



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.08.2020**

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)No.8843 of 2020

S.Suresh Kumar

... Petitioner

-Vs-

1.The Chief Engineer (Personnel)
Tamil Nadu Generation and Distribution Corporation Ltd.,
TANGEDCO,
No.144, Anna Salai, Chennai-02.

2.The Chief Engineer,
O/o.the Chief Engineer,
Distribution TANGEDCO,
Trichy Region, Trichy District.

3.The Superintending Engineer,
O/o.The Superintending Engineer,
Karur Electricity Distribution Circle,
TANGEDCO , Karur-05.

... Respondents

Prayer: Writ Petition - filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the respondent No.3 to revoke the suspension of the petitioner and reinstate the petitioner in the post of Assistant Engineer in the light of the order passed by the Hon'ble Supreme Court in *Ajay Kumar Choudhary- vs Union of India* reported in (2015) 7 SCC 291 within the time stipulated by this Court.

For Petitioner	:	Mr.I.Pinaygash
For Respondents	:	Mr.T.Sakthikumaran, Standing Counsel

ORDER

The prayer sought for herein in this writ petition is for a Writ of Mandamus, directing the respondent No.3 to revoke the suspension of the petitioner and reinstate the petitioner in the post of Assistant Engineer in the light of the order passed by the Hon'ble Supreme Court in ***Ajay Kumar Choudhary- vs Union of India reported in (2015) 7 SCC 291*** within the time stipulated by this Court.

2.Heard Mr.I.Pinaygash, learned counsel appearing for the petitioner and Mr.T.Sakthikumaran, learned Standing Counsel appearing for the respondents.

3. The petitioner was working as Assistant Electrical Engineer under the third respondent. While so, in view of the Vigilance and

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Anti Corruption case, which was registered against the petitioner on 07.10.2010, the petitioner has been placed under suspension from 08.10.2010. Though the criminal case has been pending all along, since no disciplinary action or proceedings has been initiated against the petitioner, the petitioner has made a request to the respondents on 06.06.2019 stating that for all these 8 years the petitioner has been out of service and he and his family are surviving only out of the subsistence allowance being paid to him and therefore, such a prolonged suspension can very well be reviewed and the petitioner can be reinstated into service. Since the said request has not been considered by the respondents, the petitioner has approached this Court with the aforesaid prayer.

4. The learned counsel appearing for the petitioner would submit that, in view of the law having been laid down by the Hon'ble Apex Court in **Ajay Kumar Choudhary- vs Union of India reported in (2015) 7 SCC 291** the prolonged suspension against the petitioner can very well be reviewed by the respondents and since the said request having been not considered by the respondents for the past more than a year as the petitioner has made such request on 06.06.2019, the petitioner is entitled to seek for mandamus as prayed herein.

5. He has also relied upon two of my orders, where I have dealt with the similar issues, one is in **W.P. (MD)No.13601 of 2018 in the matter of L.Antony vs. The Chief Engineer and another, dated 26.06.2018** and another case in **W.P(MD)No.13621 of 2018 in the matter of K.Thirupathi vs. The Chief Engineer and another, dated 27.06.2018**, where the learned counsel appearing for the petitioner relied upon the following passage:-

"7. Similarly a number of orders have been relied upon by the learned counsel appearing for the petitioner. He also relied upon the recent order passed by the learned Judge of this Court at the Principal Seat in W.P.Nos.6741 to 6743 of 2018, dated 18.04.2018, wherein, the learned Judge, considering the similar circumstances, has passed the following order:

"4. Learned counsel for the petitioners would submit that considering that suspension cannot be for indefinite period and any suspension order passed pending disciplinary proceedings or criminal prosecution is unsustainable and liable to be quashed, the petitioners be reinstated into service, in view of the settled proposition of law by the Apex Court in the case of Ajay Kumar Chowdary v. Union of India, 2015 (7) SCC 291, and, as such, the Writ Petitions are to be allowed.

5. Learned counsel for the respondents, however, though does not dispute that suspension is for indefinite period and no review has been done,



submits that the petitioners having been trapped while taking bribe, taking them into service is not in the interest of the administration. Hence, the Writ Petitions, according to him, are devoid of merit and liable to be dismissed.

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6. In Ajay Kumar Chowdary's case, cited supra, the Apex Court has held in paragraphs 11 and 12 as under :

"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."

7. Keeping the above principle in mind, if we see the



present case, it is not known when the criminal prosecution launched against the petitioners is going to be concluded. Therefore, this Court is of the view that the petitioners have a good case and the prayer made by them in the Writ Petitions deserves to be granted. Accordingly, the respondents are directed to take effective steps to revoke the orders of suspension against the petitioners, giving necessary instructions in this regard to the appropriate authority, and also reinstate the petitioners in posts of similar grade, as they deem just and proper within a period ten days from the date of receipt or production of a copy of this order."

5. Since the petitioner's case also is similarly placed and the facts also are similar to that of the case referred to above, the said relief granted to the petitioner in that writ petition can be given to this petitioner also.

6. Accordingly, there shall be an order to the following effect:

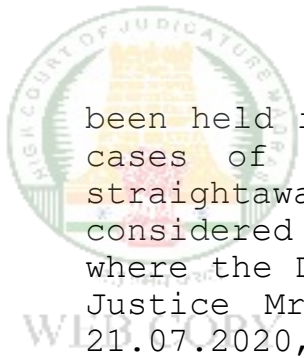
(i) That the respondents are directed to review the suspension made against the petitioner on 13.08.2008, in the light of the aforesaid judgments rendered.

(ii) On such review, the respondents shall take into account that past more than ten years, the petitioner has been paid with subsistence allowance, without extracting any work and thereby, the Respondent Corporation is spending money on nothing.

(iii) Taking into account of the aforesaid facts and circumstances and the legal position, the respondents shall pass a reasoned order with regard to the revocation of suspension of the petitioner and in such case, the petitioner can be given re-employment to any non-sensitive place as per the wish of the respondents."

6. On the other hand, the learned Standing counsel appearing for the respondents, on instructions and on notice, would make submissions stating that, no doubt the petitioner has been placed under suspension for the past 8 years, of-course pursuant to the criminal case which was filed and is pending against him and since the criminal case is filed by the Vigilance and Anti Corruption Department, where the trial is going on, such a prolonged suspension have not been reviewed all along. He would further submit that, unmindful of the pendency of the said criminal case, the respondents decided to conduct a disciplinary proceedings against the petitioner and that was also initiated against him, accordingly, on 10.08.2018 charge-memo has been issued on the petitioner, however, the enquiry is pending.

7. The learned Standing Counsel appearing for the respondents would further submit that, no doubt, the law in this regard as has



been held in **Ajay Kumar's case** cited supra can be applied to the cases of this nature, provided, whether such a suspension can straightaway be revoked by applying the said principles, has been considered by a recent decision of the Division Bench of this Court where the Division Bench consisting of Hon'ble The Chief Justice and Justice Mr.Senthilkumar Ramamoorthy in W.A.No.552 of 2020, dated 21.07.2020, has considered similar issue.

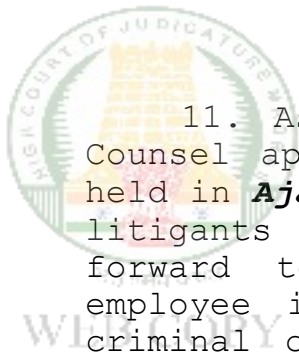
8. In the said Division Bench judgment, the learned Standing Counsel appearing for the respondents, has relied upon Paragraphs 3 & 4, which reads thus:-

"3.The charges have to be enquired into and to that extent, learned counsel for the appellant has submitted that the proceedings should be concluded at the earliest and should not be delayed for such a long time. But so far as the question of interfering with the suspension order is concerned, we have dealt with this issue, after considering the case of Ajay Kumar (supra), by following the ratio of the Division Bench of Delhi High Court in the case of Govt. of NCT of Delhi v. Dr.Rishi Anand, reported in 2017 SCC OnLine Del 10506. The same has been followed by another Division Bench in the case of The Director General of Police, Dr.Radhakrishnan Road, Mylapore, Chennai-600 004 and another v. T.Kamarajan, W.A.No.3957 of 2019, decided on 19.11.2019 and by us in the case of R.Elumalai V. District Collector, Villupuram and others, C.M.P.Nos.7453, 7546 and 7547 of 2020 and W.A.SR.No.21904 of 2020, decided on 20.07.2020.

4.We are, therefore, not inclined to interfere with the suspension order, but we direct the respondent Tamil Nadu Electricity Board to proceed and preferably conclude the disciplinary proceedings against the appellant not later than four months from today. In the event such a course is not adopted by the respondent Tamil Nadu Electricity Board, then the competent authority shall proceed to consider the review of the suspension order in accordance with law."

9. The latest decision of the Division Bench of this Court cited supra would squarely applies to the facts of this case also. As in this case also, the disciplinary proceedings have already been initiated, where the charge-memo with definite charges have been served on the petitioner, therefore, within a reasonable period, which also may be fixed by this Court, the disciplinary proceedings could be concluded and depending upon the out come of the disciplinary proceedings the decision as to whether the petitioner can be kept under further suspension or otherwise, can be decided.

10. I have considered the said submissions made by both sides and perused the materials placed before this Court.



11. As has been rightly pointed out by the learned Standing Counsel appearing for the respondents, no doubt law, as has been held in **Ajay Kumar's case** cited supra, may come to the rescue of the litigants of this nature, provided, if the employer has not come forward to initiate the disciplinary proceedings against the employee independently, unmindful of the long pendency of the criminal case. This has been exactly emphasised by the Division Bench in the case cited supra, since I am bound by the said decision of the Hon'ble Division Bench of our High Court in the recent decision referred to above, I am inclined to dispose of this writ petition with the following orders:-

"i) that the respondents shall be at liberty to proceed against the petitioner with the disciplinary proceedings as the same has been initiated by the issuance of charge-memo dated 10.08.2018 to the petitioner, such disciplinary proceedings shall be concluded within a period of four months from the date of receipt of a copy of this order. Within the stipulated period of four months if the disciplinary proceedings are not concluded, the respondents shall review the suspension order made against the petitioner on 08.10.2010 and accordingly, a decision can be taken thereon, within a period of four weeks, thereafter.

ii) It is needless to mention that in order to complete the disciplinary proceedings within the time stipulated above, the petitioner is expected to give fullest co-operation to the respondents.

13. With these directions, the Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar (Records)

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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

+1 CC to M/s.T. SAKTHIKUMARAN, Advocate (SR-13873[F] dated 07/08/2020)

W.P. (MD) No. 8843 of 2020

06.08.2020

SCR(CO)

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