

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2019
CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

WP. Nos.16837 to 16840 of 2017
and
WMP. Nos.18285 to 18292 of 2017

D.Venkatesan ...Petitioner in WP. No.16837 of 2017
A.Manivanan ...Petitioner in WP. No.16838 of 2017
J.Kavidasan ...Petitioner in WP. No.16839 of 2017
D.Thuyavan ...Petitioner in WP. No.16840 of 2017
Vs

The District Manager,
TASMAC Limited,
Chennai North ... Respondent in all WPs

COMMON PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ or order of direction or any other Writ in the nature Writ of Certiorarified Mandamus to call for the records relating to the order in proceedings AA.No.A1/1032/2015 dated 30.11.2015 passed by the respondent herein and quash the same and further direct the respondent to pay all arrears of salary.

For Petitioner : Mr.K.M.Ramesh in all WPs

For Respondent : Ms.P.Arumugarajan
Standing Counsel in all WPs

C O M M O N O R D E R

The Writ Petitioner challenges an order of suspension dated 30.11.2015 and seeks a quash of the aforesaid order as well as a direction to the respondent/ District Manager, TASMAC Chennai (North) Office, B-4 Ambattur Industrial Estate, Chennai 600 058 to pay arrears of salary in respect of the period when he was under suspension.

2. The four petitioners before me are employed as Supervisors in TASMAC. The charge laid against the petitioners is that the petitioners had pursued higher education, obtaining

a law degree from Sri Venkateswara Law College, Tirupathy as well as enrolled in the Bar Council of Tamil Nadu and Puducherry while in the service of the TASMAL, and that too without obtaining prior permission. The matter was referred for enquiry and the Enquiry Officer vide his report dated 28.02.2016 has concluded that the charges have not been 'clearly proved beyond doubt'. The conclusion of the Enquiry Officer is extracted below:

'17. It is the general thought arose in everybody and the same is also arose in the mind of Mr.D.Venkatesan's and there is no wrong in it. Further it doesn't seem to be a mistake. Moreover, during the period he studied LLB there was no clear advice, and there is no justice in saying that he had studied LLB without prior permission.

During the conclusion of this enquiry, after carefully scrutinizing all the points referred in the above said 17 paragraphs, it is clearly understood and there is no doubt that though Mr.D.Venkatesan has studied LLB at Tirupathi, he has discharged his daily duties (assigned to him) very well without giving any room for complaints and without spoiling the name of TASMAL.

Hence, the charges leveled against Mr.D.Venkatesan, supervisor of the Liquor Shop No.241 viz.,

1.Studied Higher education and graduated during his employment in TASMAL

2.Without obtaining any prior permission and studied his higher education, graduated and enrolled in Bar Council of India

3.During his service in the liquor shop simultaneously has enrolled in the Bar Council of India and involved in the concerned services.

4.Why the Salary drawn, incentive and other monetary benefits received, during his service in the TASMAL should not be recovered from?

5.Violating the TASMAL Rules he has involved in other services and committed the act of Revenue loss to TASMAL Management etc.,

and all the above said charges are not clearly proved beyond doubt'

3. Prima facie, I may observe that the conclusion of the Enquiry Officer appears wholly misconceived. The facts as noted by him appear sufficient to establish the position that the petitioners have pursued study of law while being employed in the TASMAC and without the requisite permission. Clearly, double jeopardy has been caused as the petitioners have been half hearted in both the study of law as well as in the discharge of their functions at their workplace.

4. Be that as it may, learned counsel for the respondent confirms that no orders have been passed by the Disciplinary Authority till date even though the Enquiry Report is dated as early 28.02.2016 and despite there having been no order of stay passed by this Court in the Writ Petition.

5. The learned counsel for the petitioner states that upon receipt of communication from the TASMAC setting out the aforesaid facts, the Bar Council has also proceeded to remove the name of the petitioners from its rolls. So far so good.

6. However, as regard the suspension impugned before me, the Supreme Court in the case of Ajay Kumar Choudhary Vs. Union of India through its Secretary and another [(2015) 7 SCC 291] has deprecated prolonged suspensions holding that no order of suspension should be permitted to continue beyond ninety 90 days without charges being framed. Relevant paragraphs of the Judgment are extracted herein:

'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 Code of Criminal Procedure, 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorize detention of an accused person beyond a 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 Raghbir Singh V. State of Bihar and more so of the Constitution Bench in Antulay we are spurred to extrapolate the quintessence of the proviso of Section 167(2) CrPC, 1973 to moderate suspension orders in cases of departmental/disciplinary enquires 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/charge-sheet has not been served on the suspended person. It is true that the proviso to Section 167(2) CrPC 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/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 officers 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 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. Further more, 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.

22. So far as the facts of the present case are concerned, the appellant has now been served with a charge-sheet, and, therefore, these directions may not be relevant to him any longer. However, if the appellant is so advised he may challenge his continued suspension in any manner known to law, and this action of the

respondents will be subject to judicial review.'

In the light of the categorical pronouncement of the Supreme Court as aforesaid, the order of suspension dated 30.11.2015 is set aside.

6. Liberty is granted to the respondent to continue the disciplinary proceedings and bring the same to logical conclusion, in accordance with law and uninfluenced by the observations made in this order. The petitioners will be reinstated forthwith in line with the above judgment.

7. These Writ Petitions are disposed of in the above terms. Connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

rkp

To:

The District Manager,
TASMAC Limited, Chennai North.

+4ccs to Mr.KM.Ramesh, Advocate SR.No.27956,27957,27958,27959

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and

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mp (CO)

GMV (29/03/2019)

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