

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2019

CORAM :

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

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.3957 of 2019

1. The Director General of Police,
Dr.Radhakrishnan Road,
Mylapore,
Chennai-600 004.
 2. The Deputy Inspector General of Police,
Vellore Range,
Vellore. .. Appellants/Respondents
- vs.
- T.Kamarajan ... Respondent/Petitioner

Appeal filed under Clause 15 of the Letters Patent against the order dated 11.04.2019 passed in W.P.No.32956 of 2017 on the file of this Court.

W.P.No.32956 of 2017:

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records and quash the impugned order of the 2nd Respondent dated 09.12.2015 vide C.No. B2/015242/2015-R.O. 408/2015 suspending the Petitioner from service as on inspector of Police with effect from 08.12.2015 and consequently direct the 2nd Respondent to reinstate the Petitioner within time frame.

For Appellants : Ms.Narmada Sampath
Addl. Advocate General
assisted by
Mr.V.Jayaprakash Narayanan
Government Pleader

For Respondent : Mr.K.Ravi Anantha
Padmanabhan

JUDGMENT
(Delivered by The Hon'ble Chief Justice)

Heard learned Additional Advocate General for the appellant State and learned counsel for the respondent/writ petitioner.

2. This appeal arises out of a peculiar case where the defence of the respondent/writ petitioner, on the basis whereof he succeeded before the learned Single Judge, is basically founded on the ratio of the judgment in the case of Ajay Kumar Choudhary v. Union of India, through its Secretary and another, reported in (2015) 7 SCC 291, that has been quoted in extenso by the learned Single Judge to allow the writ petition of the respondent/writ petitioner, quashing the suspension order on the ground of prolonged suspension.

3. The appellant State and its authorities, in their usual lethargic mode of speed in processing disciplinary matters, particularly relating to incidents where allegations are of corruption, have filed this appeal contending that quashing of the suspension order added with reinstatement of the respondent/writ petitioner on any non-sensitive post, will still hamper the functioning of the department and would be a wrong precedent in the background that the respondent/writ petitioner is a Police Officer of a uniformed disciplinary services of the State Police entrusted with the onerous duty of policing and protecting the citizens of the State.

4. The contention is that if the protection of law is extended to this boundary in relation to delinquents facing serious corruption charges, it will virtually amount to shielding a person, who, even though having committed such an offence, would be entitled to an undesirable protection that may lead to demoralization of the police force. Such cases do raise the question of conflict between morality and law.

5. However, learned counsel for the respondent/writ petitioner contends that whatever is legal is just and, therefore, again relying on Paragraph 21 of the judgment in the case of Ajay Kumar Choudhary (supra) and the judgment in the case of State of Tamil Nadu v. Promod Kumar IPC, reported in 2018 SCC OnLine SC 1079 as well as a couple of more decisions of this Court, has urged that the respondent/writ petitioner is fully protected by law and the learned Single Judge has rightly exercised discretion so as to protect the respondent/writ petitioner from being virtually victimized by the department by prolonging the suspension order.

6. We are aware of the limitations as well as the binding nature of precedents and there is no doubt that this Court is bound by the law laid down by the Apex Court. But we find that there are Apex Court decisions that have not been referred to in either the judgment of the Ajay Kumar Choudhary or Promod Kumar IPS (supra). One of such decisions that has been cited by the learned Additional Advocate General is in the case of Allahabad Bank and another v. Deepak Kumar Bhola, reported in (1997) 4 SCC 1, where a bank employee had been suspended subject to the disciplinary proceedings on the charges of alleged embezzlement. The Apex Court proceeded to observe that it would indeed be inconceivable that a bank should allow an employee to continue to remain on duty when he is facing serious charges of corruption and misappropriation of money. The Apex Court further observed that allowing such an employee to remain in the seat would result in giving him further opportunity to indulge in acts for which he was being prosecuted.

7. On the other hand, we have also to counter balance the period of time that has been luxuriously consumed by the appellant State in not only prolonging the suspension, but also not allowing the disciplinary proceedings to commence.

8. We have given our thoughtful consideration to the rival contentions of the parties and the law that has been cited at the bar. We are convinced that laying down a law of general proposition in all cases may not be a safe pronouncement so as to distract public perception of faith and morality about the very system that has been created to protect the citizenry. The question of allowing an Officer, who is facing allegations of corruption charges where the defence taken is that the charges are false, would be dependent on the culmination of the disciplinary or criminal proceedings.

9. We would refer to the decision of a Division Bench in the case of Secretary to Government v. S.R.Venkatesh, reported in 2019 SCC OnLine Mad 8769, where this Court while referring to Rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules did not accept the argument of prolonged suspension in the matter of an Assistant Engineer who was facing graft charges and reversed the judgment of the learned Single Judge. The decision does not, however, notice the case of Ajay Kumar Choudhary (supra).

10. There is another decision in the case of Arignar Anna Sugar Mills Ltd. v. R.Vengatasamy and another, reported in 2017 SCC OnLine Mad 33673 of a Division Bench, whereunder, while referring to the judgment of Ajay Kumar Choudhary (supra), it has been held in paragraphs (6) to (12) as follows:

"6. With the greatest of respect to the learned Single Bench, Ajay Kumar Choudhary (supra) does not lay down any absolute proposition that a suspension order should be set aside whenever charges are not served within three months. On the other hand, the Supreme Court propounded the proposition that the principles of expedition and diligence at every stage of a criminal trial ought to be applied in case of departmental enquiries. At all stages, i.e., investigation, inquiry, appeal, revision, the burden lies on the prosecution and in this case on the employer to justify and explain the delay. The Court is to engage in a balancing test to determine whether this right had been denied in the instant case.

7. In the case before the Supreme Court, the Central Administrative Tribunal had, having regard to the facts and circumstances of the case, directed that the suspension of the appellant in that case could not be extended beyond 90 days from 19.3.2013. The High Court had set aside the aforesaid direction viewing it as a substitution of a judicial determination to the authority possessing the power, i.e., the Government. The Supreme Court set aside the pronouncement of the High Court as unsustainable.

8. In Ajay Kumar Choudhary (supra), the Supreme Court observed that if within three months the memorandum was not served, a reasoned order must be passed for the extension of the suspension. The Supreme Court also observed that the Government was free to transfer a 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 might have and which he might use for obstructing the investigation against him.

9. We are of the view that Ajay Kumar Choudhary (supra) does not lay down any absolute proposition that an order of suspension should never extend beyond three months. In fact, in Ajay Kumar Choudhary (supra), the Supreme Court observed that the directions regarding the restriction on extension of a suspension order beyond three months would not apply as the appellant had been served

with a charge sheet. The appellant had only been given the liberty to challenge his continued suspension in any manner known to law, if so advised, and it was clarified that the action of the respondents in continuing suspension would be subject to judicial review. In our view, the learned Single Bench erred in setting aside the suspension placing reliance on Ajay Kumar Choudhary (supra).

10. It is well settled that a judgment is to be understood in the context of the facts in which the judgment is rendered. Sentences in a judgment cannot be read in the same manner as a statute and in any case, words and sentences in a judgment cannot be read out of context. In Padma Sundara Rao (Dead) and others v. State of Tamil Nadu and others, reported in (2002) 3 SCC 533, cited by Mr.S.Saji Bino, learned counsel appearing on behalf of the appellant, a Five Judge Bench of the Supreme Court held as under:

'9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.'

11. In the instant case, as observed above, a charge sheet had been issued, though after five months and four days of the suspension. The learned Single Bench ought to have considered the question of whether the suspension should outright be set aside or allowed to continue upon consideration of all relevant facts and circumstances, including the nature of the charges.

12. The decision of the Supreme Court in Ajay Kumar Choudhary (supra) enunciates the proposition that principles of criminal law should be applied to departmental proceedings. Even criminal law permits incarceration beyond three months in serious and grave cases pending trial."

11. We have also come across the Delhi High Court Division Bench judgment in the case of Govt. of NCT of Delhi v. Dr. Rishi Anand, reported in 2017 SCC OnLine Del 10506, wherein, paragraph 22 reads as under:

"22. The decision of the Supreme Court in Ajay Kumar Choudhary (supra) itself shows that there cannot be a hard and fast rule in this regard. If that were so, the Supreme Court would have quashed the suspension of Ajay Kumar Choudhary. However, in view of the fact that the charge memo had been issued to Ajay Kumar Choudhary - though after nearly three years of his initial suspension, the Supreme Court held that the directions issued by it would not be relevant to his case."

12. The reason for us to accept the aforesaid proposition emerges from an insistence in such matters on the trustworthiness, integrity and the devotedness that is required of a disciplined officer, who, in our opinion, should be beyond the influence of any allegations of corruption. The impact on the moral fibre of the society and the faith of the people should not be diluted on account of any occasional instances of misconduct. At the same time, officers should be guarded against ungenerous and unfavourable criticism on the basis of any invented tales, but their conduct should not be open to any genuine suspicion. The charges levelled against the respondent/writ petitioner in the present case can be assessed either way on the basis of the evidence that may be collected during the disciplinary proceedings or even during the criminal trial. This Court, therefore, should be cautious enough to take care while passing an order of reinstatement about the gravity of the allegations and the possibility of the delinquent in either trying to influence or delay the proceedings and gain advantage only by a sheer passage of time. The concept of human rights and protection of Article 21 should not altogether eclipse the circumstances of a case, where serious graft charges are pending adjudication.

13. In our opinion, it would be appropriate that in such cases and on peculiar facts, it would be expedient and in the interest of justice to ensure that public faith and confidence is not diluted and consequently, we modify the order of the

learned Single Judge directing posting of the respondent/writ petitioner against a non-sensitive post to the extent that he shall be treated to be on leave with salary for a period of three months from today. The appellant State will be bound to conclude the enquiry proceedings and the respondent/writ petitioner will be bound to co-operate with the same in order to bring the disciplinary proceedings to a logical conclusion. The said proceedings would be, however, subject to any other proceedings that may be pending in this regard against the respondent/writ petitioner.

14. Learned counsel for the respondent/writ petitioner submits that a direction may be issued with regard to the conclusion of the criminal trial as well. This is not a petition, nor the subject matter of the petition is the criminal trial and therefore, it will be open to the respondent/writ petitioner to approach the appropriate forum for any such direction.

15. The writ appeal is, accordingly, allowed to the extent indicated above. No costs. Consequently, C.M.P.No.24826 of 2019 is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

bbr
To:

- 1.The Director General of Police,
Dr.Radhakrishnan Road,
Mylapore, Chennai-600 004.
- 2.The Deputy Inspector General of Police,
Vellore Range, Vellore

+1 CC to Mr.K.Ravi Anantha Padmanabhan, Advocate sr 97134.
+1 CC to Govt. Pleader sr 97546.

W.A.No.3957 of 2019

RSI (CO)
SP(09/12/2019)