



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2021

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THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.1238 of 2021

and

W.M.P.No.1390 of 2021

Mr.N.Natesan

...Petitioner

Vs

1. The Commissioner,
Municipal Administration,
Chepauk, Chennai 600 005.

2. The Commissioner,
Madurantakam Municipality,
Madurantakam,
Chengalpet District.

...Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records of the second respondent in impugned proceedings bearing Na.Ka.No.395/2020/C1 dated 21.05.2020 and quash the same and consequently, direct the respondents to pay the arrears of subsistence allowance.

For Petitioner : Mr.S.Udayakumar

For Respondents : Mr.G.Krishna Raja, AGP for R1
Mr.L.P.Maurya for R2

O R D E R

This writ petition has been filed to issue a writ of Certiorarified Mandamus, to call for the records of the second respondent in the impugned proceedings bearing Na.Ka.No.395/2020/C1 dated 21.05.2020 and quash the same and consequently, direct the respondents to pay the arrears of subsistence allowance.

2. The case of the petitioner is that he was appointed as a Sweeper/Cleaner by the first respondent on 29.09.2001. Earlier, he joined as daily wager on 01.11.1998 and thereafter on permanent basis on 29.09.2000. While working under the control of the second respondent, in March 2020, there was a quarrel



between the petitioner's brother and the neighbours which led to the filing of the complaint and counter complaint by the parties before the jurisdictional police. An FIR was registered on 02.03.2020 in Crime No.80 of 2020 for the alleged offence under Sections 294(b), 323, 324 and 506(ii) of I.P.C. In pursuance of the registration of the FIR, the petitioner was arrested along with others on 02.03.2020 and subsequently, he was released on bail.

3. In view of the fact that the petitioner was detained in custody and arrested, he was placed under suspension by proceedings dated 21.05.2020, with effect from 03.03.2020, pending enquiry. The petitioner belongs to ST community and stated that he was not involved in any criminal case and having unblemished service as a Government servant through out his career.

4. According to the petitioner, as far as his discharge of official duties is concerned, there is no complaint against him and his suspension was only on the basis of registration of FIR against him and his arrest. The subsistence allowance which is due and payable to him has also not been paid from September 2020.

5. Mr.S.Udaya kumar, learned counsel for the petitioner would submit that the suspension order was passed as early as on 21.05.2020 and the same has been continued without any review being conducted by the second respondent. A simple common place quarrel with the neighbours has resulted in registration of FIR and which led to the unfortunate arrest of the petitioner. Even otherwise, there has been no complaint against the petitioner in the official discharge of his duties. The learned counsel would submit that it is incumbent upon the authorities to conduct periodical review, particularly, in the matters like the present one, when there is no act of misconduct on the part of the petitioner herein relating to his employment. Merely because of the criminal case is pending, that cannot be a sole reason for keeping the petitioner under suspension for indefinite period of time.

6. The learned counsel for the petitioner would also refer to the trite citation of the Hon'ble Supreme Court of India reported in (2015) 7 SCC 291 in the case of Ajay Kumar Choudhary Vs. Union of India Apart from that, the learned counsel would also refer to a decision of the learned Judge of this Court following the above Supreme Court's order reported in (2016) 7 MLJ 766 in the case of K.Selvamani Vs. State of Tamil Nadu.

7. Mr.G.Krishnaraja, learned Government Advocate appeared for the first respondent and Mr.L.P.Maurya, learned counsel



appeared on behalf of the second respondent and counter affidavit has been filed on behalf of the second respondent.

8. In the counter affidavit, it is stated that the periodical review would not arise in the matters where suspension was a result of criminal case registered and pending against the employee concerned. The relevant rules have also been quoted in the counter affidavit.

9. According to the counter affidavit, in terms of G.O.Ms.No.124, Personnel and Administrative Reforms Department, dated 22.02.1993, the Departmental action need not be pursued in the criminal cases filed. Therefore, the petitioner cannot claim that no progress has been made on the departmental side. As far as the ruling of the Hon'ble Supreme Court in the case of Ajay Kumar Choudhary and the allegation of non payment of subsistence allowance is concerned, the same are answered specifically in paragraph No.11 of the counter affidavit. The learned counsel who appeared for the second respondent reiterated the above facts and would particularly, emphasis the legal position that the periodical review is not mandatory and cannot be legally insisted upon in the facts and circumstances of the case.

10. This Court has considered the submissions of the learned counsel for the petitioner and the learned counsel for the contesting second respondent and perused the rules and materials placed on record.

11. From the above factual narrative, it could be seen that the petitioner was alleged to have involved in a common place quarrel along with his brother with the neighbours which led to registration of FIR and registration of criminal complaint. The consequences of the registration of criminal case resulted in the arrest of the petitioner and subsequent enlargement of the petitioner on bail.

12. As rightly stated by the learned counsel for the petitioner, except the said criminal case, there is no other complaint against the petitioner in discharge of his official duties. In the said circumstances, though this Court cannot find anything wrong with the order of suspension passed by the second respondent dated 21.05.2020, nevertheless, the concern of the Court in this regard is the continuance of the suspension in the facts and circumstances of the case.

13. Even assuming that there is no legal imperative for the second respondent to review the suspension periodically because of the fact that the petitioner was involved in a criminal case which invited the suspension, yet, that does not give them a blanket discretion to continue a person under suspension for



indefinite period of time till the outcome of the criminal trial against the petitioner.

14. Even otherwise, this Court is of the view that the ruling of the Supreme Court as referred to, does not make a distinction between the criminal case or a departmental proceedings. The entire emphasis by the Hon'ble Supreme Court is on the prolonged nature of suspension in several cases, causing irreparable injury on the employees affected by such prolonged suspension.

15. In any event, the least that could be expected from the authority concerned is to examine the nature of criminal case registered against the petitioner and to take a call whether the suspension to be continued or not. It is certainly not open to the second respondent to completely surrender his discretion and would state that in all criminal matters, no such review is possible and any review is only after the outcome of the criminal trial. Such rigid and extreme position adopted by the second respondent cannot be countenanced both in law and facts. Any employee who is placed under suspension for whatever reasons, is entitled to seek review of the suspension, after passage of some time. Even if no such specific request is made, it is incumbent on the authority to ensure that the suspension is reviewed periodically and a conscious decision is to be taken either to continue or revoke the suspension. It is certainly not open to the authority to state that no review at all is possible under any circumstances of the case.

16. In respect of the citation relied on by the learned counsel for the petitioner reported in (2015) 7 SCC 291 in the case of Ajay Kumar Choudhary Vs. Union of India, paragraph No.21 of the ruling of the Hon'ble Supreme Court 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 person concerned 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



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adequately safeguard the universally recognised principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognise that the 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."

17. The above decision was followed by the learned Judge of this Court in the case of K.Selvamani Vs. State of Tamil Nadu reported in (2016) 7 MLJ 766. and it would be relevant to refer the following paragraph Nos.4 to 8 which are extracted hereunder:

"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 first respondent. 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 Ajay Kumar Choudhry Vs. Union of India (supra) 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



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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. Director of Public Health and Preventive Medicine (supra), 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."

18. The above decision was rendered in the context of criminal case only wherein the employee concerned was involved in the trap case. Even in such serious circumstances, the learned Judge allowed the writ petition and set aside the order of suspension. As a matter of fact, consistently, this Court has been holding that the prolonged suspension without valid reason is legally impermissible. The case on hand as compared to the facts in the above decision, is far better and deserving interference of this Court.

19. The above decisions would squarely apply to the present case, in the face of the fact that this Court following the decision of the Ajay Kumar Choudhary's case, has allowed several writ petitions finding no justification for prolonged suspension. In the circumstances of the case herein, in the considered view of this Court, the prolonged suspension of the petitioner is not warranted at all and the same is without any justification. This is particularly so, there is no act of misconduct on the part of the petitioner in the discharge of his official duties. Merely because the petitioner was involved in the criminal case as an outcome of the petty quarrel with his



neighbours, he cannot be denied of his livelihood and kept under suspension indefinitely.

20. For the above said reasons, the impugned order passed by the second respondent in Na.Ka.No.395/2020/C1 dated 21.05.2020, is hereby set aside. The second respondent is directed to reinstate the petitioner forthwith.

21. With the above direction, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gsk

To

1. The Commissioner,
Municipal Administration,
Chepauk, Chennai 600 005.
2. The Commissioner,
Madurantakam Municipality,
Madurantakam,
Chengalpet District.

+1cc to Mr.S.Udayakumar, Advocate, S.R.No.58815

+1cc to Mr.Maurya, Advocate, S.R.No.58733

W.P.No.1238 of 2021
and
W.M.P.No.1390 of 2021

RSV(CO)
RGA(01/12/2021)