

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2019

CORAM :

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

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.4254 of 2019

The Commissioner of Police,
Salem City, Salem.

.. Appellant/Respondent

vs.

K.Malarvizhi

.. Respondent/Petitioner

Appeal filed under Clause 15 of the Letters Patent against the order dated 27.03.2019 passed in W.P.No.25187 of 2018 on the file of this Court.

WP.No. 25187 of 2018: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ or order or orders or direction particularly in the nature of Writ of Certiorarified Mandamus, calling for the records relating to the respondent vide proceedings No.CPO 1001/2013/C.No.H1/625/29924/2013 dated 15.12.2013 and to quash the same and consequently direct the respondent to revoke the order of suspension dated 15.12.2013 and reinstate the petitioner in service.

For Appellant

: Mr.P.H.Arvind Pandian
Addl. Advocate General
assisted by
Mr.V.Jayaprakash Narayanan
Government Pleader

For Respondent

: Mr.S.Vijaya Kumar

JUDGMENT

(Delivered by Subramonium Prasad, J.)

The instant appeal assails the judgment dated 27.03.2019 passed in W.P.No.25187 of 2018. The learned Single Judge, by the impugned judgment, has directed the appellant to revoke the suspension and reinstate the respondent into service and post her at a non-sensitive post.

2. The respondent was working as a Women Sub-Inspector of Police. There was an allegation of demand and acceptance of bribe for a sum of Rs.10,000/-. The respondent was placed under suspension on 15.12.2013 and the suspension continues till date. No departmental enquiry has been initiated against the respondent.

3. A criminal case has been instituted against the respondent for the offence under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. Cognizance has been taken and trial is proceeding on the file of the Special Court, Salem in C.C.No.116 of 2014. The respondent gave a representation on 13.04.2015 for revocation of suspension, which was rejected by the appellant and the same has been challenged in W.P.No.25187 of 2018 from which the instant writ appeal arises.

4. The learned Single Judge has found that the respondent was under suspension for the past six years and therefore, found that it is not proper for the department to keep the employee under a long and continuous period of suspension. This order has been assailed by the State Government contending that the respondent is facing very serious charges of corruption and it will not be proper to reinstate such an officer, as it will affect the morale of the Police department.

5. The State would rely on the judgment dated 19.11.2019 passed by this Court in W.A.No.3957 of 2019 (The Director General of Police, Chennai v. T.Kamarajan), wherein, this Court had set aside the order of the learned Single Judge, revoking suspension.

6. On the other hand, learned counsel for the respondent would rely on the judgment of the Hon'ble Supreme Court in the case of Ajay Kumar Choudhary v. Union of India, through its Secretary and another, reported in (2015) 7 SCC 291, wherein, it has been held by the Hon'ble Supreme Court that an employee cannot be kept under suspension for a long period of time.

7. Heard learned counsel for the parties.

8. This case is squarely covered by the judgment of the Hon'ble Supreme Court in Ajay Kumar Choudhary (supra), wherein the Hon'ble Supreme Court 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.

.....

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/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. As in the case in hand, the Government is free to transfer the person concerned 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 recognised principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognise that the 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."

9. Reliance placed by the learned counsel for the appellant on the judgment dated 19.11.2019 in W.A.No.3957 of 2019 (supra) is misplaced on the facts of this case. In that case, the department had initiated disciplinary proceedings and in the facts of that case, this Court held that suspension may not be revoked till the culmination of the disciplinary proceedings. In the present case, as noticed above, disciplinary proceedings have not been initiated. In view of the above, no interference is called for with the judgment of the learned Single Judge.

10. The writ appeal is dismissed. It will be open for the appellant to take appropriate steps to get the trial expedited. No costs. Consequently, C.M.P. No.26517 of 2019 is closed.

Sd/-

Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

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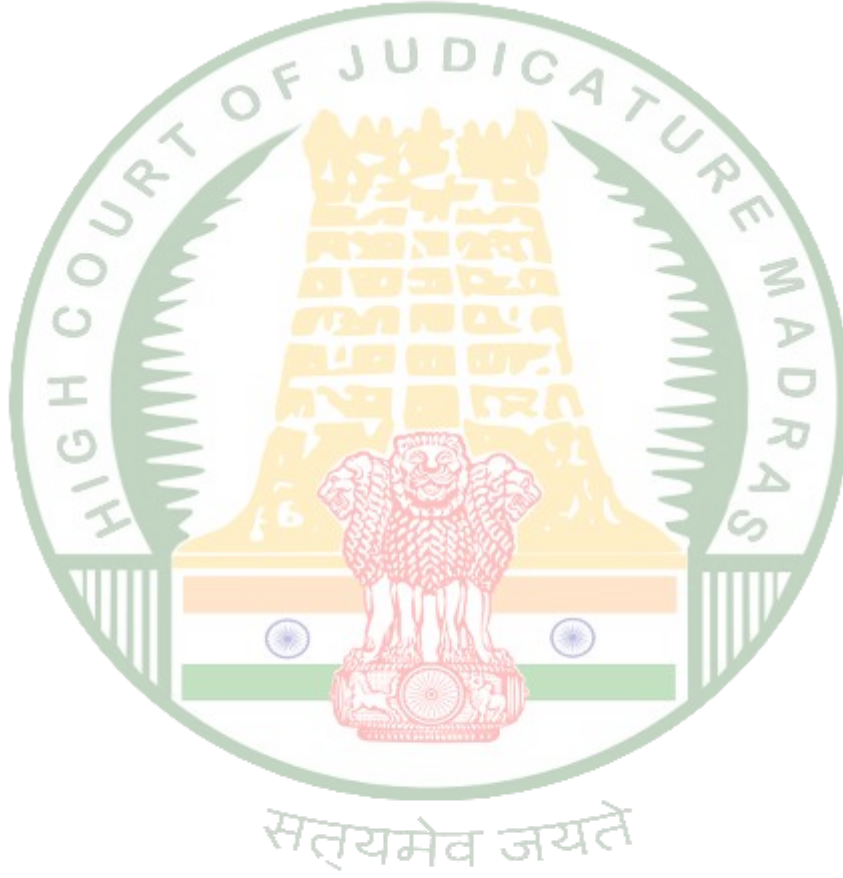
To:

The Commissioner of Police,
Salem City, Salem.

+1cc to the Government Pleader, S.R.No. 102549

W.A.No.4254 of 2019

KJ (CO)
GN (22/01/2020)



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