

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.07.2019

Pronounced on : 25.07.2019

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.29209 of 2018

and

W.M.P.No.34136 of 2018

G.Manimegalai

...Petitioner

Vs.

1.The District Collector,
Collectorate,
Dharmapuri,
Dharmapuri District.

2.The Deputy Superintendent of Police,
Vigilance and Anti-Corruption Department,
Dharmapuri District.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the proceedings of the 1st respondent in Roc.No.24917/2016/A2 dated 28.11.2016 and to quash the same as illegal improper, incompetent and ultra virus and consequentially direct the 1st respondent herein to reinstate the petitioner in the post of Special Tahsildar (SSS).

For Petitioner : Mr.R.Singaravelan

Senior Counsel

For M/s.N.Elumalai

For Respondents : Mr.J.Pothiraj

Special Government Pleader

ORDER

The petitioner was working as Special Tahsildar (SSS) at Pennagaram Taluk. On the basis of a complaint filed by one person alleging that the petitioner demanded and received illegal gratification, a criminal case was registered in Crime No.7/AC/ 2013 for the offences under Section 7 of the Prevention of Corruption Act, 1988. The petitioner was also arrested by the

2nd respondent and remanded to judicial custody on 19.11.2013. In view of the petitioner being implicated in the criminal case and being taken to judicial custody, she was placed under suspension on 20.11.2013 by the 1st respondent. Since she was placed under suspension without the same being reviewed, the petitioner submitted a representation on 23.08.2015 to the 1st respondent to revoke her suspension order. Since no orders were passed in the representation, the petitioner has approached this Court in W.P.No.24329 of 2016 seeking to challenge the suspension order. The writ petition was disposed of on 20.09.2016 with a direction as under:

"4.Considering the facts and circumstances of the case and considering the submissions made on either side, this Court directs the petitioner to submit a fresh representation to the respondent, within a period of two weeks from the date of receipt of a copy of this order, and on receipt of the same, the respondent is directed to consider the same, and pass appropriate orders, on merits and in accordance with law, within a period of four weeks thereafter. It is made clear that this Court has not expressed any opinion with regard to the claim projected by the petitioner and it is for the respondent to consider the claim of the petitioner strictly on merits and in accordance with law. The Writ Petition is disposed of accordingly. No costs."

2.In pursuance of the direction passed by this Court, the 1st respondent passed an order on 28.11.2016 rejecting the representation of the petitioner on the ground that the criminal case was pending and the suspension would be continued till the pronouncement of the judgment in the criminal case which is pending before the Chief Judicial Magistrate, Dharmapuri District in Criminal Case No.1/2015. The said rejection order is put to challenge in the present writ petition.

3.Mr.R.Singaravelan, learned Senior Counsel appearing for the petitioner would submit that while rejecting the representation of the petitioner seeking revocation of the suspension, the 1st respondent did not consider the legal principles laid down by the Hon'ble Supreme Court of India in "Ajay Kumar Choudhary V. Union of India through its Secretary and another reported in (2015) 7 Supreme Court Cases 291".

4.According to the learned Senior 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 Senior 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/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."

(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'b'le 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/எண்.40828/நிபி/உ.உ/அ.எண்.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."

5. Therefore, the learned Senior 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 2013 onwards the petitioner has been placed under suspension.

6. According to the learned Senior Counsel, the criminal trial has not been progressed at all, despite the fact the petitioner was present before the trial Court, on more than 35 occasions. However, the criminal trial has been adjourned from time to time due to continuous absence of witnesses. Therefore, the delay in conclusion of the criminal trial was entirely due to the prosecution and not due to the petitioner. Therefore, the petitioner's claim for revocation of suspension is directly covered by the above decisions of the Hon'ble Supreme Court of India and also of this High Court.

7. Per contra, Mr. J. Pothiraj, learned Special Government Pleader for the respondents would strongly object to grant of any relief to the petitioner on the ground that the petitioner was involved in corruption case and therefore, her reinstatement would be against public interest. In fact, when the criminal case is being tried, the petitioner has to wait till the outcome of the criminal proceeding and only if the petitioner comes out unscathed from the criminal proceedings, she can stake her claim for revocation of suspension. In the said circumstances, the authority has rightly rejected the representation of the petitioner, seeking revocation of the suspension.

8. Heard the learned Senior Counsel for the petitioner and the learned Special Government Pleader for the respondents.

9. This Court is in agreement with the submissions made on behalf of the learned Senior 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 and public trial."

10. 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.

11. In view of the above, this Court has no hesitation in allowing the Writ Petition. Accordingly, the impugned order dated 28.11.2016 in Roc.No.24917/2016/A2 is hereby set aside and the 1st respondent is directed to reinstate the petitioner with all attendant benefits. While reinstating the petitioner, the 1st respondent may ensure that the petitioner shall not be posted to any sensitive post. The order shall be complied with by the 1st respondent within a period of four weeks from the date of

receipt of a copy of this order.

12.With the above direction, the Writ Petition is allowed.
No costs. Consequently, connected Miscellaneous Petition is
closed.

Sgl

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The District Collector,
Collectorate,
Dharmapuri,
Dharmapuri District.

2.The Deputy Superintendent of Police,
Vigilance and Anti-Corruption Department,
Dharmapuri District.

+1cc to the Govt.Pleader, Advocate, SR.No.64239/19

+2cc to Mr.C.Planisamy, Advocate, SR.No.63598/19

W.P.No.29209 of 2018

Kak(07/08/2019)

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