

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 01.04.2019
CORAM :
THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.28454 of 2017
and
W.M.P.Nos.30564 to 30566 of 2017

Thiru.T.Soundararajan,
S/o.Thangaraj,
No.2/82, Mela Street,
Mangalampettai Post,
Ulundurpet Taluk,
Villurpuram District. ... Petitioner

Vs.

1.The District Revenue Officer,
Villupuram.

2.The Revenue Divisional Officer,
Thirukoilur.

3.The Thasildar,
Ulundurpet.

... Respondents

PRAYER :- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to impugned order of suspension passed by the second respondent in Proc.No.A1/2378/2017 dated 30.03.2017 and quash the same and consequently direct the second respondent to reinstate the petitioner back into service with all service and monetary benefits arising thereof.

For Petitioner : Mr.N.Fidelia

For Respondent : Mr.A.Zakkir Hussain
Government Advocate

O R D E R

The Writ Petition is filed challenging an order of suspension passed by the 2nd respondent dated 30.03.2017. The petitioner is said to have demanded a sum of Rs.10,000/- as bribe from one Mr.S.Balamurugan for recommending transfer of patta in his mother's name. There is also an allegation that he had accepted bribe earlier for a sum of Rs.8,000/- at 12.00 noon on 28.03.2017, when he was worked as Village Administrative

Officer at U.Keeranur. A criminal case has been registered by the Vigilance and Anti-Corruption department, Villupuram in Crime No.5/AC/2017/VPM dated 27.03.2017. The petitioner was arrested by the Inspector of Police V & AC, Villupuram on 28.03.2017, and remanded to judicial custody in Sub-Jail for men, Villupuram till 11.04.2017, when he was released on bail.

2. Admittedly, the criminal proceedings are only in FIR stage and no charge sheet has been laid till date.

3. Heard Mr.N.Fidelia, learned counsel for the petitioner and Mr.Zakir Hussain, learned Government Advocate.

4. Mr.Zakir Hussain, learned Government Advocate admits that no charge sheet has been laid in this matter till date. Learned counsel for the petitioner also confirms that no disciplinary action has been initiated, till date, by the authorities.

5. The Supreme Court in the case of Ajay Kumar Choudhary Vs. Union of India through its Secretary & another (2015 (2) SCALES 432) has deprecated the act of continuous and prolonged suspension in cases where the officials are not seen to take proper action by filing a charge sheet and subsequent action thereto. At paragraph 13 and 14 of the judgment the Bench states as follows:

"13. 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 Cr.P.C. of 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, 1986 (4) SCC 481, and more so of the Constitution Bench in Antulay, we are spurred to extrapolate the quintessence of the proviso of Section 167(2) Cr.P.C. 1973 to moderate Suspension Orders in cases of departmental/disciplinary inquiries 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/Chargesheet 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.

14. We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet 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 concerned person 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 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 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."

6. In the light of the categorical pronouncement of the Supreme Court as aforesaid, the order of prolonged suspension dated 30.03.2017, without even charge sheet being filed till date, is quashed and the petitioner is directed to be reinstated forthwith.

7. The Writ Petition is disposed of in the above terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sai

To

1.The District Revenue Officer,
Villupuram.

2.The Revenue Divisional Officer,
Thirukoilur.

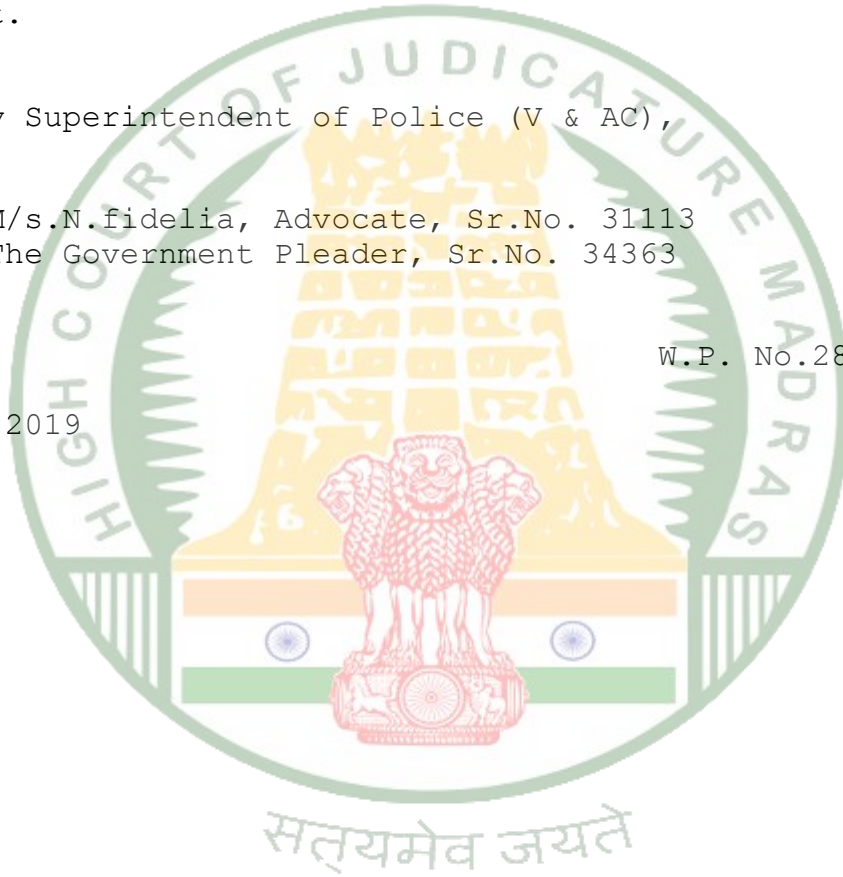
3.The Thasildar,
Ulundurpet.

Copy to :
The Deputy Superintendent of Police (V & AC),
Villupuram.

+1 cc to M/s.N.fidelia, Advocate, Sr.No. 31113
+1 cc to The Government Pleader, Sr.No. 34363

LN(CO)
CSL/20.06.2019

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