

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14/11/2019

C O R A M

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.5874 of 2017  
and  
MP.No.6290 of 2017

Mr.O.Baskaran

...

Petitioner

Vs

1. The Additional Director General of Police (L&O),  
Dr.Radhakrishnan Salai, Mylapore,  
Chennai - 04.

2. The Commissioner of Police,  
Office of the Commissioner of Police,  
Madurai.

...

Respondents

**Prayer** : Petition filed under Article 226 of the Constitution of India praying for the issuance of Certiorarified Mandamus, calling for the records of the second respondent and quashing his impugned order dated 25.07.2014 vide C.No.D(3)/337677/2014/C.P.O.No.988/2014 suspending the petitioner from his service as Special Sub Inspector of Police (HC 2841) Madurai City in pursuance of the case registered by V&AC, detachment, Virudhunagar vide FIR.No.2/2014 for offences under Section 7 and 13(2) r/w 13(1) (d) of the Prevention of

Corruption Act, 1988 and consequently direct the respondent-1 to reinstate the petitioner into service as Special Sub Inspector of Police, Madurai City.

For petitioner ... Mr.S.K.Ravi Ananthapadmanaban

For respondents ... Ms.R.Janaki, A.G.P

**ORDER**

The instant writ petition is for a Writ of Certiorarified Mandamus, calling for the records of the respondent in C.No.D(3)/337677/2014/C.P.O.No.988/2014, dated 25.07.2014, and quash the same and consequently direct the respondent herein to post the petitioner in any non-sensitive post.

2. On 18.07.2014, while the petitioner was serving as SSI (Special Sub- Inspector) in CS.CID, Virudhunagar, he was caught for demanding and accepting an illegal gratification of Rs.1,500/- He was arrested by the Directorate of Vigilance and Anti-Corruption. He was placed under suspension on 25.07.2014. A case has been registered against the petitioner under Section 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. Charge sheet has

been filed before the Court of Chief Judicial Magistrate cum Special Judge, Srivilliputhur in special criminal case No.8 of 2015. The petitioner continued to be in suspension from 25.07.2014 till date. The representation of the petitioner to revoke the suspension has not been considered till date.

3. The petitioner has filed this writ petition primarily relying on the judgment of the Hon'ble Supreme Court in **Ajay Kumar Choudhary Vs. Union of India** reported in 2015 7 SCC 291, wherein the Hon'ble Supreme Court has deprecated prolonged periods of suspension.

4. On notice, the respondents have filed a counter. In the counter, it is stated that the petitioner was caught red-handed demanding and accepting bribe. It is stated that the grievance of the petitioner seeking release from suspension could not be considered as per the guidelines of Government of Tamil Nadu in letter No.4785/A/N/94-10 P&AR (N) Department, dated 05.01.1996 wherein it is specifically stated that it would be embarrassing to

have a public servant on duty who is facing trial in criminal court for grave charges which would not only affect the morale of others in service but also would act as disincentive for the public servant, who are committed to honest conduct in public service.

5. Heard the counsel for the parties.

6. The learned counsel for the petitioner placed strong reliance on the judgment of the ***Ajay Kumar Choudhary Vs. Union of India (Supra)***. According to the petitioner, the suspension ought to be revoked in the light of the judgment of the Hon'ble Supreme Court of India in ***Ajay Kumar Choudhary Vs. Union of India (Supra)***. The petitioner also placed reliance on judgment in the case of ***State of Tamil Nadu Vs. Pramod Kumar***, in Civil Appeal No.8427-8428 of 2018, wherein the Hon'ble Supreme Court placed reliance on the judgment of the ***Ajay Kumar Choudhary Vs. Union of India (Supra)*** and revoked the suspension. The petitioner also relied on another Division Bench judgment of this Court in ***M.Murugan Vs. The Deputy Inspector General of Police***, in W.A.(MD).No.100 of 2017, wherein

this Court after quoting extensively from the judgment of **Ajay Kumar Choudhary Vs. Union of India (Supra)**, revoked the suspension and placed the petitioner therein, in the non-sensitive post.

7. On the other hand, the learned counsel for the respondent relies on a letter dated 26.04.2016, wherein the P&AR (N) Department, has given instructions to Secretary, after the judgment of the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary Vs. Union of India (Supra)**. Instructions have been given in the said letter that the suspension of persons facing grave criminal charges should not be mechanically revoked.

8. The respondent also placed reliance on G.O.Ms.No.40, Personnel and Administrative Reforms (N) Department, dated 30.01.1996, which states that the time limit for revoking of suspension/completion of enquiry need not be adhered to any case, where the Government servants are facing criminal proceedings.

9. Perused the material on record. The petitioner has been under suspension from 28.08.2014. Disciplinary proceedings have not been initiated against the petitioner. The Hon'ble Supreme Court in ***Ajay Kumar Choudhary Vs. Union of India (Supra)***, 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. ”*

10. In ***State of Tamil Nadu Vs. Pramod Kumar(Supra)***, the Hon'ble Supreme Court relied on the judgment of ***Ajay Kumar Choudhary Vs. Union of India (Supra)***, and observed as under:-

*"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. "*

11. A Division Bench of this Court in **M.Murugan Vs. The Deputy Inspector General of Police (supra)**, after quoting extensively the judgment of **Ajay Kumar Choudhary v. Union of India (supra)**, observed as under:-

" 7. We are of the opinion that the issue involved in this case has to be decided only based on the decision of the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhry Vs. Union of India [2015(2) Scale 432]**, cited *supra*, wherein it has been held that the currency of suspension order should not be extended beyond a period of three months, if within this period, the Memorandum of charges/ charge sheet is not served on the delinquent official and if charge memo/sheet is served, a reasoned order must be passed for extension of the suspension. Subsequently, the Government of Tamil Nadu has also issued instructions in Letter No.13519/N/2016-1, P &AR (Per.N) Department, dated 23.07.2015, to all Principal Secretaries to Government, Department of Secretariat and Head of Departments to follow the directions of the Hon'ble Supreme Court on the limitation period of suspension, in letter and spirit.

8. Even, in the instant case, it is seen that though the

suspension order was passed on 30.06.2015, till date, charge memo has not been issued. Hence, the appellant cannot be kept under prolonged suspension, as a Division Bench of this Court in the case of *Ambigapathy, P.S. Vs. The Director of Public Health & Preventive Medicine* [1991 Writ L.R. 273], has held that the prolonged suspension is unreasonable and without any justification.

9. In this regard, one more reliance could be placed on the judgment of this Court dated 08.04.2014 in W.P.No.21014 of 2013 [*K.Selvamani Vs. State and another*], which is reported in 2014(4) MLJ 79. It is relevant to quote paragraph No.10 of the said order dated 08.04.2014, which reads thus:

"10. In this regard, a reference can be placed to an unreported judgment of this Court in W.P.No.291965 of 2010, etc. batch, dated 02.07.2012, (*G.Mathivannan Vs. The Director of Municipal Administration, Chepauk, Chennai*), wherein it has been held as follows:

"7. Apart from this, in all these cases, after a period of 6 months, the petitioners are entitled to get 75% of emoluments as subsistence allowance. Instead of keeping them idle and paying 75% of salary by way of allowance, by transferring them to a far away place and posting them in a non-sensitive post, after extracting work, they can be paid salary. However, the same can be done without detriment to the action initiated against them. In the criminal case, some of them or a few of them may be exonerated or they may be punished. But, as on date,

*not only finality has not been reached but there is no progress. Under such circumstances, in the opinion of this Court, continuance of their suspension is unreasonable following the judgment of the Division Bench.*

*8. In view of this, the suspension orders passed in all these writ petitions are set aside. However, the respondents are at liberty to post these petitioners in a far away place from the station of occurrence and post them in a non-sensitive post and if for any reason, the authorities are of the opinion that their continuance in service is a hindrance for the action initiated against them, they can re-examine the issue and they are at liberty to take appropriate action."*

12. As stated earlier, the learned counsel for the State Government placed reliance on the instructions issued by the Personnel and Administrative Department in letter (Ms) No. No.43/N/2015-3, P&AR (N) Department, dated 26.04.2016. Since heavy reliance has been placed on the said letter, the entire has been reproduced.

"From

Thiru. P.W.C. Davidar, I.A.S.,

*Principal Secretary to Government*

*To*

*All Secretaries / Principal Secretaries to Government,*

*Departments of Secretariat All Heads of Departments*

*All Boards / Corporations / Public Sector Undertakings Sir /  
Madam,*

*Sub:- Limitation fixed on the period of suspension -  
Order of the Hon'ble Supreme Court of India in Ajay Kumar  
Choudhary Vs. Union of India through its Secretary & ANR in  
Civil Appeal No.1912 of 2015 (arising out of SLP (C) No.31761 of  
2013) dated 16-02-2015 - Clarification - Regarding" –*

*Ref:- 1. Government Letter No.13519 / N /2015-1,  
Personnel and Administrative Reforms (N) Department , dated  
23-07-2015.*

*2. From the Engineer-in-Chief, WRD and Chief Engineer  
(General), Public Works Department, Chepauk, Chennai-05,  
Letter No.Cl I (3) / 450 / 2015-4; dated 04-11-2015.*

*In the letter 1<sup>st</sup> cited, the Departments of Secretariat  
and the Heads of Departments were requested to follow the  
directions ordered by the Hon'ble Supreme Court of India on  
the limitation in the period of suspension as three months  
based on a case-law in Ajay Kumar C.'noudharv Vs. Union of  
India through its Secretary & ANR in Civil Appeal No.1912 of  
2015 (arising out of SLP (C) No.31761 of 2013) dated 16-02-  
2015.*

2. In this connection, it is clarified that in the said decision of the Supreme Court of India in the case-law indicated in the letter 1<sup>st</sup> cited, itself it has been among other things enlightened as given below

" 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".

3. It is observed from the above terms that if the charge memo / Charge sheet is not served in departmental disciplinary inquiries within a period of three months, the suspension should not extend beyond the said period. If the memorandum of charges is served, a reasoned order must be passed for the extension of suspension.

4. In this connection, the Government instructions issued already with regard to the suspension arising out of criminal cases, are once again extracted as below :-

(i) In Govt. Letter No.47685A/N/94-10, dated 05-01-1996, the grounds for keeping a Government servant under suspension on account of criminal cases / grave corruption charges pending against him, are, among other things, given there-under as follows

(a) 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;*

*(b) it would be embarrassing to have a public servant on duty, who is facing trial in 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 a disincentive for the public servants who are committed to honest conduct in public service.*

*(c) The High Court, Madras in a case law in D. Uthirakumaran Vs the Government of Tamil Nadu and another (1988 Writ Law Reporter p-229) has quoted an observation as given below :-*

*"The seriousness of the allegations and the nature of the allegations and the embarrassment faced by the Government and the necessity to keep the high morale of the public services could also be factors that could legitimately weigh with the Government in making the order of suspension."*

*(d) The Supreme Court of India in a case law in R.P. Kanpur Vs. Union of India and another (1964 AIR Supreme Court p-787) has, held as given below*

*"on general principles therefore, the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a depart/mental enquiry against him."*

*(ii) In addition to the above, detailed guidelines have*

already been issued in G.O.(Ms.) No.40, P.& A.R. (N) Department, dated 30.1.1996 to curtail (i) prolonged suspension in departmental disciplinary cases. In this G.O. itself also, it has been clearly stated that the time limit prescribed therein, does not applicable to the criminal cases.

5. In view of the above settled policy of the Government for at least temporarily keeping away the corruption-charged public servants and / or the public servants charged on their moral-turpitude either on their official and / or private capacity, till they are exonerated of the grave charges, by way of keeping them under suspension from public service so as to encourage cleanliness in the effective delivery of public services to the general public, it is clarified that the instructions issued already in Govt, letter No.13519/N/2015-1 dated 23.7.2015 to the effect that the time limit of three months on suspension cases specified therein, are applicable only to the suspension cases arising out of departmental disciplinary inquiries pertaining to non-vigilance and / or any non-criminal cases. in view of the admitted fact that the gravity of the Vigilance / Criminal cases is alarmingly more, than that of the seriousness of the non-vigilance / non-criminal cases in which allegation of corruption js not dealt with.

6. It is also clarified that in the event of conviction in criminal case and / or grave corruption charges proved in any case, the competent authority may, by discretion, tend to impose any of the major penalties (dismissal / removal) against

*those accused officers concerned. Hence, in such cases, the suspension of those accused officers who have attained the age of superannuation but not permitted to retire and retained in service under Fundamental Rules 56 (1) (c) or similar such any rule equivalent to that rule applicable to Boards / Corporations / Public Sector Undertakings / Societies (as the case may be), may not be mechanically revoked by applying any time limit. The reason for the need to continue the suspension of such accused officers, is that major penalty (dismissal / removal) could not be imposed against them, if their suspension is revoked and if they are permitted to retire without knowing the outcome of the criminal / grave corruption charges pending or contemplated, if any, against them.*

*7. It is also further instructed that if any revocation of suspension has been- made in the suspension cases of the accused officers who Involved in any of the vigilance / criminal cases based on the Government letter No.13519/N/2015, dated 23.7.2015, such revocation of suspension must be taken-up for immediate review by the competent authorities or any higher authority to the competent authority concerned and appropriate orders shall be passed immediately by duly taking into account of the grounds given under para-(4) and para-(5) above.*

*Yours faithfully*

*Principal Secretary to Government"*

13. It is to be stated that this letter is in the teeth of the observations made in ***Ajay Kumar Choudhary Vs. Union of India (Supra)***. Article 141 of the Constitution of India state that law laid down by the Hon'ble Supreme Court is binding on all Courts. This Court is of the view that the circular cannot override the law laid down by the Hon'ble Supreme Court. Even though the judgment of the Hon'ble Supreme Court in ***Ajay Kumar Choudhary Vs. Union of India (Supra)*** and ***State of Tamil Nadu Vs. Pramod Kumar (Supra)***, deals with all India service, but the ratio will apply to the State service also.

14. Further no disciplinary action has been taken against the petitioner. The petitioner was working as a Junior Assistant. There is no material to show that the petitioner can anyway tamper with the evidence. The above mentioned authorities shows that the Courts have frowned upon the persons being kept in prolong suspension by paying 75% of the emoluments as subsistence allowance, without any work extracting from them.

15. G.O.Ms.No.40, Personnel and Administrative Reforms (N) Department, dated 30.01.1996, also runs counter to the above mentioned judgments. In view of the fact that no disciplinary proceedings have been initiated against the petitioner, the petitioner cannot be kept in suspension for such a long time, merely because the petitioner is facing a criminal case. **The writ petition is allowed.** The respondents are directed to reinstate the petitioner in a non-sensitive post completely unconnected to the work he has performed. No Costs. Consequently, the connected miscellaneous petition is closed.

14/11/2017

Index : Yes / No

Internet : Yes / No

Speaking/Non-speaking order

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**SUBRAMONIUM PRASAD, J**

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To

1. The Additional Director General of Police (L&O),  
Dr.Radhakrishnan Salai, Mylapore,  
Chennai - 04.
2. The Commissioner of Police,  
Office of the Commissioner of Police,  
Madurai.



**W.P.No.5874 of 2017**

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