



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.2654 of 2020

and W.M.P. (MD)No.2279 of 2020

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P.Kubendran

... Petitioner

versus

1. The Chief Engineer (Personnel)

TANGEDCO

No.144, Anna Salai,

Chennai - 600 002.

2. The Superintending Engineer,

Theni Electricity Distribution Circle,

Tamil Nadu Electricity Board,

Theni - 625 531.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings in Ku.No.00807/MePo/Theni/VuNiA/NiPil/Ko.Marai/15, dated 27.01.2015 issued by the second respondent and quash the same and consequently, direct the second respondent herein to consider the revocation of the order of suspension and regularize the period of suspension with all monetary and service benefits to the petitioner within a reasonable time in the light of the Judgment of the Hon'ble Supreme Court of India reported in 2015 (7) SCC 291.

For Petitioner : Mr.K.Appadurai

For Respondents : Mr.T.Sakthikumaran,
Standing Counsel

ORDER

This writ petition is filed as against the order of suspension dated 27.01.2015 passed by the second respondent and also for a consequential direction to regularize the period of suspension with all monetary and service benefits.

2. The petitioner joined the service in the Tamil Nadu Electricity Board as Helper on 14.05.2003 and after regularization of his service, he was promoted as Commercial Assistant and thereafter, he was promoted as Commercial Inspector in the office of the Assistant Electrical Engineer, TANGEDCO, Uthamapalayam, <https://hcservices.ecourts.gov.in/hcservices/>. While so, he was placed under suspension, vide order dated 27.01.2015 passed by the second respondent. Challenging the same, the present writ petition has been filed.



3. The learned counsel for the petitioner submits that the petitioner was placed under suspension, pursuant to a criminal case registered against him in Cr.No.1 of 2015 on the file of the Department of Vigilance and Anti-Corruption, Theni.

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4. The main ground raised by the learned counsel for the petitioner is that though the petitioner has been placed under suspension in the year 2015, no charge memo has been issued so far and therefore, as per the Judgment of the Hon'ble Apex Court in **Ajay Kumar Choudhary vs. Union of India**, reported in 2015 7 SCC 291, the order of suspension is liable to be revoked.

5. Mr.T.Sakthikumaran, learned Standing Counsel appearing for the respondents submits that on 23.01.2015, the petitioner was caught red-handed, when he demanded and received illegal gratification of Rs.4,000/- from one Kasi Viswanathan, S/o.Soorathevar, for effecting new agricultural service connection and therefore, he has been placed under suspension as per the Standing Order of the Tamil Nadu Electricity Board. He further submits that no charge memo has been issued, since all the records have been seized by the Investigating Agency, namely, Department of Vigilance and Anti Corruption, Theni. He further submits that since it is a case of trap, the petitioner is not entitled for any relief, as per the dictum laid down by the Hon'ble Apex Court in **Ajay Kumar Choudhary vs. Union of India**, reported in 2015 7 SCC 291. In support of his contention, he also relied upon the Judgment of this Court in W.A.No.599 of 2020, dated 02.09.2020.

6. This Court paid its anxious consideration to the rival submissions made.

7. Admittedly, the petitioner was arrested by the Department of Vigilance and Anti-Corruption, Theni, when he demanded and received illegal gratification of Rs.4,000/- in the year 2015 and therefore, the petitioner has been placed under suspension as per the Standing Order of the Tamil Nadu Electricity Board. However, no charge memo has been issued so far, since all the documents have been seized by the Department of Vigilance and Anti-Corruption, Theni.

8. In **Ajay Kumar Choudhary vs. Union of India**, reported in 2015 7 SCC 291, the Hon'ble Apex Court has held 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.

<https://hcservices.ecourts.gov.in/hcservices/>

9. A Division Bench of this Court in **R.Elumalai v. District Collector**, [2020 SCC online Mad 1472], considered **Ajay Kumar**



Choudhary's case and the judgment of the Delhi High Court in **Government of NCT of Delhi v. Dr.Rishi Anand [2017 SCC online Del 10506]** and concluded that in cases relating to suspension for alleged involvement in graft charges leading to a criminal trial, interference with the suspension order on the basis that the suspension period exceeded three months is not justifiable.

10. The First Bench of this Court, in W.A.No.599 of 2020, vide Judgment dated 02.09.2020, has passed the following order:

"11. Upon considering the law laid down in the judgments that have been discussed herein above, it is clear that there is no absolute rule in respect of the validity of suspension orders from the perspective of duration especially when such suspension is in the context of a pending criminal proceeding. In other words, in these situations, the law on suspension as laid down in paragraph 11 of R.P. Kapur v. Union of India, AIR 1964 SC 787, by a Five Judge Bench upholding suspension pending enquiry subject to payment of subsistence allowance as per service conditions and that in Union of India v. Ashok Kumar Aggarwal (2013) 16 SCC 147, wherein it was held that the court does not sit in appeal and that such orders would be interfered with only if the charges are patently baseless, mala fide or vindictive would continue to hold the field. In this case, as stated earlier, there is a pending criminal proceeding, wherein the Respondent is being prosecuted for corruption. In these circumstances, the decision of the learned single Judge to direct the Chief Judicial Magistrate to conclude the proceeding within four months is justified and does not warrant interference. On the other hand, especially in light of the above direction, the revocation of the suspension on the ground that it is prolonged is clearly unsustainable. The consequential direction to post the Respondent in a nonsensitive post is also not sustainable especially in view of the fact that the Respondent is an Assistant Engineer and it is difficult to find a post that may be termed non-sensitive in that cadre. Therefore, we allow the appeal in part insofar as it directs the Appellants to revoke the suspension and to post the Respondent in a non-sensitive post. On the other hand, we affirm the impugned order to the extent that the Chief Judicial Magistrate, Thiruvannamalai, has been directed to conclude the criminal proceedings within a period of four months, albeit with the qualification that the said period shall run from the date of receipt of a copy of the judgment in this appeal"



11. In view of the Judgment of the First Division Bench of this Court in W.A.No.599 of 2020, dated 02.09.2020 (cited supra), this Court is not inclined to interfere with the order of the suspension. Accordingly, the writ petition is dismissed.

12. However, considering the fact that the suspension order has been issued in the year 2015 and no charge memo has been issued by the respondent Board, this Court directs the learned Chief Judicial Magistrate, Theni, to dispose of the case in Spl.C.No.1 of 2016 within a period of six months from the date of receipt of a copy of this order.

13. It is always open to the respondents to get xerox copies of the records from the Department of Vigilance and Anti-Corruption, Theni and issue a charge memo as directed by the Hon'ble Apex Court in **Ajay Kumar Choudhary vs. Union of India**, reported in **2015 7 SCC 291** and proceed with the enquiry and pass final orders as early as possible. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

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/ /2021

Sub Assistant Registrar(CS)

Ogy

To

The Chief Judicial Magistrate, Theni.

Copy to

The Officer in charge,
Department of Vigilance and Anti Corruption,
Theni.

+1 CC to M/s.T.SAKTHI KUMARAN, Advocate (SR-36861[F] dated
01/12/2021)

W. P (MD) No. 2654 of 2020
29.11.2021

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