



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.10.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No.10023 of 2020
(Through Video Conferencing)

P.Tamilalagan

... Petitioner

vs.

1. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai-600 004.

2. The Commissioner of Police,
No.132, Commissioner Office Building,
EVK Sampath Road,
Vepery,
Chennai-600 007.

3.The Joint Commissioner of Police,
Office of the Joint Commissioner of Police,
West Zone,
Kamarajapuram, Ambattur,
Chennai-600 053.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari calling for the records of the impugned proceedings in suspension order RC.No.PR/WZ/31610/2019/WZO No.735/2019 dated 25.10.2019 issued by the 3rd Respondent and quash the same.

For Petitioner : Mr.Naveen Kumar Murthi

For Respondents : Mr.L.S.M.Hasan Fizal
Government Advocate.

O R D E R

This writ petition has been filed for issuance of a Writ of Certiorari, calling for the records of the impugned proceedings in suspension order dated 25.10.2019 issued by the 3rd Respondent and quash the same.



2. The petitioner was placed under suspension on 23.10.2019 for allegedly receiving bribe. A trap order was placed. The petitioner was arrested by the Department of Vigilance and Anti-Corruption near the Annamalaiar Unnamulaiamman Temple at Anna Nagar near K4 Police Station while demanding a bribe of Rs.20,000/- and was sent to Judicial Custody.

3. It is the case of the petitioner that the petitioner has been kept under suspension for a long period of time. It is further submitted that the case was registered against the petitioner in Crime No.13/AC/2019/CC-II dated 23.10.2019 under Section 7 of the Prevention of Corruption Act as amended in 2018 but the respondents have not initiated any departmental proceedings against the petitioner.

4. Appearing on behalf of the petitioner, the learned counsel for the petitioner submits that under similar circumstances, the Hon'ble Supreme Court in the case of Ajay Kumar Choudhary v. Union of India through its Secretary and another reported in (2015) 3CTC 119 has interfered and held that the Government Servants even if the accused of serious crime cannot be kept under suspension and charge memo is issued.

5. The learned counsel for the petitioner relied on the following decisions reads as under:

"i) Ajay Kumar Choudhary v. Union of India reported in (2015) 7 SCC 291.

ii) State of Tamil Nadu v. Promod Kumar reported in (2018) 17 SCC 677.

iii) C. Jawahar v. The Managing Director, Tamil Nadu Minerals Limited, Chennai-5 in W.P. (MD) No.12906 of 2014".

6. The learned Government Advocate for the respondents submits that the respondents have not stated that whether a Charge Memo has been issued or not to the petitioner.

7. The learned Government Advocate for the respondents further submits that the petitioner was caught red handed while demanding a bribe of Rs.20,000/- from one G. Prabhakaran.

8. The learned counsel for the petitioner submits that the 3rd respondent being an Officer in the uniformed service cannot be reinstated even if no Charge Memo has been issued to the petitioner inasmuch as the Criminal Proceedings has been



initiated against the petitioner and it is for the petitioner to participate in the said proceedings and in case the proceedings is concluded, the case of the petitioner will be considered on merits and decision will be taken as to whether the petitioner deserves to be reinstated or not in to the service or not.

9. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents.

10. The petitioner has been placed suspended on 23.10.2019. The Department of Vigilance and Anti Corruption has filed a complaint against the petitioner and the said complaint is under for investigation and eventually a Charge Sheet will have to be filed by the Department in the aforesaid proceeding before the jurisdictional criminal Court. The Hon'ble Supreme Court in the case of Ajay Kumar Choudhary v. Union of India has considered the similar issue and held as follows:

'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, 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 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.''

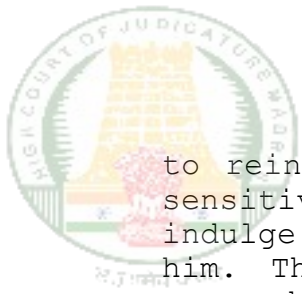


11. There the delinquent Ajay Kumar Choudhary was placed under suspension on 30.09.2011 and no charge sheet was issued to him. The Hon'ble Supreme Court in the State of Tamil Nadu v. Promod Kumar IPS and another reported in (2018) 17 SCC 677 considered the rules and Government Orders are applicable to an Officer in Uniformed Service and held that there cannot be any dispute regarding the power or the jurisdiction of the State Government for continuing the first respondent the delinquent under suspension pending criminal trial. There is no doubt that the allegations made against the first respondent are serious in nature. However, the point is whether the continued suspension of the first respondent for a prolonged period is justified. It however decided to grant relief, by considering the fact that the delinquent has suspended for more than a period of six years and therefore, directed the appellant-State of Tamil Nadu to reinstate the delinquent in a non-sensitive post.

12. Recently also, this Court in W.P.(MD).No.12906 of 2014 dated 20.12.2018 in the case of C.Jawahar v. The Managing Director, Tamil Nadu Minerals Limited, Chennai-5 followed the same views.

13. The Departmental proceedings and the Criminal proceedings proceeded on different footing though both may arise out of same event. In a criminal case, the prosecution has to prove the case beyond reasonable doubt and if the accused is able to disprove the same, benefit of doubt, is to be extended. The Court will have to acquit the person of the crime. Whereas, in a disciplinary proceedings, different yardstick applies. It is preponderance of probability. Even if stringent rules of evidence do not apply in such proceedings, if there is preponderance of probability, punishment can be imposed under the Rules. Nothing precludes the Department from initiating the departmental disciplinary proceedings against the petitioner, even though same evidence and set of witnesses have to be examined both in the Criminal Court and in the departmental disciplinary proceedings.

14. The Hon'ble Supreme Court has granted a concession in Promod Kumar IPS case following the views in Ajay Kumar Choudhary's case. Considering the same, this writ petition is disposed by directing the 3rd respondent to issue a Charge Memo to the petitioner, within a period of three months from the date of receipt of a copy of this Order. In case, no such charge memo is issued by the Department within the aforesaid period of three months, the 3rd respondent is directed



to reinstate the petitioner back in service, in any other non-sensitive post where the petitioner has no opportunity to have indulge in any corruption or tamper with the evidence against him. The petitioner is also directed to co-operate with the respondents in the proposed disciplinary proceedings. The Writ Petition is disposed with the above observation. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ssn

To:

1. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore,
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2. The Commissioner of Police,
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Office of the Joint Commissioner of Police,
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Chennai-600 053.

+2cc to M/s.Naveen Kumar Murthi, Advocate Sr.51832
+1cc to the Government pleader SR.52465

W.P. No.10023 of 2020

sj[col]
srg 27/10/2021