



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD)No.7737 of 2021

and

W.M.P (MD)No.5889 of 2021

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Soundari

... Petitioner

Vs.

1.The Joint Director of Agriculture,
Pudukottai District,
Pudukottai.

2.The Deputy Director of Agriculture,
Farmers Training Centre,
Kudumiyamalai,
Pudukottai District.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the first respondent in proceedings கடித எண்.அ2/10248/2018, dated 12.03.2021 and quash the same as illegal, consequently directing the first respondent to revoke the order of suspension passed by him in Proc.A2/10248/2018, dated 03.08.2018.

For Petitioner : Mr.T.Lenin Kumar

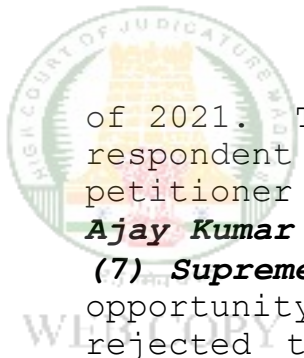
For Respondents : Mr.K.S.Selvaganesan

Government Advocate

ORDER

This writ petition is filed to quash the impugned order, dated 12.03.2021 passed by the first respondent in his proceedings in கடித எண்.அ2/10248/2018 and consequently direct the first respondent to revoke the order of suspension passed by him in Proc.A2/10248/2018, dated 03.08.2018.

2. According to the petitioner, while she was working as Typist in the second respondent office was arrested on 01.08.2018 and criminal case was also registered in Cr.No.93 of 2018 for the offences punishable under Sections 302 and 379 of IPC. The first respondent, by order, dated 03.08.2018, suspended the petitioner from service with effect from 01.08.2018. For the past three years, the petitioner is kept under suspension and the respondents have not passed any order extending the suspension. The petitioner gave representation, dated 09.01.2021 to the first respondent to revoke the order of suspension and filed a writ petition in W.P(MD)No.1942



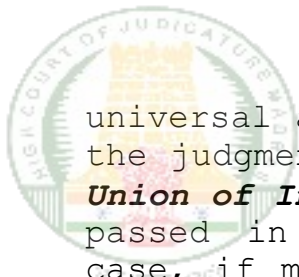
of 2021. This Court, by order, dated 05.02.2021, directed the first respondent to consider and pass orders on the representation of the petitioner in the light of the judgment of the Hon'ble Apex Court in **Ajay Kumar Choudhary vs. Union of India and another** reported in **2015 (7) Supreme Court Cases 291**. The first respondent without giving any opportunity to the petitioner, by impugned order, dated 12.03.2021, rejected the representation of the petitioner. Challenging the same, the petitioner has come out with the present writ petition.

3. The learned counsel appearing for the petitioner submitted that the petitioner is kept under suspension for more than three years without any valid reason. The Hon'ble Apex Court in **Ajay Kumar Choudhary's case** (Supra) held that an employee cannot be kept under suspension for more than three months. If the respondents want to extend the suspension, they have to pass a reasoned order. The first respondent rejected the representation of the petitioner on flimsy ground. Considering the facts and circumstances of the case, the suspension order may be revoked and petitioner may be posted in a non-sensitive post and prayed for setting aside the order of the first respondent by allowing the writ petition.

4. The respondents filed counter affidavit. Mr.K.S.Selvaganesan, learned Government Advocate appearing for the respondents submitted that the petitioner was suspended pending criminal case. In the criminal case, chargesheet has been filed and the case was taken on file in S.C.No.49 of 2019, on the file of the Mahila Court, Pudukottai. The trial is going on and some of the witnesses were examined and some more witnesses are to be examined. The judgment of the Hon'ble Apex Court in **Ajay Kumar Choudhary vs. Union of India and another** reported in **2015(7) Supreme Court Cases 291** relied on by the learned counsel for the petitioner is not applicable to the case of the petitioner and prayed for dismissal of the writ petition.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents and perused the materials available on record.

6. From the materials on record, it is seen that the petitioner is challenging the impugned order rejecting the request for revocation of suspension. In the present case, the petitioner was suspended on 03.08.2018 pending criminal case and not by way of any punishment. Suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered. Suspension is an interim measure in the aid of proceedings so that the delinquent may not gain custody or control of papers to take any advantage of his/her position. The Hon'ble Apex Court in **Union of India v. Ashok Kumar Aggarwal** reported in **(2013) 16 SCC 147** held that the suspension for longtime is not a ground for revoking the order of suspension invalid and facts of each case need to be taken into consideration since no formula of



universal application can be laid down. The Hon'ble Apex Court in the judgment reported in **[2015) 7 SCC 291 [Ajay Kumar Choudhary Vs. Union of India and another]** held that when an order of suspension is passed in contemplation of disciplinary proceedings or criminal case, if memorandum of chargesheet or chargememo is not served on the delinquent employee within three months from the date of suspension, the suspension order has to be revoked. If memorandum of chargesheet or chargememo is served, a reasoned order must be passed for extension of suspension.

7. After considering various judgments, the Hon'ble Apex Court in paragraphs- 21 and 22 of the judgment 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 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.

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 paragraph-22 of the Judgment referred to above, held that if chargesheet is filed and chargememo is served, direction given in paragraph-21, may not be relevant in any longer. In Paragraph-22 of



the said Judgment, employee was given liberty to challenge the continued suspension and any action of the employer is subject to judicial review.

9. In view of the judgment of **Union of India v. Ashok Kumar Aggarwal** reported in **(2013) 16 SCC 147** referred to above, the contention of the learned counsel for the petitioner that suspension must be revoked after expiry of three months is misconceived. This issue was considered by the First Bench of this Court, in W.A.No.599/2020, [Tamil Nadu Generation & Distribution Corporation Limited (TANGEDCO) and others vs. A.Srinivasan]. The First Bench after considering the various judgments relied on by the parties, by the judgment dated 02.09.2020 has held that in **Ajay Kumar Choudhary's** [supra], the Hon'ble Apex Court has not laid down any absolute proposition that an order of suspension should never extend beyond three months. Paragraphs-10 & 11 of the judgment of the First Bench of this Court read as follows:-

"10. On perusal of the judgment in Ajay Kumar Choudhary, it is clear that the Hon'ble Supreme Court was dealing with a case wherein the Appellant had been served with a charge sheet before the judgment was pronounced. On that basis, on the facts of that case, paragraph 22 reflects that the order of suspension was not set aside although the suspension period exceeded three months. However, while disposing of the case, the Hon'ble Supreme Court held that the suspension period should not extend beyond three months if the memorandum of charges/charge sheet is not served on the delinquent officer/employee. The judgment in Ajay Kumar Choudhary was dealt with in detail by a Division Bench of this Court in Director General of Police [cited supra]. In the said judgment, this Court held as follows in paragraphs 9,10 & 11:

9. We are of the view that Ajay Kumar Choudhary (supra) does not lay down any absolute proposition that an order of suspension should never extend beyond three months. In fact, in Ajay Kumar Choudhary (supra), the Supreme Court observed that the directions regarding the restriction on extension of a suspension order beyond three months would not apply as the appellant had been served with a charge sheet. The appellant had only been given the liberty to challenge his continued suspension in any manner known to law, if so advised, and it was clarified that the action of the respondents in continuing suspension would be subject to judicial review. In our view, the learned Single Bench erred in



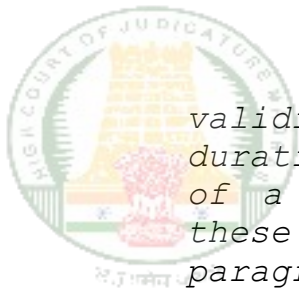
setting aside the suspension placing reliance on Ajay Kumar Choudhary (supra).

10. It is well settled that a judgment is to be understood in the context of the facts in which the judgment is rendered. Sentences in a judgment cannot be read in the same manner as a statute and in any case, words and sentences in a judgment cannot be read out of context. In Padma Sundara Rao (Dead) and others v. State of Tamil Nadu and others, reported in (2002) 3 SCC 533, cited by Mr.S.Saji Bino, learned counsel appearing on behalf of the appellant, a Five Judge Bench of the Supreme Court held as under: Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.;

11. In the instant case, as observed above, a charge sheet had been issued, though after five months and four days of the suspension. The learned Single Bench ought to have considered the question of whether the suspension should outright be set aside or allowed to continue upon consideration of all relevant facts and circumstances, including the nature of the charges.?

Likewise, the Division Bench of this Court in R.Elumalai v. District Collector, [2020 SCC online Mad 1472, considered the Ajay Kumar Choudhary case and the judgment of the Delhi High Court in Government of NCT of Delhi (cited supra) 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."

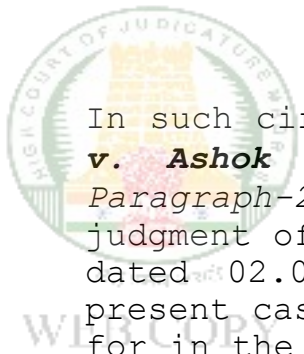
"11. Upon considering the law laid down in the judgments that have been discussed herein above, it is clear that there is no absolute rule in respect of the



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 non-sensitive post is also not sustainable especially in view of the fact that the Respondent in 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."

After holding so, the First Bench set aside the order of the learned Single Judge, revoking the order of suspension relying on **Ajay Kumar Choudhary's** case [supra] and confirmed the order of the learned Single Judge with regard to the decision to conclude the trial of criminal case within four months.

10. In the present case, the petitioner is being prosecuted for the offences under Sections 302 and 379 of IPC. The petitioner is prosecuted for having committed murder and theft, which are a serious and grave offence. The learned Government Advocate appearing for the respondents submitted that trial is going on and some of the witnesses were already examined. According to the learned Government Advocate, some more witnesses are to be examined.



In such circumstances, the ratio in the judgment in **Union of India v. Ashok Kumar Aggarwal** reported in **(2013) 16 SCC 147** and Paragraph-22 of **Ajay Kumar Choudhary's** case [supra] and the judgment of the First Bench of this Court, made in W.A.No.599/2020, dated 02.09.2020, are squarely applicable to the facts of the present case and the petitioner is not entitled to the relief sought for in the present writ petition. The respondents have given cogent and valid reason for rejecting the representation of the petitioner to revoke the suspension. The reason given in the impugned order is in consonance with the well settled judicial pronouncements referred to above.

11. In view of the above, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar(CS)

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To

1.The Joint Director of Agriculture,
Pudukottai District,
Pudukottai.

2.The Deputy Director of Agriculture,
Farmers Training Centre,
Kudumiyanmalai,
Pudukottai District.

+1 CC to M/s.SPL GP (SR-21711[F] dated 08/07/2021)

W.P. (MD)No.7737 of 2021
06.07.2021

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