magistrate, Chengalpattu and a charge sheet has been filed on 20.10.2015. The petitioner was in suspension from the date she was arrested on 26.11.2014.

4. The learned counsel for the petitioner assails the impugned order continuing the suspension on the ground that the same is contrary to several orders passed by this Court. This Court in W.A.No.1255 of 2017 by an order dated 03.10.2017 observed as under:

"3. It appears that the respondent herein, who was working as Junior Engineer in the Electricity Board, is now facing a disciplinary proceedings on the basis of a trap case and consequent arrest on 24.02.2009. Considering the unreasonable delay in conducting the criminal proceedings, the learned Single Judge has allowed the writ petition, which is under challenge in the present writ appeal.

4. No doubt, the respondent herein is facing a trap case and more than eight years had already lapsed. However, considering the facts and circumstances of the case and applying the judgment of the Apex Court in AJAY KUMAR CHOUDHRY V. UNION OF INDIA ((2015) 7 SCC 291), we hereby extend another three months time to the management to get the matter being cleared, failing which, the respondent shall be taken on duty and posted in a non-sensitive post, till the proceedings are completed. The writ appeal is ordered accordingly. No costs. The connected miscellaneous petition is closed. "

5. Simultaneously, a Single Judge in W.P.No.23646 of 2012 by an order dated 28.11.2016, after referring to various paragraphs in the decision of Hon'ble Supreme Court in Ajay Kumar Vs. Union

of India [(2015) 7 SCC 291], observed as under:

"4. Admittedly, the criminal proceedings initiated against the petitioner are still pending. The petitioner has been kept under suspension for almost seven years. No doubt, in cases of corruption charges, the delinquent, who has been held for corruption, has to be dealt with severely and strenuous action needs to be initiated against him. But, when there is an inordinate delay in completing the criminal proceedings, it would not be appropriate to keep the charged official under suspension, only on the basis of an investigation report.

5. In this connection, the Hon'ble Supreme Court in *Ajay Kumar Choudhary V. Union of India* [(2015) 7 SCC 291] as held as follows:

"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."

6. If the suspension is continued for an unreasonably long period, the same is liable to be set aside. Following the judgment of the Hon'ble Supreme Court, this Court by an order dated 21.09.2016 passed in W.P.No.37322 of 2015, in a similar set of facts held as follows:

"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.""

6. In the latest judgment, the Hon'ble Supreme Court in *State of Tamil Nadu Vs. Promod Kumar IPS & another* [Civil Appeal No.8427-28-2018, decided on 21.08.2018], has observed as under:-

20. The first Respondent was placed under deemed suspension under Rule 3(2) of the All India

Services Rules for being in custody for a period of more than 48 hours. Periodic reviews were conducted for his continuance under suspension. The recommendations of the Review Committees did not favour his reinstatement due to which he is still under suspension. Mr.P. Chidambaram, learned Senior Counsel appearing for the first Respondent fairly submitted that we can proceed on the basis that the criminal trial is pending. There cannot be any dispute regarding the power or jurisdiction of the State Government for continuing the first Respondent under suspension pending criminal trial. There is no doubt that the allegations made against the first Respondent are serious in nature. However, the point is whether the continued suspension of the first Respondent for a prolonged period is justified.

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 27.06.2016, 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 18 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 Appellant State has the liberty to appoint the first Respondent in a non sensitive post."

7. In view of the settled position of law, the impugned order dated 28.11.2014 is set aside and quashed. The respondents are directed to reinstate the petitioner in service at an appropriate place at their discretion. The orders to be passed within six weeks from the date of receipt of a copy of this order.

Accordingly, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

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To

1. The Chief Engineer / Distribution,
Tamil Nadu Generation and
Distribution Corporation,
Chennai Region, Chennai - 2.

2. The Chief Engineer / Personal,
Tamil Nadu Generation and
Distribution Corporation,
Chennai Region, Chennai - 2 .

3. The Superintendent Engineer, CEDC,
Tamil Nadu Generation and
Distribution Corporation,
Chengalpattu.

+2 Ccs to Mr.M. Kempraj, Advocate sr 79463.

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SP(18/10/2019)