

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.34542 of 2019

and

WMP No.35243 of 2019

A.Sivakumar

... Petitioner

.Vs.

1.The Joint Registrar of Co-operative Societies,
Salem Region,
Salem.

2.Salem District Consumer Co-operative
Wholesale Stores Ltd.,
Rep.by its Joint Registrar/
Managing Director,
Sitaraman Road,
Salem-9.

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for a records of the order of suspension passed by the 2nd respondent in Na.Ka.901/2017 A.1 dated 18.11.2017 quash the same and direct the respondents to reinstate the petitioner as Assistant in the 2nd respondent wholesale stores with all monetary benefits.

For Petitioner : Mr.M.S.Palaniswamy

For Respondents: Mr.L.P.Shanmugasundaram
Special Government Pleader

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O R D E R

This Writ Petition has been filed challenging the suspension order passed by the 2nd respondent dated 18.11.2017, and for a consequential direction to the respondents to reinstate the petitioner with all monetary benefits.

2.The case of the petitioner is that he was working as a Manager in the Society and based on a criminal complaint given against the petitioner, the petitioner was placed under suspension on 18.11.2017. The petitioner continues to be under suspension till date and therefore, the petitioner has approached this Court seeking to quash the suspension order on

the ground that he has been kept under prolonged suspension.

3.Mr.M.S.Palaniswamy, learned counsel appearing on behalf of the petitioner submitted that the petitioner was placed under suspension merely based on a criminal complaint which was falsely foisted against the petitioner. The learned counsel submitted that till date there is absolutely no progress in the criminal case and not even an enquiry has been conducted in this case. The learned counsel further submitted that the petitioner has been under suspension for the last two years and therefore in accordance with the dictum of the Hon'ble Supreme Court in "Ajay Kumar Choudhary V. Union of India through its Secretary and another reported in (2015) 7 SCC 291, suspension is liable to be revoked and the petitioner must be reinstated into service.

4.Per Contra, Mr.L.P.Shanmugasundaram, learned Special Government Pleader appearing on behalf of the respondents submitted that the Vigilance and Anti Corruption, have registered an FIR in Cr.No.8 of 2017 on 17.11.2017, against the petitioner and another person, for an offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. The learned counsel submitted that the petitioner was found to be holding unaccounted money and taking into consideration the seriousness of the charges, the petitioner was kept under suspension. The learned counsel further submitted that the petitioner cannot approach this Court directly by way of filing a writ petition since such a writ petition is not maintainable against a Co-operative Society.

5.This Court has carefully considered the submissions made on either side and the materials available on record.

6.The petitioner was kept under suspension pursuant to the order passed by the 2nd respondent on 18.11.2017, only on the ground that a criminal complaint has been made against the petitioner and the another person and an FIR has been registered in Cr.No.8/2017. The allegation that has been made in the complaint is to the effect that one Vasantha, who was working as a sales woman was found to be in possession of unaccounted money and she was not able to provide a proper explanation. She is said to have given a confession to the effect that she is involved in receiving commissions along with the petitioner and therefore, the petitioner has also been made as an accused in the FIR and he is shown as A-2.

7.The above FIR was the basis for the suspension order that was passed by the 2nd respondent. The suspension order continues till date and the same has not been revoked.

8.The Hon'ble Supreme Court in Ajay Kumar Choudhary Vs. Union of India through its Secretary and another has held that the currency of a suspension order

should not normally extend beyond three months if within this period, the charge memo is not served on the delinquent employee. In cases where the charge memo is served, then the employer will have to pass a reasoned order justifying the extension of suspension.

9. This Court had an occasion to deal with all the earlier cases on the issue and it will be useful to extract the relevant portions of the order that was passed in W.P.No.11967 of 2018, dated 25.07.2019. The relevant portions of the order is extracted hereunder:

"5. According to the learned counsel, this Court, in a number of decisions, has followed the law declared by the Hon'ble Supreme Court in Ajay Kumar Choudhary case and set aside the suspension orders and directed the authorities concerned to reinstate the petitioners in the respective writ petitions and post them in non-sensitive posts. Many of the cases, which were allowed by this Court also, pertaining to the alleged demand of illegal gratification by the petitioner therein. In support of his contention, the learned counsel would rely on the following decisions:

(i) In Ajay Kumar Choudhary V. Union of India through its Secretary and another reported in (2015) 7 Supreme Court Cases 291, he would draw the attention of this Court at paragraph 21, which is extracted hereunder:

"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 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."

(ii) In *K.Selvamani V. The State of Tamil Nadu*, rep. By the Principal Secretary to Government, Home (Pol-2) Department, Fort St. George, Chennai and another reported in 2017 (1) CTC 795, at paragraph 6 to 8, it has been held by this Court as follows:

"6. I am of the opinion that the issue involved in this case has to be decided only based on the decision of the Hon'ble Supreme Court in 2015 (2) SCALES 432 [*Ajay Kumar Choudhry Vs. Union of India*], wherein it has been held that the currency of suspension order should not be extended beyond three months, if within this period, the Memorandum of charges/charge sheet is not served on the delinquent official and if charge memo/sheet is served, a reasoned order must be passed for extension of the suspension. Subsequently, the Government of Tamil Nadu has also issued instructions in Letter No.13519/N/2016-1, P & AR (Per.N) Dept, dated 23.07.2015, to all Principal Secretaries to Government, Department of Secretariat and Head of Departments to follow the directions of the Hon'b'le Supreme Court on the limitation period of suspension in letter and spirit.

7. Even in the instant case, the facts of the case could show that the respondents have not passed any reasoned order for extension of suspension in respect of the petitioner herein. The petitioner cannot be kept under prolonged suspension. Further, in the case *Ambigapathy, P.S. Vs. The Director of Public Health & Preventive Medicine*, reported in 1991 Writ L.R. 273, a Division Bench of this Court has held that the prolonged suspension is unreasonable and without any justification.

Following the above said decision, I am of the

opinion, the petitioner herein is entitled to the relief sought for in the writ petition and the impugned order is liable to be quashed.

8. Accordingly, the writ petition is allowed and the impugned order is quashed. The respondents are directed to reinstate the petitioner in any non-sensitive post at a far away place forthwith. Consequently, connected Miscellaneous Petition is closed. No costs."

(iii) In Civil Appeal No.8427-8428 of 2018 arising out of S.L.P.(Civil) No.12112-12113 of 2017 dated 21st August, 2018 [between State of Tamil Nadu rep. By Secretary to Government (Home) V. Promod Kumar IPS & another] the Hon'ble Supreme Court in paragraph No.23, has observed as under:

"23. This Court in Ajay Kumar Choudhary v. Union of India protracted suspension and held that suspension must necessarily be for a short duration. On the basis of the material on record, we are convinced that no useful purpose would be served by continuing the first Respondent under suspension any longer and that his reinstatement would not be a threat to a fair trial. We reiterate the observation of the High Court that the Appellant State has the liberty to appoint the first Respondent in a non sensitive post."

(iv) In W.P.No.28454 of 2017 dated 01.04.2019 [between T.Soundararajan V. The District Revenue Officer, Villupuram and others], this Court in paragraph 6 has observed as follows:

"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."

(v) In W.P.No.33806 of 2018 dated 02.04.2019 [between P.Saravanan V. The Superintending Engineer, TANGEDCO, TNEB, Chengalpattu Electricity Distribution Circle, Chengalpattu] in paragraphs No.8 & 9, this Court has held as follows:

"8. In the case on hand, the order of suspension was issued long back and the writ

petitioner is under continuous suspension without any progress in the departmental disciplinary proceedings as well as the criminal case. This being the factum of the case, this Court is of an opinion that there is no useful purpose would be served in keeping the writ petitioner under suspension for further period.

9. Accordingly, the following orders are passed:-

(i) The impugned order of suspension passed by the respondent in Memo No. 50/Adm.2/A.1/F. Suspension/2009, dated 26.5.2009 is quashed.

(ii) The respondent is directed to reinstate the petitioner in service.

(iii) The respondent is directed to post the writ petitioner in any one of the non-sensitive post till the conclusion of the departmental disciplinary proceedings as well as the criminal case registered against the writ petitioner.

(vi) In W.P.No.13961 of 2018 dated 05.04.2019 [between B.Elankovan V. The Chairman, TANGEDCO, Nadippisai Pulavar K.R.Ramasamy Building, No.144, Anna Salai, Chennai - 600 002 and others] in paragraphs No.6 to 8, this Court has observed as follows:

"6. Competent Officials of the State as well as the Departments are the custodians of the tax payers money and they have got every duty to protect the public money and spend the same judiciously and in accordance with law. A public official wasting the tax payers money is committing misconduct and it is necessarily that such officials are also to be booked under the Discipline and Appeal Rules. The money of the tax payers are spend by the public officials without considering the circumstances and other aspects.

7. This apart, an employee is not allowed to take employment anywhere during the period of suspension. If a person is made to sit ideally without any work for number of years, the same would cause a mental agony, which is not good for the betterment of the society in general.

All these aspects are to be considered, while prolonging the period of suspension.

Even, at the time of reviewing the order of suspension, the authorities competent must take into consideration of all these aspects and if necessary, revoke the order of suspension and post such employee in any one of the non-sensitive post till the conclusion of the departmental proceedings or criminal case. In view of the fact that the writ petitioner is under suspension for the past eight years, there is absolutely no progress in the Departmental Disciplinary Proceedings.

8. Under these circumstances, this Court is of an opinion that the present writ petition is to be considered. Accordingly, the following orders are passed:-

(1) The impugned order of suspension issued by the fourth respondent in proceedings in Ref.No.F/N/vz;/40828-epgp1-c2-m/vz;/5838-2014 dated 26.12.2014 is quashed.

(2) The respondents are directed to reinstate the writ petitioner forthwith.

(3) The respondents are directed to post the writ petitioner in any one of the non-sensitive post till the conclusion of the departmental disciplinary proceedings."

(vii) In W.P.No.33379 of 2018 dated 08.04.2019 [between P.Govindarajan V. The Chairman cum Managing Director, TANGEDCO (Tamil Nadu Generation and Distribution Corporation Ltd.), Tamil Nadu Electricity Board, No.144, Anna Salai, Chennai- 2 and others], in paragraphs No.11 & 12, this Court has held as under:

"11. In the case on hand, the order of suspension was issued long back and the writ petitioner is under continuous suspension without any progress in the departmental disciplinary proceedings as well as the criminal case. This being the factum of the case, this Court is of an opinion that there is no useful purpose would be served in keeping the writ petitioner under suspension for further period.

12. Under these circumstances, this Court is of an opinion that the present writ petition is to be considered. Accordingly, the following orders are passed:-

(1) The impugned order of suspension issued by the third respondent in proceedings in Memo No.114197/ 951/ G7/G72/2015-1, dated 3.3.2015, is quashed. (2) The respondents are directed to reinstate the writ petitioner in service.

(3) The respondents are directed to post the writ petitioner in any one of the non-sensitive post till the conclusion of the departmental disciplinary proceedings.

(viii) In W.P.No.11328 of 2019 dated 29.04.2019 [between J.Mathialagan V. The Chairman, Tamil Nadu Generation and Distribution Corporation Ltd., (TANGEDCO), NPKRR Maaligai, No.144, Anna Salai, Chennai and others] in paragraphs No.8 to 10, this Court has observed and held as follows:

"8. Competent Officials of the State as well as the Departments are the custodians of the tax payers money and they have got every duty to protect the public money and spend the same judiciously and in accordance with law. A public official wasting the tax payers money is committing misconduct and it is necessarily that such officials are also to be booked under the Discipline and Appeal Rules. The money of the tax payers are spend by the public officials without considering the circumstances and other aspects

9. This apart, an employee is not allowed to take employment anywhere during the period of suspension. If a person is made to sit ideally without any work for number of years, the same would cause a mental agony, which is not good for the betterment of the society in general. All these aspects are to be considered, while prolonging the period of suspension. Even, at the time of reviewing the order of suspension, the authorities competent must take into consideration of all these aspects and if necessary, revoke the order of suspension and post such employee in any one of the non-sensitive post till the conclusion of the departmental proceedings or criminal case. In view of the fact that the writ petitioner is under suspension for the past seven years, there is absolutely no progress in the Departmental Disciplinary Proceedings.

10. Under these circumstances, this Court is of an opinion that the present writ petition

is to be considered. Accordingly, the following orders are passed:-

(1) The impugned order of suspension issued by the third respondent in Memo No.115/Adm.II/A4/ F.Suspension/2012 dated 11.5.2012 is quashed.

(2) The respondents are directed to reinstate the writ petitioner forthwith.

(3) The respondents are directed to post the writ petitioner in any one of the non-sensitive post till the conclusion of the departmental disciplinary proceedings."

6. Therefore, the learned counsel would submit that consistently this Court, even in cases of corruption, held that the employee cannot be suspended for an indefinite period. While so, in the present case, from 2016 onwards the petitioner has been placed under suspension.

7. According to the learned counsel, the criminal trial has not progressed at all and the criminal trial is likely to be delayed. Therefore, the petitioner's claim for revocation of suspension notwithstanding the pendency of criminal trial is imperative and the issue is also directly covered by the above decisions of the Hon'ble Supreme Court of India and also of this High Court.

12. This Court is unable to appreciate the arguments advanced by the learned Special Government Pleader on behalf of the respondents particularly with reference to the citation, since those orders cited by him one the Hon'ble Supreme Court and other by a Division Bench of this Court were rendered prior to Ajay Kumar Choudhary case and therefore, it cannot hold the field any further after the pronouncement of the decision by the Hon'ble Supreme Court of India in the Ajay Kumar Choudhary case. In fact, after Ajay Kumar Choudhary case, numerous orders have been passed by the Division Bench as well as the learned single Judges of this Court following the legal principle of the Hon'ble Supreme Court and directed reinstatement of the suspended employees. Therefore, the arguments advanced on behalf of the respondents deserved to be rejected.

13. While so, this Court is in agreement with the submissions made on behalf of the learned counsel for the petitioner. The Hon'ble Supreme Court of India in Ajay Kumar Choudhary

case has elaborately held that the suspension is only transitory or temporary in nature and must perforce be of short duration. In fact, in paragraphs No.11 and 12, the Hon'ble Supreme Court has frowned upon the long period of suspension'. Those paragraphs are also extracted hereunder:

"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

14. In same lines, various High Courts and particularly this High Court have passed numerous orders setting aside the suspension order and directed the authorities concerned to post the suspended officers concerned in non-sensitive posts. This was done keeping in mind public interest, as payment of huge subsistence allowance without extracting work from the employee concerned, drains public exchequer. Moreover, the person accused is entitled to speedy trial under Article 21 of the Constitution of India. Therefore, in order to uphold the public interest and also constitutional imperatives, the suspension orders have been interfered with by the Courts".

10. It is clear from the above order that this Court had taken into consideration all the earlier judgments and it has categorically held that a suspension can only be transitory or temporary in nature. It cannot be extended for a very long time without any justification. This Court also held that huge payments are being made by way of subsistence allowance without extracting any work from the delinquent employees and the same has a direct impact on the public exchequer.

11. It must be borne in mind that even in cases of corruption, an employee cannot be suspended for an indefinite period and if in case an employee has to be kept in suspension, then a reasoned order must be passed justifying the extension of suspension. Without resorting to such a process, an employee cannot be kept under suspension endlessly.

12. In view of the above discussion, this Court finds that the petitioner has already been kept under suspension for more than two years and there is absolutely no progress in the investigation after an FIR was registered. That apart, no charge memo has been issued by the Society. Therefore, no useful purpose will be served by continuing with the suspension of the petitioner and paying him subsistence allowance without extracting any work. Hence, this Court has no hesitation to interfere with the order of suspension passed by the 2nd respondent in his proceedings dated 18.11.2017 and accordingly the same is quashed. The 2nd respondent is directed to reinstate the petitioner with all attendant benefits and he shall ensure that the petitioner is posted in a non-sensitive post. This order shall be complied with within a period of four weeks from the date of receipt of copy of this order.

In the result, this Writ Petition is allowed with the above directions. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (J)

//True Copy//

Sub Assistant Registrar

KP

To

1.The Joint Registrar of Co-operative Societies,
Salem Region,
Salem.

2.The Joint Registrar/
Managing Director,
Salem District Consumer Co-operative
Wholesale Stores Ltd.,
Sitaraman Road,
Salem-9.

+1cc to Mr.M.S.Palaniswamy, Advocate, S.R.No.106515

+1cc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No. 52247

+1cc to the Special Government Pleader(CO-OP), S.R.No. 46

W.P.No.34542 of 2019

GN(23/01/2020)

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