

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.09.2020
C O R A M

The Hon'ble Mr. AMRESHWAR PRATAP SAHI, THE CHIEF JUSTICE
and
The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Appeal No.599 of 2020
&
C.M.P.No.8324 of 2020

1. Tamil Nadu Generation & Distribution Corporation Limited (TANGEDCO)
(Formerly Tamil Nadu Electricity Board),
Rep. By its Chairman-cum-Managing Director,
No.144, Anna Salai, Chennai-600 002.
2. The Chief Engineer (Personnel)
Tamil Nadu Generation & Distribution Corporation Limited (TANGEDCO)
(Formerly Tamil Nadu Electricity Board),
Rep. By its Chairman-cum-Managing Director,
No.144, Anna Salai, Chennai-600 002.
3. The Chief Engineer (Distribution)
Tamil Nadu Generation & Distribution Corporation Limited (TANGEDCO)
(Formerly Tamil Nadu Electricity Board),
Villupuram Region, Villupuram.
4. The Superintending Engineer,
Thiruvannamalai Electricity Distribution Circle,
Tamil Nadu Generation & Distribution Corporation Limited (TANGEDCO)
(Formerly Tamil Nadu Electricity Board),
Vengal, Thiruvannamalai. ...Appellants/Respondents

Vs

A.Srinivasan ...Respondent/Petitioner

PRAYER : Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order dated 27.02.2020 made in W.P.No.3398 of 2020.

W.P.No.3398/2020:

Writ Petition praying to call for the records relating to the impugned order issued by the 4th Respondent in Memo

No.601/245/Adm3/A1/F.D.P. 2017 dated 13.01.2017 and to quash and consequently direct the Respondents to reinstate the Petitioner into service with consequential and attendant benefits.

For Appellants : Mr.Karthik Rajan
For Respondent : Mr.G.Sankaran

JUDGMENT

SENTHILKUMAR RAMAMOORTHY J.,

The Respondent herein is an employee of the Appellant and was working as a Junior Engineer [Electrical Grade I] in Thiruvannamalai Electricity Distribution Circle. During the course of employment, a trap was laid by the Vigilance and Anti-corruption Department on 09.01.2017, and the Respondent was found to have demanded illegal gratification to fix the change over switch. On that basis, he was arrested. Pursuant thereto, he was placed under deemed suspension on 13.01.2017 and such suspension has continued till date. A criminal case was registered against the Respondent under Section 7 of the Prevention of Corruption Act, 1988 and the said case is presently pending as S.C.No.53 of 2018 before the Chief Judicial Magistrate, Thiruvannamalai. On account of the continuation of the suspension, he filed W.P. No.3398 of 2020 to challenge the proceedings by which he was placed under suspension. By order dated 27.02.2020, the learned single Judge allowed the writ petition by revoking the suspension and directing that the Respondent/Petitioner be placed in a non-sensitive post. The learned single Judge further directed the Chief Judicial Magistrate-cum-Special Court, Thiruvannamalai, to complete the proceedings in Spl.C.C.No.53 of 2018 within a period of four months from the date of receipt of a copy of the order. The said order is impugned herein.

2. We heard the learned standing counsel, Mr.Karthik Rajan, for the Appellants and the learned counsel, Mr.G.Sankaran, for the respondent.

3. The learned counsel, Mr.Karthik Rajan, pointed out that the Respondent is being prosecuted before the Chief Judicial Magistrate, Thiruvannamalai, in a serious corruption case and, therefore, the continuation of the suspension by the Appellants cannot be faulted. In particular, he contends that the ratio of the judgment of the Hon'ble Supreme Court in Ajay Kumar Choudhary v. Union of India [2015 (7) SCC 291] (Ajay Kumar Choudhary) is not applicable in a situation wherein criminal proceedings in respect of corruption are pending before a competent court. In fact, he points out that the learned single Judge directed that such proceedings be concluded within four

months but notwithstanding such direction erred by revoking the suspension and directing that the Respondent be posted in a non-sensitive post. For all these reasons, he contended that the order of the learned single Judge is liable to be set aside.

4. On the contrary, Mr.Sankaran submitted that the Respondent was wrongly framed in the trap case and that the allegation is that he demanded a sum of Rs.2,100/- for getting permission to fix the change over switch. On that basis, he was suspended on 09.01.2017. In spite of the lapse of more than three years, the suspension order has not been revoked. In support of his submissions, the learned counsel referred to and relied upon the following judgments:

(i) S.Ravi and Others v. District Collector and Others [2015-4-LW.811] (S.Ravi), wherein a Full Bench of this Court concluded that it is not proper to keep a government servant under prolonged suspension without revocation or review. Therefore, it was suggested that a proper legislation should be enacted to regulate suspension.

(ii) Ajay Kumar Choudhary (cited supra). In this judgment, the Hon'ble Supreme Court, at paragraph-21, held that the currency of a suspension order should not extend beyond three months if the memorandum of charges/charge sheet is not served on the delinquent officer/employee. If it is served, it was held that a reasoned order must be passed for the extension of the suspension.

(iii) State of Tamil Nadu v. Promod Kumar [2018 (17) SCC 677], wherein, at paragraphs 26 and 27, the Hon'ble Supreme Court concluded, after reviewing the minutes of the review committee meeting, that no useful purpose would be served by continuing the first respondent under suspension.

(iv) The Agricultural Production Commissioner and Principal Secretary to Government and another v. J.Udayakumar, W.A.(MD) N.1260 of 2015, judgment dated 20.04.2017, wherein the Division Bench of this Court confirmed the judgment of the learned single Judge whereby the order of suspension was revoked on the ground that the suspension order had continued for a prolonged period.

(v) The District Collector, Chengalpattu v. K.Devendran in W.A.No.613 of 2017, judgment dated 15.06.2017, wherein the Division Bench of this Court relied upon Ajay Kumar Choudhary and upheld the revocation of the order of suspension.

5. By relying on the aforesaid judgments, Mr.Sankaran endeavoured to distinguish the judgment of the Division Bench of this Court in Director General of Police v. T.Kamarajan, W.A.No.3957 of 2019, judgment dated 19.11.2019 (Director General of Police), wherein this Court distinguished Ajay Kumar

Choudhary and concluded that the said judgment does not lay down an absolute proposition that an order of suspension should never extend beyond three months. He also pointed out that the facts of the case should be distinguished from that in Government of NCT of Delhi v. Dr.Rishi Anand [2017 SCC online Del 10506]. In this judgment also, the Division Bench of the Delhi High Court distinguished the judgment of the Hon'ble Supreme Court in Ajay Kumar Choudhary and concluded that the suspension order does not lapse ipso facto upon the expiry of the 90 day period. The learned counsel contended that these cases are distinguishable inasmuch as the suspension order has continued to be in force for more than three years although the alleged offence is not serious and was foisted on the Respondent.

6. We considered the submissions of the learned counsel for the respective parties and examined the records.

7. The principal question that arises for consideration is whether the order of suspension is liable to be revoked in the facts and circumstances of the case. The undisputed position, in this case, is that criminal proceedings were initiated against the Respondent on the basis of the trap laid by the Vigilance and Anti-Corruption Department. Such proceedings are admittedly pending before the Chief Judicial Magistrate, Thiruvannamalai in S.C.No.53 of 2018. Therefore, this is clearly a case wherein a charge sheet was filed and the criminal process is underway. The law relating to suspension orders and their revocation should be examined against this background.

8. On perusal of the Full Bench judgment in S.Ravi, it is clear that the Court did not direct the revocation of suspension if the suspension period exceeds a specific duration. This is clear from paragraph-48 and 49 of the said judgment which read as under:

"48. Tracing the rule from 1930, the first one Madras Civil Services (Classification, Control and Appeal) Rules; thereafter called as Tamil Nadu Civil Services (Classification, Control and Appeal) Rules, 1953, and then the present rules, namely, Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, having been experienced by the administrative set up, the order of suspension made or deemed to have been made under the rule may at any time be revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate. When the dominant position of the rules from 1930 does not distinguish the conflicting interest of the delinquent employee of revocation at any time and not categorising the clauses, the executive order, which has been brought into action

on 30.01.1996, has not been incorporated in the rules till now. Therefore, the force of law as to the application of rule is that notwithstanding the pendency of any case and the Government servant is placed under suspension, the authority competent is empowered to revoke the suspension at any point of time. Keeping the Government servant in a hanging position of prolonged suspension without revocation or review of such order, taking into account various factors, such as, investigation and the other mechanism involved in the process of conclusion of the enquiry for certain reasons not to conclude the enquiry, may not be right on the executive authority and, therefore, we feel, the said issue needs to be considered either by amending the rules or by bringing a proper legislation in regulating the order of suspension.

49. The Constitution of India guarantees the right of public employment and the equality thereof guaranteed to every one under Article 16 (1) shall be made available to every citizen, including the delinquent employee. Such a right has to be enjoyed by the Government servant during the pleasure of the Governor of the State. Therefore, the executive order, taking away the rights conferred upon the citizens, without making necessary amendment to the rules or bringing proper legislation, is bad in law and the review of the order of suspension by the authority without giving any distinction of the category of cases shall be made as a mandatory requirement by prescribing a period of review, otherwise, there will be a serious prejudice and continued apathy over the issue of keeping the Government servant for an unending period under suspension."

9. The sheet anchor of the Respondent's case is the judgment in Ajay Kumar Choudhary. Therefore, it is necessary to extract paragraphs 21 and 22 thereof which are as under:

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.

22. So far as the facts of the present case are concerned, the Appellant has now been served with a Chargesheet, 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."

10. On perusal of the judgment in *Ajay Kumar Choudhary*, it is clear that the Hon'ble Supreme Court was dealing with a case wherein the Appellant had been served with a charge sheet before the judgment was pronounced. On that basis, on the facts of that case, paragraph 22 reflects that the order of suspension was not set aside although the suspension period exceeded three months. However, while disposing of the case, the Hon'ble Supreme Court held that the suspension period should not extend beyond three months if the memorandum of charges/charge sheet is not served on the delinquent officer/employee. The judgment in *Ajay Kumar Choudhary* was dealt with in detail by a Division Bench of this Court in *Director General of Police* [cited supra]. In the said judgment, this Court held as follows in paragraphs 9-11:

9. We are of the view that *Ajay Kumar Choudhary* (supra) does not lay down any absolute proposition that an order of suspension should never extend beyond three months. In fact, in *Ajay Kumar Choudhary* (supra), the Supreme Court observed that the directions regarding the restriction on extension of a suspension order beyond three months would not apply as the appellant had been served with a charge

sheet. The appellant had only been given the liberty to challenge his continued suspension in any manner known to law, if so advised, and it was clarified that the action of the respondents in continuing suspension would be subject to judicial review. In our view, the learned Single Bench erred in setting aside the suspension placing reliance on Ajay Kumar Choudhary (supra).

10. It is well settled that a judgment is to be understood in the context of the facts in which the judgment is rendered. Sentences in a judgment cannot be read in the same manner as a statute and in any case, words and sentences in a judgment cannot be read out of context. In Padma Sundara Rao (Dead) and others v. State of Tamil Nadu and others, reported in (2002) 3 SCC 533, cited by Mr.S.Saji Bino, learned counsel appearing on behalf of the appellant, a Five Judge Bench of the Supreme Court held as under:

'9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board (1972) 2 WLR 537.

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.'

11. In the instant case, as observed above, a charge sheet had been issued, though after five months and four days of the suspension. The learned Single Bench ought to have considered the question of whether the suspension should outright be set aside or allowed to continue upon consideration of all relevant facts and circumstances, including the nature of the charges."

Likewise, the Division Bench of this Court in R.Elumalai v. District Collector, [2020 SCC online Mad 1472, considered the Ajay Kumar Choudhary case and the judgment of the Delhi High Court in Government of NCT of Delhi (cited supra) and concluded that in cases relating to suspension for alleged involvement in graft charges leading to a criminal trial, interference with the suspension order on the basis that the suspension period exceeded three months is not justifiable.

11. Upon considering the law laid down in the judgments that have been discussed herein above, it is clear that there is no absolute rule in respect of the validity of suspension orders from the perspective of duration especially when such suspension is in the context of a pending criminal proceeding. In other words, in these situations, the law on suspension as laid down in paragraph 11 of R.P. Kapur v. Union of India, AIR 1964 SC 787, by a Five Judge Bench upholding suspension pending enquiry subject to payment of subsistence allowance as per service conditions and that in Union of India v. Ashok Kumar Aggarwal (2013) 16 SCC 147, wherein it was held that the court does not sit in appeal and that such orders would be interfered with only if the charges are patently baseless, mala fide or vindictive would continue to hold the field. In this case, as stated earlier, there is a pending criminal proceeding, wherein the Respondent is being prosecuted for corruption. In these circumstances, the decision of the learned single Judge to direct the Chief Judicial Magistrate to conclude the proceeding within four months is justified and does not warrant interference. On the other hand, especially in light of the above direction, the revocation of the suspension on the ground that it is prolonged is clearly unsustainable. The consequential direction to post the Respondent in a non-sensitive post is also not sustainable especially in view of the fact that the Respondent is an Assistant Engineer and it is difficult to find a post that may be termed non-sensitive in that cadre. Therefore, we allow the appeal in part insofar as it directs the Appellants to revoke the suspension and to post the Respondent in a non-sensitive post. On the other hand, we affirm the impugned order to the extent that the Chief Judicial Magistrate, Thiruvannamalai, has been directed to conclude the criminal proceedings within a period of four months, albeit with the qualification that the said period shall run from the date of receipt of a copy of the judgment in this appeal.

12. The writ appeal is accordingly disposed of on the above terms. Consequently, the connected miscellaneous petition is closed. No costs.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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+1 CC to Mr. Karthik Rajan, Advocate sr 28859.

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