



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2021

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THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.NO.34367 OF 2018

AND W.M.P.NOS.18301,39935, 39936 & 39938 OF 2018

T.Thirunavukkarsu

...Petitioner

Vs

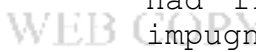
1. The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Coimbatore 641 018.
2. The Assistant Commissioner/Executive Officer
Arulmigu Vanabadrakali Amman Koil,
Thekkampatti, Mettupalayam Taluk,
Coimbatore District-641 305.
3. Arul Mighu Vanbadrakali Amman Thiru Kovil,
Represented by its Hereditary Trustee,
Mrs.R.Vasantha
Thekkampatti, Mettupalayam Taluk,
Coimbatore District-641 305.

...Respondents

PRAYER:

Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari or any other writ or appropriate writ, order or directions by calling for the records of the 3rd respondent in her proceedings dated 16.10.2017 and quash the same as illegal.

For Petitioner	: Mr.Radhakrishnan for M/s.Ganesh Babu
For R-1	: Mr.t.Chezhiyan Additional Government Pleader (HR & CE)
For R-2	: Mr.R.Bharanidharan
For R-3	: Ms. Elizabeth Rani



ORDER

In contemplation of an enquiry, the 3rd respondent herein had framed certain charges against the petitioner through the impugned order dated 16.10.2017 and had also placed him under suspension. It is stated that the petitioner is still under suspension and that he is being paid subsistence allowance.

2. The guidelines governing a Government employee to be kept under prolonged suspension, has been dealt with the Hon'ble Supreme Court in Ajay Kumar Choudhary v. Union of India, (2015) 7 SCC 291 at page 303, in the following manner:-

"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 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."

Thus, an order of suspension cannot be unjustifiably prolonged, except in accordance with the mandated guidelines as held in the Ajay Kumar Choudhary's case (supra). In the light of the aforesaid decision of the Hon'ble Supreme Court, the petitioner's prolonged suspension for more than four years cannot be sustained.



3. In so far as the charges are concerned, the learned Counsel for the petitioner would submit that the petitioner is due to retire in the month of June 2022. Since the grounds raised in the present Writ Petition could be appropriate if raised before the Enquiry Officer by way of a reply and through oral and documentary evidences, this Court is of the view that the enquiry can be directed to be completed within a stipulated period, by taking into account of the petitioner's age of retirement. In this background, the petitioner is granted liberty to raise all the grounds of his defense before the Enquiry Officer.

4. Since charges seems to have been framed by the 3rd respondent herself and is also stated to be the Enquiry Officer, it would be appropriate to direct the 1st respondent herein to appoint a independent Enquiry Officer for conducting the enquiry, pursuant to the impugned charges. The 1st respondent shall pass such orders of appointing the Enquiry Officer within a period of one week from the date of receipt of copy of this order. There upon, the Enquiry Officer shall conclude the Enquiry after extending due opportunities to all the parties and by following the principles of natural justice and submit his report, atleast within a period of 2 months from the date of receipt of copy of this order.

5. In the light of the above observations, the impugned order dated 16.10.2017, in so far as placing the petitioner under suspension is hereby quashed and the 3rd respondent herein is directed to forthwith reinstate the petitioner back into service. In case, the subsistence allowance has not been fully paid to the petitioner, it will be open to the petitioner to make his claim before the 3rd respondent herein and such a request shall be considered within a weeks time from the date of such a request.

6. This Writ Petition stands ordered accordingly. Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

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Mrs.R.Vasantha
Thekkampatti, Mettupalayam Taluk,
Coimbatore District-641 305.

+1cc to M/s.Elizabeth Ravi, Advocate, S.R.No.67861
+2ccs to Mr.R.Ganesh Babu, Advocate, S.R.No.67790
+2ccs to Mr.R.Karthikeyan, Advocate, S.R.No.68067,68221
+1cc to the Government Pleader, S.R.No.68144

W.P.No.34367 of 2018

BP(CO)
PM/05/01/2022