

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2019

CORAM

THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

W.P.No.26644 of 2017
and
W.M.P.No.28371 of 2017

S.Prakash ... Petitioner
Vs.

1. Director of School Education,
Directorate of School Education,
No.17, College Road, Thousand Lights West,
Thousand Lights,
Chennai - 600 006.
2. Joint Director of School Education (Personnel),
Directorate of School Education,
No.17, College Road, Thousand Lights West,
Thousand Lights,
Chennai - 600 006.
3. Additional Assistant Elementary Educational Officer,
Veppanappalli,
Krishnagiri District. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, to direct the 1st and 2nd respondent to revoke the order of suspension passed by the 2nd respondent herein dated 21.06.2017 vide proceedings bearing number R.C.No. 043038/A3/S2/2017 and consequently to reinstate the petitioner in service in the post of Superintendent, in the Tamil Nadu School Education Department within the time frame as may be fixed by this Court.

For Petitioner : Mr.Santhanaraman
for Mr.M.R.Sivakumar

For Respondents : Mr.A.Zakkir Hussain,
Government Advocate
for Mr.P.Raja

O R D E R

Heard Mr.Santhanaraman, learned counsel for Mr.M.R.Sivakumar, learned counsel for the petitioner and Mr.A.Zakkir Hussain, learned Government Advocate for Mr.P.Raja, learned counsel for the respondents.

2. The writ petitioner in this case challenges the suspension imposed on him by the second respondent - Joint Director of School Education (Personnel) on 21.06.2017 and further seeks a direction for his reinstatement in service in the post of Superintendent, Tamil Nadu School Education Department, within a time frame to be fixed by this Court. The specific argument is that the suspension imposed is unduly prolonged and ought not to be continued in the light of recent judgements of the Supreme Court.

3. The practice of prolonged suspension has been deprecated by the Supreme Court in the case of Ajay Kumar Choudhary Vs. Union of India reported in [(2015) 7 SCC 291], wherein at paragraphs Nos.20 and 21, it is held as follows :

" 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 authorise 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 Raghubir Singh V. State of Bihar and more so of the Constitution Bench in Antulay, we are spurred to extrapolate the quintessence of the proviso to Section 167(2) Cr.P.C, 1973 to moderate suspension orders in cases of departmental/disciplinary enquiries 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) Cr.P.C 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 offices within or outside the State so as to serve 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 interest 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."

4. The aforesaid judgement has also been referred by the Supreme Court in a subsequent matter, in State of Tamil Nadu represented by Secretary to Government (Home) Vs. Promod Kumar IPS and Another (Civil Appeal No.8427-8428 of 2018, dated

21.8.2018) wherein, frowning upon the practice of protracted suspension, it has been held that suspension should only be of a short duration.

5. In the present case, the First Information Report has been registered against the petitioner on 07.06.2017 for the offence under Section 7 of Prevention of Corruption Act, 1988, stating that he had demanded a bribe from one R.Balakrishnan, for handing over a transfer order passed by the third respondent. However, no charges have been framed, thus far. This is an admitted position.

6. The second respondent has filed a counter and reiterated the seriousness of the charges levelled against the petitioner and also relied on G.O.Ms.No.40, Personnel and Administrative Reforms (N) Department, dated 30.01.1996, in terms of which, the petitioner should be retained under suspension till the completion of criminal case registered against him. This Government Order would evidently be overridden by the categorical pronouncements of the Supreme Court, supra.

7. In the light of the admitted fact that the petitioner in the present case has been under suspension since 21.06.2017 and no charges have been framed even till date, this Court proceeds to quash the suspension order dated 21.06.2017. The petitioner will be reinstated in a non-sensitive post and necessary orders be passed in this regard expeditiously.

8. This writ petition is disposed of on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Director of School Education,
Directorate of School Education,
No.17, College Road, Thousand Lights West,
Thousand Lights,
Chennai - 600 006.

2.The Joint Director of School Education (Personnel),
Directorate of School Education,
No.17, College Road, Thousand Lights West,
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3.The Additional Assistant Elementary Educational Officer,
Veppanappalli,
Krishnagiri District.

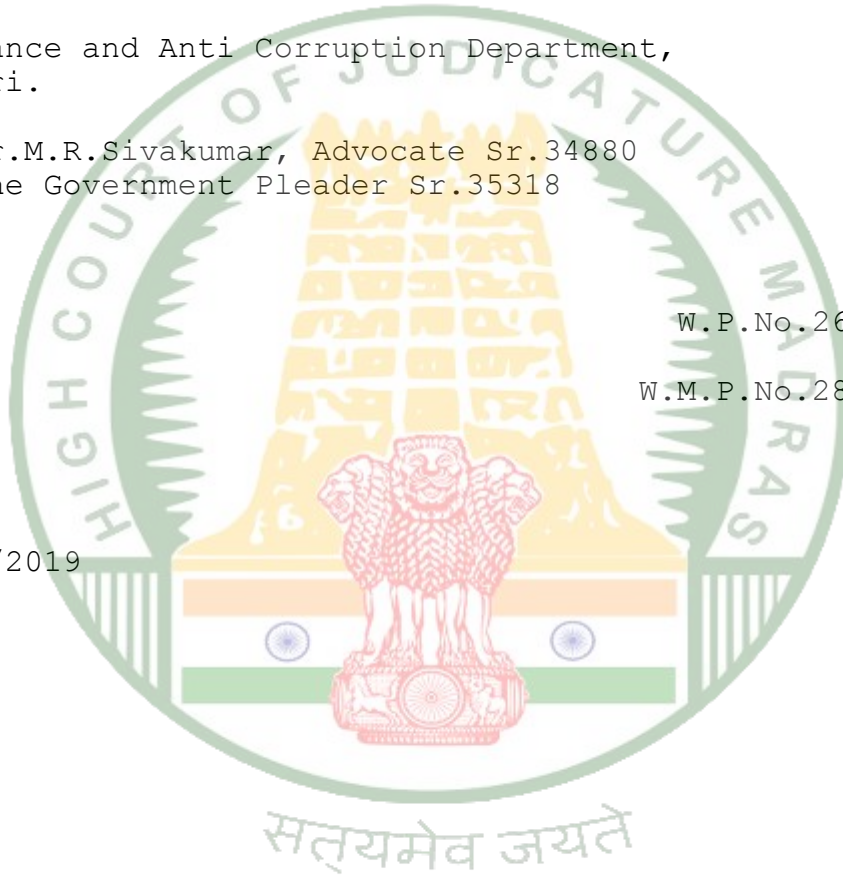
Copy to

The Vigilance and Anti Corruption Department,
Krishnagiri.

+lcc to Mr.M.R.Sivakumar, Advocate Sr.34880
+lcc to the Government Pleader Sr.35318

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and
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VJ II[co]
srg 23/05/2019



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