

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/12/2019

C O R A M

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.32583 of 2017

K.Baskar

...Petitioner

Vs

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Revenue & Disaster Management Department,
Secretariat,
Fort St. George Chennai - 600 009.
2. The Commissioner of Revenue Administration,
Chepauk,
Chennai - 5.
3. The District Collector,
Krishnagiri District,
Krishnagiri.

...Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for the issuance of Certiorari Mandamus, calling for the records related to the impugned proceedings issued by the 1st respondent in G.O(2D).No.348 Revenue and Disaster Management Department, Services Wing, Service2(2) Section dated 28.11.2017 and to quash the same and consequently directing the respondents to reinstate the petitioner into service with all consequential and other attendant benefits.

For petitioner ... Mr.Niranjana Rajagopal
for Mr.M.Marudhachalam

For respondents ... Mr.A.Zakir Hussain, G.A

O R D E R

The issue which arises in the present writ petition is whether order of suspension should be passed against the petitioner by an order dated 28.11.2017 should be set aside when it is not extended as provided for under the service Rules.

2. The writ petitioner was working as Special Tahsildar (Land Acquisition), NH 7 & NH46, Krishnagiri, from 13.02.2013 to 23.10.2013. During this period, there were acquisition

proceedings for the purpose of widening lanes of NH 46 in Burgur village of Krishnagiri Taluk. In these acquisition proceedings the Special District Revenue Officer (Land Acquisition) Krishnagiri was the land Acquisition Officer. Land was acquired in these proceedings and it included lands which originally belonged to one Mr.Devan. After the initiation of the proceedings, Mr.Devan sold this property to Mr.Kuppusamy, who subsequently applied for compensation from the Government. Based on this application, the Special District Revenue Officer (Land Acquisition), requested the writ petitioner to conduct an enquiry and submit a report examining the veracity of this claim. Accordingly, the petitioner conducted an enquiry and on 01.07.2013, submitted a report to the Special District Revenue Officer (Land Acquisition), stating that the land was in the possession of Mr.G.Kuppusamy and that the revenue records were in his name. The report thus recommended that the compensation amount be paid to him.

3. On 17.07.2013 the Special District Revenue Officer (Land Acquisition) issued an order for the disbursement of compensation amount in favour of Mr.G.Kuppusamy. Following this the original owner Mr.Devan submitted his representation to the District Collector, Krishnagiri, claiming compensation for this land. Mr.Devan further filed WP.No.9648 of 2014 directing the respondents to pass orders on this representation. On 03.04.2014, this Court passed orders in this writ petition directing the District Collector, Krishnagiri, to consider the representation made by Mr.Devan and pass orders in accordance with law. The District Collector, Krishnagiri, in compliance with the orders of this Court conducted an enquiry and concluded that the compensation had wrongly been paid to Mr.G.Kuppusamy, due to negligence of the officers who granted the same, including the petitioner.

4. The District Collector, Krishnagiri, through a letter dated 30.07.2014, thus requested the Commissioner of Revenue Administration, to initiate the disciplinary actions against these officials and the same was subsequently initiated. On 02.06.2015, the Special District Revenue Officer (Land Acquisition), who was the Competent Authority for land acquisition and payment of compensation forwarded a report to the District Collector stating that the transfer was made as per law only after examining the revenue documents and establishing possession over the land. The Commissioner of Revenue Administration forwarded the letter submitted by the District Collector dated 30.07.2014 to the Revenue Disaster and Management Department of the State of Tamil Nadu. The Revenue Disaster and Management Department then directed the District Collector, Krishnagiri, to provide a report on this claim. Based on this request the District Collector, Krishnagiri, submitted

the report on 08.08.2016, stating that the compensation was awarded only after considering that the property was in Mr.G.Kuppusamy's possession and the revenue records were in his name. The report thus recommended that no charge be made or action be taken against the officers, including the petitioners.

5. On 22.09.2016 the Commissioner of Revenue Administration issued proceedings stating that the report dated 08.08.2016, submitted by the District Collector, Krishnagiri, did not in fact originate from the District Collector's office. Based on an enquiry conducted by the District Collector, the writ petitioner was blamed for fabricating and forging the document dated 08.08.2016. On 24.07.2017, the petitioner had a charge memo issued against him by the Revenue Disaster and Management Department, State of Tamil Nadu, stating that he has wrongly recommended the payment of compensation to Mr.G.Kuppusamy. Further an FIR had been filed on 02.02.2017 and the petitioner was arrested as an accused in Cr.No.59/2017, on the file of Taluk Police station, Krishnagiri, for fabrication of document dated 08.08.2016. This criminal case was filed based on a complaint given by the Personal Assistant of the District Collector, Krishnagiri, who claimed that her signature was forged on the letter dated 08.08.2016. On 28.11.2017, the writ petitioner was issued an order of suspension by the Revenue Disaster and Management Department, State of Tamil Nadu, in G.O. (2D).No.348, owing to his involvement in both the disciplinary proceedings and the criminal case.

6. The present writ petition arises out of this impugned Government order and the writ petitioner claims that this suspension must be set aside, reinstating him into service. Both parties have made submissions extensively on the merits of the charge memo, the disciplinary proceedings and the criminal case, however in the present instance, since only the order of suspension is in question before the Court, these are not required to be dealt with in detail.

7. Heard the learned counsel for the parties and perused the material on record.

8. Rule 17(e) of the The Tamil Nadu Civil Services (Discipline and Appeal) Rules, reads as under:-

"(e) (1) A member of a service may be placed under suspension from service, where- *

- (i) where-a disciplinary Proceedings against him is contemplated or is pending; or
- (ii) a case against him in respect of any criminal offence is under investigation, inquiry or trial."

9. In the present case, the order of suspension was issued on 28.11.2017. It has been more than two years since this suspension order has been issued. Further this suspension order has not been extended. The respondents have relied on G.O.Ms.No.40, Personnel and Administrative Reforms (N) Department, dated 30.01.1996, which reads as under:-

"2. In the light of the legal position enunciated by the Tamil Nadu Administrative Tribunal in the said judgement and after examining in detail the question of revising the time limits, laid down earlier on 27.2.80 and looking into other related issues, the Government direct that item (ii) to (ix) of paragraphs 5 of G.O. Ms. No. 211, Personnel and Administrative Reforms Department dated 27.2.80 be substituted by the following:

(ii) Where a Government servant has been suspended pending disciplinary action, such proceedings should be initiated and finalised normally within a period of six months.

(iii) In cases where a Government servant has been suspended and the matter has been referred for investigation to the Director of Vigilance and Anti-corruption for enquiry, the latter should complete the enquiry and send his report to Government through the Vigilance Commission within one year.

(iv) In respect of cases referred to under items (ii) and (iii) above, the authority who ordered the suspension/Director of Vigilance and Anti-corruption should, before the expiry of the periods mentioned, report the matter to the Head of the Department/Government, indicating the progress of the disciplinary action/investigation by the Director of Vigilance and Anti-corruption, the reasons for non completion of the work and the further time required for completing the disciplinary action/investigation and furnish reasons for continuing the suspension, if continued suspension is felt essential. If the authority which initiated action in the first instance is the Head of the Department, the report will be sent to Government.

(v) After the initial report referred in item (iv) above, reports should be sent to Government at the end of every six months, indicating the

further progress, so as to enable the Government to review the progress of the case, for such action as may be necessary to ensure expeditious disposal.

(vi) The Head of the Department or the Government, as the case may be will examine the case with reference to the subject matter of the disciplinary action/ Investigation in progress and the reported stage of progress and permit the continued suspension beyond six months/ one year. Where the Government have themselves ordered suspension, they will examine the case on the same lines and accord similar permission.

(vii) The disciplinary authorities should ensure that the delay in processing the case is not due to delaying tactics of the Government servant. They should ensure that all notices issued to the suspended Government servant should reach him without any loss of time and the Government servant under suspension should be allowed not more than the time prescribed in the relevant Tamil Nadu Civil Services (Discipline and Appeal) Rules or if no time is prescribed, then he should be allowed not more than three weeks to send his replies.

(viii) When the disciplinary authority comes to a conclusion suo motu or after conclusion of the investigation by the Director of Vigilance and Anti-corruption, the disciplinary authority shall, while initiating action by issue of charges under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, or under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, as the case may be, examine with reference to the facts established, which form the basis for the charges, whether public interest or the needs of further proceedings will require continued suspension of the Government servant already under suspension.

(ix) The time limits mentioned above will not be applicable to cases of Government servants against whom criminal proceedings have been initiated. However, while sanctioning prosecution in such a criminal case, an examination similar to the one

mentioned in item (viii) above shall be made by the competent authority.

(x) If, on examination of the case under items (vi), (viii) -or (ix) above, continued suspension is considered not necessary, the suspension may be revoked, in exercise of the powers conferred under Rule 17(e) (6) of Tamil Nadu Civil Services (Discipline and Appeal) Rules or under Rule 3 (b) (5) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, as the case may be.

(xi) Suspension will continue to be in force unless it is revoked as mentioned under item (x) above."

7. In Government Letter. No. 107821/91 -4, Personnel and Administrative Reforms (Per-N) Department, dated 23.11.92 (communicating the revised format of suspension orders) the Government have already instructed that as far as possible the factual details and the reasons for suspension should be specified in the order of suspension, except in cases where such requirement are dispensed with expressly or by necessary implication or it is not desirable in the larger public interest to communicate the reasons for suspension. It should be borne in mind that while issuing orders of suspension, the period of suspension shall not be specified."

It is thus contended that no time limit should not apply in the present case as the petitioner was suspended following criminal proceedings being initiated against the same. The writ petitioner however has relied on two judgments which have been subsequent to this Government order and which would thus take precedence.

10. The judgments relied upon by the petitioner are those of the Hon'ble Supreme Court in Ajay Kumar Choudhary Vs. Union of India, 2015 (7) SCC 291 and State of Tamil Nadu Vs. Pramod Kumar I.P.S., 2018 SCC Online SC 1079. The Hon'ble Supreme Court in State of Tamil Nadu Vs. Pramod Kumar I.P.S., (supra) reaffirmed the decision of this Court in Pramod Kumar I.P.S., Vs. State of Tamil Nadu, in WP.No.39989 of 2016, dated 12.01.2017. This latter judgment also places reliance on Ajay Kumar Choudhary Vs. Union of India, and the relevant portions of Pramod Kumar I.P.S., Vs. State of Tamil Nadu read as under:-

"67. It is not in dispute that the Government is empowered to place the officers under suspension till the disposal of criminal proceedings. The Government is given the discretionary power to take a decision

in the matter.

68. While exercising discretion to place a member of All India Service under suspension until the termination of the criminal proceedings, the Government have to consider a host of factors. The possibility to commit similar offence, possible attempt to influence the witnesses, interference in the pending proceedings etc. are all relevant factors to arrive at a decision initially to place the employee under suspension or to continue the suspension thereafter.

69. In fact, rule 3(8) (c) of the Rules and the related schedule I provides that the review committee while examining a case shall consider the possibility of the officer under suspension tampering with the evidences, his influencing the process of enquiry or investigation and deprivation of his services during suspension.

70. In any case, the question regarding deprivation of services was not considered either by the Review Committee or by the Disciplinary Authority at any point of time.

71. "The Hindu", on 10 January 2017, reported that the Directorate of Vigilance and Anti Corruption, a premium agency of the State, entrusted with the task of tackling corruption in public administration, has remained vacant without a head since 2013. There are three posts of Inspector General of Police and out of that, two have remained vacant for close to five years. Similar is the case with the regular police establishment, both law and order and crime detection. While considering the question of deprivation of the services of a delinquent officer, during suspension, the vacancy position is also a relevant consideration. The services of officers like the petitioner could be utilized by appointing them in non sensitive posts, so that other officers could be relieved and posted to fill up the vacancy in sensitive posts, requiring man power. This aspect was never considered by the Review Committee in the case of the petitioner, notwithstanding the rule mandating such consideration while reviewing the case for extension of suspension.

72. The Supreme Court in Ajay Kumar Choudhary vs. Union of India and another, 2015(7) SCC 291, deprecated the practice of protracted suspension and repeated renewal and indicated that a reasoned order must be passed for the extension of suspension. The Supreme Court said :-

"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."

On perusal of these judgments, it is clear that suspensions issued pending disciplinary proceedings are not to be implemented for indefinite periods and it must be shown that

there was a specific threat to the fairness of these proceedings through reinstatement.

11. In the present case, no major threat to the conduct of the disciplinary proceedings or the criminal case has been made out, if the petitioner is reinstated into service. Prolonging of this suspension would thus be unjustified. For the above reasons, the writ petition is allowed and the writ petitioner is to be reinstated into service within a period of eight weeks and posted to a non-sensitive post. No Costs.

s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

Pkn.

To

1. Principal Secretary to Government,
The State of Tamil Nadu,
Revenue & Disaster Management Department,
Secretariat,
Fort St. George Chennai - 600 009.
2. The Commissioner of Revenue Administration,
Chepauk,
Chennai - 5.
3. The District Collector,
Krishnagiri District,
Krishnagiri.

+1 CC to Mr.M. Marudhachalam, Advocate sr 105940

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W.P.No.32583 of 2017

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