

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23/10/2019

C O R A M

The Honourable Mr. Justice SUBRAMONIUM PRASAD

Writ Petition No.5556 of 2017

P.Sakkarai

... Petitioner

Vs

1. The Assistant Director
Khadi & Village Industries Board
Kanchipuram.

2. The Chief Executive Officer
Khadi & Village Industries Board
Kuralagam
Chennai 108.

... Respondents

Prayer Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, to call for the records of the respondents 1 and 2 in connection with the impugned orders passed by the first respondent in RC.No.5/2009/E dated 9/1/2009 and the second respondent in Memo Na.Ka.No.503/E4(2)/09 dated 03/04/2014 and Memo in Na.Ka.No.503/E4(2)/2009 dated 23/12/2015 and quash the same and direct the respondents to reinstate the petitioner in a non-sensitive post and grant him all consequential service and monetary benefits.

For petitioner ... Mr.K.Ravi Anantha Padmanaban

For respondents ... Mr.S.K.Bose

O R D E R

Instant writ petition has been filed to quash the orders of the respondents 1 and 2, in connection with the impugned orders, passed by the first respondent, in RC.No.5/2009/E, dated 9/1/2009 and the second respondent, in Memo Na.Ka.No.503/E4(2)/09, dated 3/4/2014 and Memo in Na.Ka.No.503/E4(2)/2009, dated 23/12/2015, and consequently, direct the respondents to reinstate the petitioner in a non-sensitive post and grant him all consequential service and monetary benefits.

2. Brief facts of the case is as follows:-

Petitioner is an accused, for an offence punishable, under Sections 7 and 13 (2) r/w. Section 13 (1) (d) of the Prevention of Corruption Act, 1988, for having accepting the bribe of Rs.1,000/-. Charge sheet has been filed, in S.C.No.9 of 2008, on the file of the Chief Judicial Magistrate, Tirunelveli. Petitioner was placed under suspension, on 9/1/2009. Charge sheet has been filed on 24/6/2011. Since, the petitioner continues to be on suspension, for the last eleven years, he has filed the instant writ petition, for reinstatement, by revoking the order of suspension. It is also stated that no disciplinary proceeding has been initiated against the petitioner.

3. Learned counsel for the petitioner relies on the judgment of the Hon'ble Supreme Court in Ajay Kumar Choudhary vs. Union of India, through its Secretary and another {(2015) 7 SCC - 291 and the State of Tamil Nadu, rep. By Secretary to Government (Home) Vs. Promod Kumar, IPS & Another (Civil Appeal No.8427-8428 of 2018), dated 21/8/2018, to contend that a person cannot be placed on prolonged suspension.

4. On the other hand, learned counsel for the respondents state that it is a case of trap. Petitioner has been caught red handed, accepting the bribe and such persons cannot be permitted to join back the services as it would send a wrong signal to the employees in the organisation.

5. Heard Mr.K.Ravi Anantha Padmanaban, learned counsel for the petitioner and Mr.S.K.Bose, learned counsel for the respondents.

6. As rightly pointed out by the learned counsel for the petitioner that Ajay Kumar Choudhary vs. Union of India, through its Secretary and another {(2015) 7 SCC - 291, the Hon'ble Supreme Court has found fault with prolonged suspension. In the said judgment, the Hon'ble Supreme Court, has observed as under:-

8. The learned Senior Counsel for the Appellant, however, has rightly relied on a series of Judgments of this Court, including O.P. Gupta v. Union of India 1987 (4) SCC 328, where this Court has enunciated that the suspension of an employee is injurious to his interests and must not be continued for an unreasonably long period; that, therefore, an order of suspension should not be lightly passed.

9. Our attention has also been drawn to K. Sukhendar Reddy v. State of A.P. 1999 (6) SCC 257, which is topical in that it castigates selective suspension perpetuated indefinitely in circumstances where other involved persons had not

been subjected to any scrutiny. Reliance on this decision is in the backdrop of the admitted facts that all the persons who have been privy to the making of the Office-notes have not been proceeded against departmentally.

10. So far as the question of prejudicial treatment accorded to an employee is concerned, this Court in *State of A.P. v. N. Radhakishan* 1998 (4) SCC 154, has observed that it would be fair to make this assumption of prejudice if there is an unexplained delay in the conclusion of proceedings. However, the decision of this Court in *Union of India v. Dipak Mali* 2010 (2) SCC 222 does not come to the succour of the Appellant since our inspection of the records produced in original have established that firstly, the decision to continue the suspension was carried out within the then prevailing period and secondly, that it was duly supported by elaborate reasoning.

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.

19 State of Punjab v. Chaman Lal Goyal (1995) 2 SCC 570 deserves mention, inter alia, because action was initiated on 25.3.1992 and a Memorandum of Charges was issued on 9.7.1992 in relation to an incident which had occurred on 1.1.1987. In the factual matrix obtaining in that case, this Court reserved and set aside the High Court decision to quash the Inquiry because of delay, but directed that the concerned officer should be immediately considered for promotion without taking the pendency of the Inquiry into perspective.

20. 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 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.

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/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 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. (emphasis supplied).

7. The said judgment has been reiterated by the Hon'ble Supreme Court in the State of Tamil Nadu, rep. By Secretary to Government (Home) Vs. Promod Kumar IPS & Anr, (Civil Appeal No.8427-8428 of 2018). Petitioner is under suspension, for the past eight years. In view of the above cited judgment, it may not be correct to keep the petitioner further under longer suspension. Accordingly, writ petition is allowed. Respondents are directed to appoint the petitioner in a non-sensitive post which is completely unconnected to the post where he was serving. Respondents are directed to pass requisite orders, within a period of twelve weeks, from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS III)

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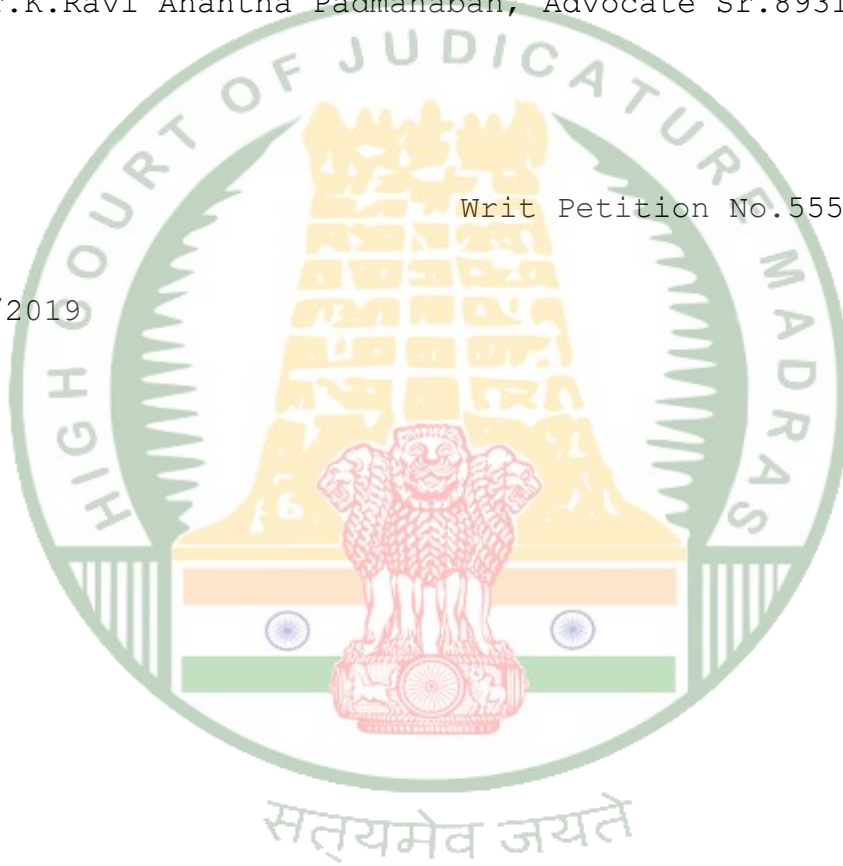
To

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+1cc to Mr.K.Ravi Anantha Padmanaban, Advocate Sr.89313

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