

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/11/2019

C O R A M

THE HON'BLE MR. A.P.SAHI, CHIEF JUSTICE

and

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition Nos.27145, 27280 and 27166 of 2019

&

W.M.P.Nos.26530, 26531, 26559, 26562, 26704 and 26705 of 2019

M. Rathinavelu ...Petitioner in W.P.No.27145 of 2019

A. Kalaiselvi ...Petitioner in W.P.No.27166 of 2019

C.Palaniyappan ...Petitioner in W.P.No.27280 of 2019

Vs

1. The Registrar General
High Court
Madras 600 104.

2. The Principal District Judge
Thiruvannamalai. ... First and second
respondents in all
the writ petitions

3. The Principal Subordinate Judge
Office of the Principal Sub-Court
Thiruvannamalai
Thiruvannamalai District. ... Third respondent in
W.P.Nos.27145
and 27166 of 2019

Office of the Special Judge
to deal with MCOP cases
Tiruvannamalai. ... Third respondent in
W.P.No.27280 of 2019

Prayer in W.P.Nos.27145 and 27166 of 2019: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records of the third respondent pertaining to the impugned order in Dis.No.258/2016, dated 28/3/2016 and quash the same.

Prayer in W.P.No.27280 of 2019: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records of the third respondent pertaining to the impugned order in Dis.No.134/2016, dated 2/4/2016 and quash the same.

For petitioners ... Mr.V.Bhiman

For respondents ... Mr.V.Vijaya Shankar

C O M M O N O R D E R

(Order of the Court was made by Subramonium Prasad,J)

Challenge in these writ petitions is to the orders suspending the petitioners.

2. Material on record disclosed that LAOP No.64 of 1998, was disposed of, on 28/10/1993, on the file of Principal Sub-Court, Tiruvannamalai. There were five claimants in the said LAOP. Claimant Nos.3 and 5, Ravai Kannu Gnanasekaran and Narayanachari passed away pending LAOP. Applications were filed to implead the legal heirs of Claimant No.3 and Claimant No. 5. Applications were allowed. Compensation as awarded in the LAOP was deposited in the Court.

3. After the disposal of LAOP, a vakalathnama was filed in favour of an Advocate, Mr. R.Gunasekaran. The Vakalatnama contained four signatures of the claimants, viz., (i). Ranganathan (ii). Ravai Kannu Gnanasekaran, (iii). Kumarasamy and (iv). Narayanan. An application was filed for withdrawing the amounts deposited in the account of LAOP. The same was allowed and compensation was given to Advocate R. Gunasekaran.

4. First claimant has filed a complaint, dated 1/12/2015, with the Principal Sub-Judge, Tiruvannamalai, stating that the compensation amount awarded in LAOP No.64 of 1988 was not paid to him, even after a lapse of eleven months, from the date of submission of the application for such claim through his counsel. Preliminary enquiry was ordered. On enquiry, it was found that the amount had already been disbursed in the application filed by Advocate R. Gunasekaran.

5. Notices were sent to the other claimants and the legal representatives of the claimants who had passed away during the LAOP proceedings. Enquiry reveal that the claimants and the legal representatives of the deceased claimants had not executed any vakalatnama in the name of Gunasekaran.

6. C.Palaniyappan, first petitioner (now under suspension) was working as Sheristadar in Special Subordinate Judge Court for MCOP Cases, Tiruvannamalai. K. Annamalai, second petitioner (now retired) was working as Head Clerk, in the Court of the Principal District Munsif, Cheyyar. M. Rathinavelu, third petitioner, (now under suspension) was working as Assistant, in the Court of the Principal District Munsif, Tiruvannamalai and deputed to work in the Court of the Principal Sub-Court, Tiruvannamalai. A. Kalaichelvi, fourth petitioner (now under suspension) was working as a Junior Assistant, in the Principal Sub-Court, Tiruvannamalai when the amount was given to R. Gunasekaran Advocate.

7. It was also revealed in the enquiry that when the Court staff came to know about the proposed complaints, they approached the claimants and promised them to pay the amount in two instalments, which was paid.

8. On realising the seriousness, the Principal Sub-Judge, Tiruvannamalai, lodged a complaint, on 24/3/2016, before the Superintendent of Police against R.Gunasekaran and the petitioners herein. On the basis of a complaint, FIR has been registered, in Crime No.4 of 2016, dated 25/3/2016, for offences, under Sections 420, 466, 468 r/w. 120 (b) IPC. Charge sheet has been filed and the criminal case is proceeding. Departmental proceedings have also been initiated against the petitioners herein by issuing a charge memo which is under challenge in this writ petition.

9. Charges framed against the petitioners read as under:-

Statement of charges framed against Tr.C.Palaniyappan, under suspension, Sherisdhar, Special Sub Court for MCOP cases, Tiruvannamalai, 2. Tr.K.Annamalai, under suspension, Head Clerk, Principal District Munsif Court, Cheyyar, 3. Tr.M.Rathinaval, under suspension, Assistant, Principal Sub Court, Tiruvannamalai. (On deputation with copy to the Principal District Munsif, Tiruvannamalai), 4. Tmt.A.Kalaiselvi, under suspension, Junior Assistant, Principal Sub Court, Tiruvannamalai for their misconduct.

CHARGE-I :

That in LAOP 64/1988 the enhanced compensation amount of Rs.3,05,760/- deposited in the court, which is due for payment to the claimants Ranganathan, (1/6 share), Kumarasamy (1/6 share), Saroja and Ravkannu (1/4 share) and Narayana Achari (1/3 share). By a cheque application by Advocate Tr.Gunasekaran I.A.9/2015 said to be filed on behalf of Ranganathan,

Kumarasamy and Ravakannu had obtained the cheque for Rs.2,58,622/- in collusion with delinquents Tr.Palaniappan, Tr.K.Annamalai, Tr.M.Rathinaval and Tmt.A.Kalaiselvi and encashed the same and misappropriated the compensation amount by tampering the court records. The delinquents 1 to 4 namely Tr.C.Palaniyappan, Tr.K.Annamalai, 3. Tr.M.Rathinaval, 4. Tmt.A.Kalaiselvi had acted in collusion and tampered the court records and misappropriated the amount deposited thereby rendering yourselves liable to be proceeded for misconduct under TNCS (D&A) Rules.

CHARGE-II :

That Tmt.Kalaiselvi, the Head Clerk Assistant of Principal Sub Court, Tiruvannamalai now under suspension during the relevant time was incharge of LAOP branch and when the cheque application was filed you have not attended the petition and allowed the Head Clerk Tr.K.Annamalai to deal with the same without specific instructions. You have omitted to make necessary entries in the I.A, disposal register, 'A' diary regarding numbering of the petition, orders passed in the petition and the issuance of the cheque to the Advocate. The result of the petition was also not entered in the LAOP suit register with an intension to screen the fact regarding filing of the cheque petition and orders passed therein to the notice of the claimants concerned and the counsels on record in LAOP 64/88. You have acted in collusion with the other delinquents with a view to misappropriate the amount lying in the court deposit with dishonest motive by falsifying the Government records there by you have committed misconduct, act of abuse and misuse of power and conduct unbecoming of a Government Servant thereby rendering yourself punishable under TNCS (D&A) Rules.

CHARGE-III :

That you Tr.K.Annamalai, now under suspension, formerly Head Clerk, Principal Sub Court, Tiruvannamalai during the relevant time had attended the cheque petition I.A.9/2015 filed by Advocate Tr.Gunasekaran without any specific instructions or office order even though it was not concerned with your branch. You have not properly verified the petition and numbered the same on 27.4.2015 without insisting for the passport photos of the petitioners as in case of other petitions, not verified the case bundle properly to verify whether the claimants are alive, eventhough in the bundle the legal heirs

petition filed by Ravakannu and Narayanan were available. With dishonest motive in collusion with other delinquents you have numbered the petition with a view to misappropriate the court deposit amount which is due for payment to the petitioners in the case, there by you have committed misconduct, abuse and misuse of power and conduct unbecoming of a Government Servant rendering yourself punishable under TNCS (D&A) Rules.

CHARGE-IV :

Tr.C.Palaniappan, now under suspension, previously Sheristadar, Principal Sub Court, Tiruvannamalai had failed to supervise the work of the Subordinates in the Principal Sub Court with dishonest motive and allowed the Head Clerk, Tr.K.Annamalai to deal with the LAOP petition without any orders from the Judge. You did not verify the case records properly and placed a leading note to the presiding office in collusion with Tr.Gunasekaran, Advocate and other delinquents and did not verify the case records properly and omitted to insist for a calculation statement for the amounts due to the petitioners, passport size photos and ID card Xerox copies of the petitioners as in case of other petitions. You have omitted to verify that the petitioners in the cheque petition are only entitled as per decree only for $1/6+1/6+1/8+1/3$ amount from the deposit made and the amount claimed in the cheque petition did not tally with the decree. With view to misappropriate the cheque amount you have placed the defective cheque petition for orders with a leading office note without adhering to the procedures established and instructions given by the Hon'ble High Court thereby rendering yourself punishable under TNCS (D&A) Rules for your misconduct, tampering of records, misuse and abuse of power, misappropriation of the cheque amount in collusion with Advocate Tr.Gunasekaran.

CHARGE-V :

That you Tr. Rathinavel now under suspension formerly Sheristadar Assistant Principal Sub Court, Tiruvannamalai on deputation from Principal District Munsif Court, Tiruvannamalai is duty bound to verify the amounts lying in the court deposit as well as the share of the parties concerned out of Rs.3,05,760/- wherein the petitioners Ranganathan, Kumarasamy each are entitled for $1/6$ share, Ravakannu entitled for $1/8$ share, Narayanaachri entitled for $1/3$ share. Exceeding their share fraction cheque petition was filed which

was entertained and cheque was issued in the name of the counsel without insisting for the receipt signed by the parties, photographs and ID proofs filed as in case of other petitions with a view to misappropriate the cheque amount lying the court deposit in convenience leaf with the Sheristadar and Head Clerk and other the delinquents. You had prepared the cheque number 16854 on 24.4.2015 much prior to the numbering of the petition and before orders passed by the court in collusion with the other delinquents and the Advocate Tr.Gunasekaran with a view to misappropriate the cheque amount due for payment to the claimants in LAOP 64/1988 thereby you have rendered yourself punishable under TSCS (D&A) Rules for misconduct, dishonest motive to misappropriate funds lying in the court deposit, not maintained absolute integrity and devotion to duty, misuse and abuse of power, tampering of records and conduct unbecoming of a Government Servant.

CHARGE-VI :

That you Tr.Palaniappan, had failed to supervise the work of the delinquents who were working as your Subordinates in the office with dishonest motive and omitted to see that the cheque was prepared by your assistant Tr.Rathinavel, delinquent much prior to your note and orders from the court and you have not exercised proper control and supervision in the office administration and failed to maintain absolute integrity and devotion to duty thereby contravened the provisions of Tamil Nadu Government Servants Conduct Rules 1973 thereby rendering yourself punishable under TNCS (D&A) Rules.

10. By the orders, dated 28/3/2016, 28/3/2016 and 2/4/2016, petitioners in W.P.Nos.27145, 27166 and 27280 of 2019, respectively, are put under suspension.

11. Heard the counsels for the parties

12. Though the prayer in the writ petitions is one, challenging the orders of suspension, the main contention of the learned counsel for the petitioners is that the petitioners are in suspension from March and April 2016, respectively and that the suspension must be revoked, in the light of the judgments of the Hon'ble Supreme Court, in AJAY KUMAR CHOUDHARY {(2015) 7 SCC - 291} and a Full Bench judgment of this Court in S.RAVI AND OTHERS Vs. THE DISTRICT COLLECTOR AND OTHERS {2015 (3) CTC - 465}.

13. Learned counsel for the petitioners would state that the petitioners are only subordinate staff and since all the documents are in the custody of the respondents, there is no question of tampering with the records. It is also urged that order of suspension cannot extend beyond three months and since charge memos have not been given to them in three months suspension ought to be revoked.

14. Respondents have filed counter, stating that allegations on the petitioners are such that it will not be desirable to allow them to be in service. Petitioners are guilty of serious lapses and abuse of their position. Petitioners are working in Court and the very nature of work is that only persons with very high integrity should be permitted to work inside the Court. Petitioners are guilty of being party to an act whereby, the poor claimants have been defrauded of the compensation amount which they are entitled to receive. If the petitioners come back to Court, they can indulge in tampering with records and documents. It is stated that the principle stated in Ajay Kumar's case cannot be mechanically followed in all the cases and more so, when it involves Court staff. The respondents state that it is not possible to keep them in any non-sensitive post inside the Court complex.

15. Rule 17 (e) of the Tamil Nadu Government Conduct Discipline and Appeal Rules, prescribes the conditions under which a member of a Civil Service can be placed under suspension. The said Rule reads as under:-

"(e) (1) A member of a service may be placed under suspension from service, where- (i) an enquiry into grave charges against him is contemplated or is pending; or ii) a complaint against him of any criminal offence is under investigation, or trial and if such suspension is necessary in the public interest.

(2) A Government servant who is detained in custody whether on a criminal charge or otherwise, for a period longer than forty-eight hours shall be deemed to have been suspended under this rule.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or

compulsory retirement and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government Servant is set aside or declared or rendered void in consequence of or by a decision of a Court of law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

* Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court of law has passed an order purely on technical grounds without going into the merits of the case.

(5) Where a Government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceedings or otherwise) and any other disciplinary proceedings are commenced or any other criminal complaint is under investigation or trial against him during the continuance of that suspension, and where the suspension of the Government servant is necessary in public interest as required under clause (1), the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings including departmental proceedings taken on the basis of facts which led to the conviction in a Criminal Court.

(6) An order of suspension made or deemed to have been made under this rule may at any time be revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

16. Government from time to time has passed orders, regarding continued suspension of a Government employee. In G.O.Ms.No.245, Personnel and Administrative Reforms (Per.N) Department, dated 17/3/1982, it is stated that when a Government servant has been suspended, pending disciplinary proceedings,

must be completed within a period of three months and the total period of suspension should not exceed three months. However, subsequent G.O., Ms.No.40, Personnel and Administrative Reforms (N) Department, dated 30/1/1996 has been passed and made it clear that the time limits will not be applicable, in cases of Government Servants against whom criminal proceedings have been initiated.

17. The Hon'ble Supreme Court, in AJAY KUMAR CHOUDHARY Vs. UNION OF INDIA, THROUGH ITS SECRETARY AND ANOTHER {(2015) 7 SUPREME COURT CASES 291}, on which the the learned counsel for the petitioners has placed heavy reliance, has observed as under:-

"11. 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.

12. 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." In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial."

18. The Hon'ble Full Bench of this Court in S.Ravi and Others Vs. The District Collector and Others {2015 (3) CTC - 465} also held that prolonged period of suspension must not be permitted. The Learned counsel for the Petitioner has relied on other judgments which also state that an employee should not be kept in prolonged suspension.

19. In Union of India v. Ashok Kumar Aggarwal, (2013) 16 SCC 147 the Hon'ble Supreme Court has observed as under:

27. Suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered. Suspension is an interim measure in the aid of disciplinary proceedings so that the delinquent may not gain custody or control of papers or take any advantage of his position. More so, at this stage, it is not desirable that the court may find out as to which version is true when there are claims and counterclaims on factual issues. The court cannot act as if it is an appellate forum de hors the powers of judicial review.

17. In the facts of this case, when the petitioners being Court staff have been accused of impersonation and forgery by which they have defalcated compensation of money, which has been paid by way of compensation, cannot be permitted to be brought back into the Court. This will lead to loss of confidence, in the minds of litigating public. Courts are temples of Justice and if such persons, who are accused of such heinous crimes are allowed to continue to work, which will bring down the majesty and reputation of the institution. Their very presence in the Court premises will send a wrong signal to the public at large. Revocation of suspension in such type of cases cannot be done, in a routine and mechanical manner.

20. Though the counsel for the Petitioner relying on the judgment of the Hon'ble Supreme Court in Ajay Kumar Choudhary v. Union of India, (2015) 7 SCC 291 has argued that the Petitioner can be placed in a non sensitive post by revoking suspension, it is difficult to accept the contention. The Petitioners are working in the court. It will be difficult to transfer them to any other court. The faith of the litigating public is at stake. The majesty of law cannot be compromised by the presence of such individuals whose reputation is tainted

because of allegations of forgery and fabricating court records. Unless the Petitioners don't come clean from the allegations it will be against the institution to ask them to work in any other Court. The interest of judiciary cannot be compromised. Courts work in the spirit of honesty and not in the spirit of mischief-making or money-getting. The courts staff can be permitted to work only if they maintain their commitment to integrity and service to the community. Any compromise with integrity of the employees working in the court is bound to affect the faith of the people in the rule of law and, therefore, any misconduct of the court staff has to be viewed seriously. In our country, a social duty is cast upon judiciary to show the people beacon light by their conduct and actions. People look towards the courts for Redressal of their grievances. No effort should be made or allowed to be made by which a litigant could be deprived of his rights.

21. This Court is of the view that where there are reasons which warrants that the employee against whom there are grave charges, then revocation cannot depend only on the length of time.

22. This Court by an order, dated 18/11/2019, made in W.P.No.23387 of 2019, has directed that disciplinary enquiry must be concluded, within a period of three months. If the disciplinary proceedings is not concluded, it will not be proper for the petitioners to continue the work in Court premises.

23. In this view of the matter, writ petitions are dismissed. Petitioners are at liberty to approach this Court, once again, if the enquiry is not completed, within a period of three months. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

// True Copy//

Sub Assistant Registrar

mvs.

To

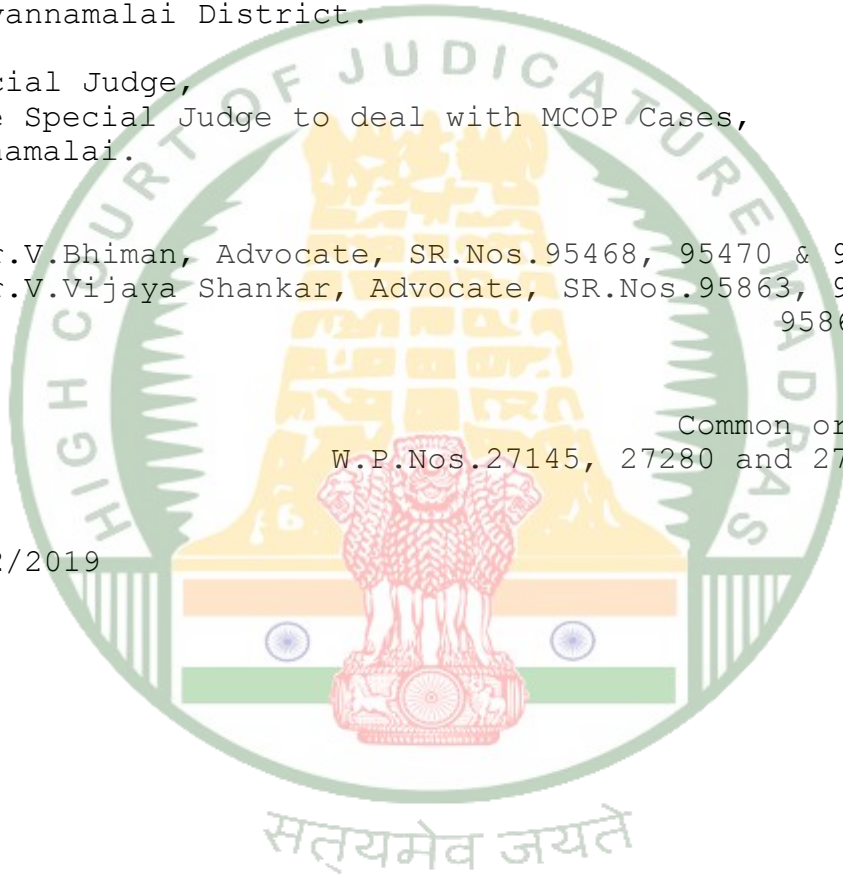
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O/o. The Special Judge to deal with MCOP Cases,
Tiruvannamalai.

+3CC to Mr.V.Bhiman, Advocate, SR.Nos.95468, 95470 & 95469.

+3CC to Mr.V.Vijaya Shankar, Advocate, SR.Nos.95863, 95862 &
95861.

Common order made in
W.P.Nos.27145, 27280 and 27166 of 2019

GP(CO)
CSR: 18/12/2019



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