

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.03.2020

CORAM

THE HON'BLE MR. JUSTICE V.PARTHIBAN

Writ Petition No.23238 of 2020 and
W.M.P.Nos.22929 & 22930 of 2020

N.Annapoorani

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Petitioner

Vs.

1.The District Collector,
The District Collector Office,
Dharmapuri,
Dharmapuri District.

2.The Block Development Officer,
Morappur Block,
Dharmapuri District.

3.The Inspector of Police,
Vigilance & Anti-Corruption
Department,
Dharmapuri - I/C,
Krishnagiri,
Krishnagiri District.

Respondents

Writ Petition filed under Article 226 of Constitution of India, for issuance of writ of certiorarified mandamus, to call for the records pertaining to the proceedings of the 1st respondent in Roc.No.27835/12/K4 dated 09.11.2012 and Roc.No.27835/12/K4 dated 17.11.2017 and quash the same as illegal illicit, improper, incompetent, arbitrary and ultra vires and consequently direct the 1st respondent herein to reinstate the petitioner in the post of Overseer in Block Development Office.

For Petitioner : Mr.R.Singaravelan Senior Counsel
for Mr.C.Palanisamy.

For Respondents: Mr.J.Pothiraj,
Special Government Pleader

ORDER

The petitioner has filed this writ petition for the following prayer:-

"To call for the records pertaining to the proceedings of the 1st respondent in Roc.No..27835 of / 12/K4 dated 09.11.2012 and Roc.No.27835/12/K4 dated 17.11.2017 and quash the same as illicit, improper, incompetent, arbitrary and ultra vires and consequently direct the 1st respondent herein to reinstate the petitioner in the post of Overseer in Block Development Office. "

2.The petitioner herein was working as an Overseer with the Morappur Block Development Office at Dharmapuri District. On 05.11.2012, one Palani lodged a complaint to the 3rd respondent, against the petitioner and a case was registered in Crime No.01/AC/2012 for the offence under Section 7 of the Prevention of Corruption Act, 1988. In view of the registration of the criminal case against the petitioner, she was placed under suspension by the 1st respondent vide proceedings dated 09.11.2012. Thereafter, it appears that the petitioner has approached this Court seeking for revocation of order of suspension in W.P.No.34574 of 2013. However, the case was disposed of by directing the petitioner to make a representation to the 1st respondent and the representation shall be considered and disposed of within three months.

3.In pursuance of the direction of this Court, the 1st respondent citing a pending criminal case against the petitioner, rejected her claim on 17.11.2017. The rejection of the request of the petitioner for revocation of suspension is under challenge before this Court.

4.Mr.R.Singaravelan, learned Senior Counsel representing Mr.C.Palanisamy, learned counsel on record for the petitioner would submit that though the complaint against the petitioner was under the Prevention of Corruption Act and the trial had commenced after framing of charge sheet in 2014, but still, the trial has not come to an end. The learned Senior Counsel would submit that the petitioner has been promptly attending all the hearings in the criminal trial for more than sixty times. But, unfortunately, the trial is being protracted and would not see the light of the day in the near future.

5.The learned Senior Counsel would submit that the law on suspension is well settled after the Hon'ble Supreme Court has passed the order in Ajay Kumar Choudhary Vs. Union of India

through its Secretary & Another¹. Following the judgment of the Hon'ble Supreme Court, number of decisions have been rendered by this Court, over a period of time interfering with the orders of prolonged suspension. The first of the decision of the learned Judge of this Court is in K.Selvamani Vs. The State of Tamil Nadu, represented by the Principal Secretary to Government, Home (Pol-2) Department, Fort St.George, Chennai and another². The learned Judge, after referring to the judgement of the Hon'ble Supreme Court in paragraph Nos.3 to 7 has held as under:-

"3.When the matter is taken up for consideration, the learned senior counsel for the petitioner, by placing reliance on two judgments reported in 1991 Writ L.R. 273 [Ambigapathy, P.S. Vs. The Director of Public Health & Preventive Medicine) and 2015 (2) SCALES 432 [Ajay Kumar Choudhry Vs. Union of India], submitted that the currency of suspension order should not be extended beyond three months, if within this period, the Memorandum of charges/chargesheet 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. In the instant case, the petitioner has been placed under suspension for a long period without any reason. Thus, the learned senior counsel for the petitioner sought for quashing the impugned order and for a direction to the respondent to permit the petitioner to join duty.

4.The learned Additional Government Pleader, by filing a detailed counter, would submit that the petitioner herein was arrested red-handed in the act of demand and acceptance of bribe; if the petitioner is allowed to rejoin duty, the Government's objective of maintaining probity in public administration will be belittled. The learned Additional Government Pleader would further submit that by following the instruction of the Government vide Letter No.47685/A/N/94-10, Personnel and Administrative Reforms Department, dated 05.01.1996, the petitioner's representation was rightly rejected by the 1st respondent.

1 (2015) 7 SCC 291

2 2017 (1) CTC 795

Thus, the learned Additional Government Pleader sought for dismissal of the writ petition.

5. Heard both sides and perused the materials available on record.

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/chargesheet 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'ble 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."

6.The learned Senior Counsel would also draw the attention of this Court to the judgement of the Hon'ble Supreme Court in State of Tamil Nadu represented by Secretary to Government (Home) Vs. Promod Kumar IPS and another³, wherein, the Hon'ble Supreme Court of India, after referring to its own decision in Ajay Kumar Choudhary Vs. Union of India through its Secretary & Another (cited supra), has allowed the Civil Appeal Nos.8427-8428 of 2018 vide its judgment dated 21.08.2018. Paragraph No.23, the operative portion of the judgment is extracted herein under:-

"23. This Court in Ajay Kumar Choudary v.Union of India, (2015) 7 SCC 291 has frowned upon the practice of 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 Appellate State has the liberty to appoint the first Respondent in a non sensitive post."

7.The above case actually went on appeal to the Hon'ble Supreme Court from this Court, wherein, a Division Bench of this Court has actually allowed the case and interfered with the order of suspension and directed the reinstatement of an I.P.S., Officer.

8.The learned Senior Counsel would further draw the attention of this Court to yet another order passed by this Court in G.Manimegalai Vs. State represented by the District Collector, Dharmapuri District and another⁴. This Court has in extenso written a detailed order and interfered with the prolonged suspension. This Court has reasoned therein from paragraph No.5 onwards and eventually allowed the writ petition. This Court has also extracted the crucial observation of the Hon'ble Supreme Court in Ajay Kumar Choudary's case (cited supra) and the relevant paragraphs of this Court as found in paragraph Nos.5 to 11 are extracted hereunder:

"5. Therefore, the learned Senior Counsel would submit that consistently this Court, even in cases of corruption, held

3 Civil Appeal Nos.8427-8428 of 2018 decided on 21.08.2018

4 W.P.No.29209 of 2018 decided on 25.07.2019

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."

9. From above, it is very clear that the issue of prolonged suspension even in the matters of criminal prosecution is no more res integra and he would urge this Court to interfere with the suspension order and to quash the rejection order passed by the authority concerned.

10. Per contra, Mr. J. Pothiraj, learned Special Government Pleader, appearing for the respondents would submit that this is a case of corruption, where, there was illegal demand of bribery

by the petitioner and therefore, her conduct is to be viewed seriously.

11. According to the learned Special Government Pleader, the criminal trial has come to an advanced stage and is likely to be completed in the near future. The petitioner who has indulged in corruption of demanding bribery, her case cannot be dealt with along with the other cases, where, suspension orders are issued for other misconduct which did not attract vigilance intervention.

12. The learned Special Government Pleader would submit that the cases relied upon by the learned Senior Counsel appearing for the petitioner cannot be pressed into service as the petitioner herein was involved in corruption and unless the criminal trial is taken to its logical end, it is not in public interest to reinstate the petitioner in service. Therefore, he would submit that the petitioner cannot be allowed to compare herself with the other cases, where, the Courts have intervened in the matter of prolonged suspension.

13. Heard Mr. R. Singaravelan, learned Senior Counsel representing Mr. C. Palanisamy, learned counsel on record of the petitioner and Mr. J. Pothiraj, learned Special Government Pleader for the respondents.

14. Although, the submissions made by the Special Government Pleader has some force that, in matters of corruption, the Courts have to be little wary in interfering with the suspension, which was necessitated by the Department as a consequence of corruption on the part of the delinquent concerned, yet, this Court has time and again interfered with prolonged suspension even in the matters of corruption as could be seen above. There are number of cases, which, this Court has passed by directing reinstatement of the employees, who came under prolonged suspension. However, the Courts have directed such reinstatement only against non-sensitive post, in many of the matters, where, suspension order was issued, on the basis of involvement of delinquent in corruption. In fact, this Court order was referred to in W.P.No.29209 of 2018 wherein an order dated 25.07.2019, was passed interfering with the order of suspension by directing the authority to post the petitioner therein to non-sensitive post. When such consistent view is taken by the Court even in matters of corruption prolonged suspension is not permissible following the dictum laid down by the Hon'ble Supreme Court in Ajay Kumar Choudary case (cited supra) this Court does not think that the petitioner herein can

be treated differently as the facts would disclose that the petitioner came under order of suspension as early as on 09.11.2012 and she is continued to be under suspension as on date for more than seven years. The pendency of the criminal case cannot be the basis for denial of the relief to the petitioner herein.

15. When the period of suspension is for more than seven years, enormous and severe anguish is experienced by the delinquent impinging upon the right of the delinquent to live with dignity and earn her livelihood. The prolonged suspension even in matters of corruption like the present one, by itself, constitute a grave prejudice to the right of the citizens to have speedy trial and justice. Such prolonged suspension would by itself casts stigma on the delinquent concerned and the stigma would prolong as long as the suspension order operates without any finality to the allegation being enquired into against the delinquent concerned. Such delay in judicial proceedings casts a shadow on the Government servants' character and integrity on one hand and on the other, the subsistence allowance which is required under law to be paid to the suspended employee would be a loss to the public exchequer, as the suspended Government servants draw their subsistence allowance without any corresponding duty to work and earn their livelihood.

16. Therefore, this Court is of the view that both in the interest of delinquent concerned as well as the public administration, the prolonged suspension like the present case for more than seven years needs to be avoided unless, the administration feels that exceptionally a hard and incorrigible case wherein, reinstatement pending criminal/disciplinary proceeding would put the public interest completely at peril and would shake the confidence and faith of the society in public administration. The prolonged suspension in the normal course is to be discouraged as authorities ought to review the cases of suspension periodically and particularly in long pending criminal cases, the authorities cannot simply take refuge on the reason of the pendency of criminal trial against the delinquent. Such approach of the authority concerned betrays application of mind in evaluating each one of the case of suspension on its merits.

17. In the above circumstances, this Court has no hesitation in allowing the writ petition. Accordingly, the writ petition is allowed and the proceedings of the 1st respondent in Roc.No.27835 /12/K4 dated 09.11.2012 and Roc.No.27835/12/K4 dated 17.11.2017 are set aside. The first respondent is directed

to reinstate the petitioner in any non-sensitive post as far as possible, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

jbm/nsd
To

- 1.The District Collector,
The District Collector Office,
Dharmapuri,
Dharmapuri District.
- 2.The Block Development Officer,
Morappur Block,
Dharmapuri District.
- 3.The Inspector of Police,
Vigilance & Anti-Corruption
Department,
Dharmapuri - I/C,
Krishnagiri,
Krishnagiri District.

+2cc to Mr.C.Palanisamy, Advocate SR.20076

W.P.No.23238 of 2019

RV (CO)
CB(18/03/2020)

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