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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.06.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.3100 of 2020

and

W.M.P(MD)No.2641 of 2020

Rajendran ... Petitioner

vs.

The Superintendent of Police,
Pudukottai District,
Pudukottai. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records from the respondent in his proceedings in D.No.K1/30785/08, D.O.No.1413/08, dated 24.09.2008 and quash the same and direct the respondent to give the petitioner posting revoking the prolonged suspension.

For Petitioner : Mr.N.Balakrishnan
For Respondent : Mr.K.S.Selva Ganesan
Government Advocate

ORDER

The petitioner has filed the present Writ Petition, to quash the proceedings of the respondent, dated 24.09.2008 and to direct the respondent to revoke the prolonged suspension.

2.According to the petitioner, while he was working as a Head Constable at Aranthangi Police Station, he was arrested on 21.09.2008, in connection with Crime No.2 of 2008, for the alleged offences punishable under Sections 7, 13(2) r/w 13(1) (d) and 12 of Prevention of Corruption Act, 1988, for demanding and accepting bribe. The petitioner was suspended from service by an order, dated 24.09.2008, with effect from 21.09.2008 A.N. The petitioner filed a Writ Petition in W.P(MD)No.8603 of 2009, before this Court, to set aside the order of suspension, dated 24.09.2008. At the time of hearing the Writ Petition, the learned counsel appearing for the petitioner restricts his claim for a direction to the respondent to dispose of the representation of the petitioner and this Court, by an order, dated 31.08.2009, directed the respondent to consider the representation of the petitioner and pass orders. As per the order of this Court, dated 31.08.2009, the petitioner's representation was rejected on 13.10.2009. According to the petitioner, his representation, dated 24.09.2019 for revocation of suspension, was again rejected on 17.10.2019. In such circumstances, challenging the impugned order of suspension, dated 24.09.2008, the petitioner has

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come out with the present Writ Petition.

3.In support of his contention, the learned counsel appearing for the petitioner relied on the Judgment of the Hon'ble Apex Court reported in ***(2015) 7 SCC 291 [Ajay Kumar Choudhary Vs. Union of India and another].***

4.The respondent filed a counter-affidavit.

5.Mr.K.S.Selva Ganesan, learned Government Advocate appearing for the respondent submitted that the petitioner was involved in a vigilance case and in view of the pendency of the criminal case, the petitioner was not entitled for revocation of suspension and the respondent has rightly rejected the representation of the petitioner, as the revocation of suspension will be against public policy. The learned Government Advocate appearing for the respondent further submitted that the petitioner was already imposed with a punishment of "postponement of his next increment for three years with cumulative effect", vide proceedings, dated 22.10.2013. In view of the pendency of the criminal case, the suspension of the petitioner continues till date. The Government issued a letter, dated 23.07.2015, stating that the time limit of three months prescribed on suspension cases is applicable only to the cases arising out of departmental disciplinary proceedings and not applicable to vigilance case. In view of the same, the Judgment relied on by the learned counsel appearing for the petitioner is not applicable to the facts and circumstances of the case and prayed for dismissal of the Writ Petition.

6.Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondent and perused the entire materials available on record.

7.From the materials available on record, it is seen that the petitioner was suspended by the respondent, by an order, dated 24.09.2008, with effect from 21.09.2008. The suspension order continues till date for nearly 13 years. In number of cases, this Court and the Hon'ble Apex Court have deprecated the practice of keeping an employee under suspension for a long period. At the same time, it has been held that it is a prerogative of the employer either to continue the suspension or revoke the same, after reviving the facts and circumstances of the case. The Hon'ble Apex Court in ***Ajay Kumar's case (cited supra)*** held that if charge-sheet in criminal case or charge-memo in disciplinary proceedings is not served within three months, the suspension has to be revoked. At the same time, the Hon'ble Apex Court in ***Ajay Kumar's case (cited supra),*** held that if a charge-memo or charge-sheet is served on the delinquent employee, then it is open to the delinquent employee to make a representation for revocation of suspension. The employer has to consider the representation and pass orders on such

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representation. The orders so passed is subject to judicial review. The relevant portions of the said Judgment referred to above read 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 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 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 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.*
>
> *22.So far as the facts of the present case are concerned, the Appellant has now been served with a Charge-sheet, 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."*

8.In the present case, the petitioner is kept under suspension for nearly 13 years based on the criminal case registered against the petitioner. Only the investigating officers are to be examined to conclude the criminal case. In such circumstances, there is no possibility of the petitioner in tampering with evidence or influencing the official witness. Further, the reason given by the respondent in the order, dated 17.10.2019, rejecting the request of the petitioner is erroneous and not valid. Even though the petitioner has not challenged the said order, this Court can take

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note of the same while considering the Writ Petition challenging the order of suspension. As rightly stated, the petitioner is under suspension for nearly 13 years and criminal case is in the final stage.

9.In view of the above facts, the order of suspension, dated 24.09.2008, passed by the respondent is liable to be set aside and the same is set aside. It is open to the respondent to post the petitioner in some other place.

10.With the above directions, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ps

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

The Superintendent of Police,
Pudukottai District,
Pudukottai.

+1 CC to M/s.N.BALAKRISHNAN, Advocate (SR-20399[F] dated 28/06/2021)

+1 CC to M/s.SPL GP (SR-20460[F] dated 28/06/2021)

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