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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.16196 of 2018
and W.M.P.No.19283 of 2018

(Through Video Conferencing)

S.Murugan

.. Petitioner

vs.

- 1.The Chairman,
Tamil Nadu Generation and
Distribution Corporation Ltd.,
(TNGEDCO),
NPKRR Maaligai,
144, Anna Salai, Chennai 600 002.
 - 2.The Chief Engineer - Personnel,
Tamil Nadu Generation and Distribution
Corporation Ltd.,
(TNGEDCO),
NPKRR Maaligai,
144, Anna Salai, Chennai 600 002.
 - 3.The Chief Engineer - Distribution,
Tamil Nadu Generation and Distribution Corporation Ltd.,
(TNGEDCO),
Vizupuram Region,
Vizupuram.
 4. The Superintending Engineer,
Thiruvannamalai Electricity,
Distribution Circle (TANGEDCO),
Thiruvannamalai.
- .. Respondents

Prayer. :- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the fourth respondent in Memo No.317/Adm.3/U.1/DHEUS/2014 dated 10.11.2014 and quash the same and consequently permit the petitioner to rejoin duty/service as foreman with all attendant/consequential benefits.

For Petitioner : M/s.S.Sai Shankar
For Respondents : Mr.P.Subramanian
Standing Counsel



O R D E R

The petitioner herein has challenged the impugned suspension order dated 10.11.2014.

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2 The petitioner was working as a Fore Man First Grade (Operation and Maintenance, Rural South) of the respondents Department for the past 25 years. During the course of employment, a trap was laid by the Vigilance and Anti-corruption Department on 07.11.2014, and the 4th Respondent is said to have found thus the petitioner had demanded bribe of Rs.5,000/- from one consumer viz., Ramasamy Naicker. The petitioner was arrested on 06.11.2014 and he was placed under suspension on 10.11.2014. Meanwhile, a criminal case was registered against the petitioner under Section 19(1) (c) of the Prevention of Corruption Act, 1988. A charge sheet was filed and the case was committed to the Chief Judicial Magistrate, Tiruvannamalai, pursuant to FIR dated 06.11.2014 in Crime No.9 of 2014. Thereafter, the petitioner sent representation to the 3rd respondent to reinstate the petitioner into service. However, the 3rd respondent has not considered the same. Hence, the petitioner has come forward with the present writ petition with the above relief.

3. The learned counsel for the petitioner submits that even as on date, no Charge Memo has been issued to the petitioner while he continues to be under suspension.

4. The case of the petitioner is that the issue is squarely covered by the decision of the Hon'ble Supreme Court in Ajay Kumar Choudary vs. Union of India, (2015)(7) SCC 291. In this connection, he drawn attention to the para nos.11,12, 21 and 22 from the said decision. That apart, the learned counsel for the petitioner has placed reliance on the aforesaid decision of this Court rendered in D.Boominathan vs. The Superintending Engineer, Theni Electricity Distribution Circle, Theni, W.P(MD)No.8561 of 2021 dated 18.06.2021, wherein, this Court has referred to above paragraphs from Ajay Kumar Choudary case.

5. That apart, the learned counsel for the petitioner referred to the decision of this Court in N.Annapoorani vs. The District Collector, the District Collector Office, Dharmapuri & Others, CDJ 2020 MHC 1216, in para 15 wherein it was held as follows:

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.



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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.

6. The learned counsel for the petitioner submits that the issue is also covered in another decision of this Court rendered in W.P.Nos.6741 to 6743 of 2018 dated 18.04.2018 dealing with an identical situation.

7. Defending the impugned proceedings, the learned Standing Counsel for the respondents submitted that the disciplinary proceeding has been kept in abeyance and that the criminal case has been filed against the petitioner and charge has been filed before the Chief Judicial Magistrate, Tiruvannamalai in Spl.Case No.15 of 2015.

8. That apart, the learned Standing Counsel for the respondents placed reliance on the two decisions of the Division Bench of this Court rendered in The State of Tamil Nadu, Rep. by its Secretary School Education Department, Fort St.George, Chennai and two others vs. 1. M.Chidambaranathan and another, W.A.No.522 of 2020 dated 21.07.2020 and another decision of the First Bench of this Court in 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 and three others vs. A.Srinivasan, W.A.No.599 of 2020 dated 02.09.2020. He further submits that the decision of the Hon'ble Supreme Court in Ajay Kumar Chowdary's case considered the First Bench of this Court, wherein, in paragraph Nos. 6 to 9, it has been observed as under:

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



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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



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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 Chowdary. 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



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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.

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."

9. He further submits that there cannot be any order passed especially when there is no time limit prescribed in the relevant rules for issuing charge memo in the disciplinary proceedings, pursuant to the suspension order of the delinquent employer. He further submits that the writ petition may be dismissed.

10. He further submits that the order dated 02.09.2020 in W.A.No.599 of 2020, the First Bench of this Court uphold the order of the learned Single Judge of this Court, in W.P.No.3398 of 2020 dated 27.02.2020, directing 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. While at the same time, interfered with the order setting aside the order of the suspension.



11. By way of re-joinder, the learned counsel for the petitioner submits that in W.A.No.599 of 2020, the delinquent was under suspension on 13.01.2017 and after a charge memo was issued, the delinquent approached the Court. He submits that in this case, the petitioner approached the Court four years after the date of suspension orders and seven years have lapsed since then and nothing has progressed and therefore, this is a fit case for being considered differentially by applying the principle laid down in para 21 of the Hon'ble Supreme Court in Ajay Kumar Chowdary's case referred supra.

12. Heard the learned counsel for both sides.

13. The petitioner was suspended as early as 10.11.2014 after he was trapped by the Vigilance and Anti Corruption Police and remanded to a police custody on 07.11.2014. Thereafter, a Charge Memo was issued on 07.11.2015.

14. Though more than six years have lapsed since then, nothing has progressed either in the disciplinary proceedings or in the criminal proceedings in S.P.L.Case No.15/2015 before the Chief Judicial Magistrate, Thiruvannamalai. Only one witness has been examined in S.P.L.Case No.15/2015 till September 2018. Details of further progress is not available. Nothing precluded the respondents to proceed with the disciplinary proceedings independently independent of the pending criminal proceedings in S.P.L.Case No.15/2015.

15. Considering the fact that the petitioner was placed under suspension as early as 10.11.2014 and considering the fact that disciplinary proceeding has not progressed, this Court is inclined to direct the respondents to re-induct the petitioner into any non-sensitive post away from the headquarters where the disciplinary proceedings is pending against the petitioner and when the petitioner cannot indulge in any alleged corruption, on or before 1st September, 2021.

16. This Writ Petition stands disposed with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

kkd

s/d-
Assistant Registrar(CS-III)

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Sub-Assistant Registrar



To
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Vizupuram Region,
Vizupuram.
4. The Superintending Engineer,
Thiruvannamalai Electricity,
Distribution Circle (TANGEDCO),
Thiruvannamalai.

+ 1cc to Mr.P.Subramanian, Advocate Sr.38363

W.P.No.16196 of 2018

VBM(CO)
EU 25.08.2021