



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.06.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD)No.8561 of 2021

and

W.M.P (MD)No.6444 of 2021

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D.Boominathan

... Petitioner

Vs.

The Superintending Engineer,
Theni Electricity Distribution Circle,
Theni. ... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for entire records relating to the impugned proceedings of the respondent herein vide Ku.Aa.No.961/SE/Theni/Ni-Aa/Ni-Pi./U3/Ko/2020, dated 18.02.2020, and quash the same as illegal and consequently to direct the respondent to reinstate the petitioner in service forthwith.

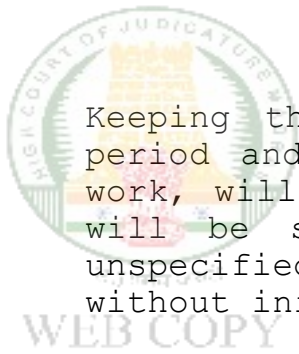
For Petitioner : Mr.S.Manikandan

For Respondent : Mr.T.Sakthikumaran

ORDER

This writ petition is filed to quash the impugned proceedings of the respondent vide Ku.Aa.No.961/SE/Theni/Ni-Aa/Ni-Pi./U3/Ko/2020, dated 18.02.2020 and direct the respondent to reinstate the petitioner in service forthwith.

2. The learned counsel appearing for the petitioner submitted that the petitioner while working as Assistant Engineer at Erasakkanai, Chinnamanur Sub Division, Theni Circle, was placed under suspension on 18.12.2020 with effect from 15.12.2020 based on the criminal case registered against him and his arrest. The respondent intimated the petitioner that departmental proceedings would be initiated against him. Now, the criminal case is pending without any progress and no departmental proceeding was initiated against the petitioner. The petitioner is under continuous suspension from 18.12.2020 for more than six months. When the delinquent employee is suspended in contemplation of disciplinary proceedings, disciplinary proceedings must be concluded expeditiously. The delinquent employee cannot be kept under suspension for a prolonged period. The learned counsel appearing for the petitioner further submitted that if suspension of the petitioner is continued for a prolonged period, he will not be in a position to defend the criminal case initiated against him.



Keeping the delinquent employee under suspension for unspecified period and pay the subsistence allowance without extracting any work, will be financial loss to the department. No useful purpose will be served in keeping the employee under suspension, for unspecified period without any progress in the criminal case or without initiating any departmental proceedings.

3. In support of his contention, the learned counsel appearing for the petitioner relied on 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 Hon'ble Apex Court in paragraphs-11, 12, 21 22 of the judgment held as follows:-

"11.Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the memorandum of charges, and eventually culminate after even longer delay.

12.Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion of offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is, to determine his innocence or iniquity.....

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.''

4. Per contra, the learned Standing counsel appearing for the respondent submitted that the petitioner demanded bribe and while accepting the bribe, he was caught red-handed in a trap laid down by the Department. The petitioner has committed grave misconduct and criminal case initiated against him is pending. The contention of the learned counsel appearing for the petitioner that an employee cannot be kept under suspension for a prolonged period and his reliance of **Ajay Kumar Choudhary's case** is not applicable to the facts of the present case. The learned Standing counsel appearing for the respondent relied on the judgment of the First Bench of this Court, dated 02.09.2020 in W.A.No.599/2020, [Tamil Nadu Generation & Distribution Corporation Limited (TANGEDCO) and others vs. A.Srinivasan] and submitted that revocation of suspension after certain period, is not automatic and when criminal case is pending, the petitioner can be kept under suspension till the disposal of the criminal case.

5. The learned Standing counsel appearing for the respondent referred to Paragraph-11 of the said judgment and contended that unless the charges are patently baseless, mala fide or vindictive, the Court cannot interfere with order of suspension and prayed for dismissal of the writ petition. Paragraph-11 of the said judgment reads as follows:-

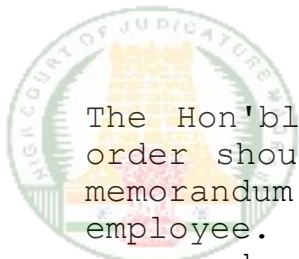
"11. Upon considering the law laid down in the judgments that have been discussed herein above, it is clear that there is no absolute rule in respect of the validity of suspension orders from the perspective of duration especially when such suspension is in the context of a pending criminal proceeding. 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."

6. Heard the learned counsel appearing for the petitioner and the learned Standing counsel appearing for the respondents and perused the materials available on record.

7. From the above rival submissions made by the learned counsel on either side, it is seen that the criminal case was registered against the petitioner on 15.12.2020 for demanding and accepting bribe. The petitioner was arrested and subsequently enlarged on bail. A reading of the impugned order of suspension shows that in view of criminal case registered against the petitioner, in public interest and administrative reason, the petitioner was suspended from service with effect from 15.12.2020. It is the contention of the learned counsel appearing for the petitioner that after registration of criminal case against the petitioner, there is no progress in the criminal case. It is not the case of the respondent that in the criminal case, charge-sheet is filed and served on the petitioner. In such circumstances, Paragraph-21 of the Judgment in **Ajay Kumar Choudhary Vs. Union of India (UoI) and others** reported in **2015 (7) SCC 291** is squarely applicable to facts of the present case.



The Hon'ble Apex Court has categorically held that the suspension order should not extend beyond three months, if within this period memorandum of charges/charge-sheet is not served on the delinquent employee. The Hon'ble Apex Court has also held that if the memorandum of charges/charge-sheet is served on the delinquent employee, a reasoned order must be passed for extension of suspension. In the present case, no charge-sheet is filed in the criminal case and therefore, as per the judgment of Hon'ble Apex Court referred to above, the order of suspension should not be extended beyond three months. Even if charge-sheet is filed, suspension can be extended only by reasoned order by the respondents. The judgment of the First Bench relied on by the learned Standing counsel appearing for the respondent is not applicable to the facts of the present case, as in the said judgment, charge-sheet is filed and direction has been given to the concerned Magistrate to conclude the disciplinary proceedings within four months. It is pertinent to note that in paragraph-22 of the judgment, the Hon'ble Apex Court has held that if chargesheet is served on the delinquent employee, it is open to him to challenge his continuous suspension and the action of the employer will be subject to judicial review.

8. The Hon'ble Apex Court while holding that order of suspension should not be extended beyond three months, if charge sheet or charge memo is not served on the delinquent employee within that time, has given liberty to the Department to transfer the concerned person to any Department, any of its Office, so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him.

9. In view of the ratio laid down in Paragraph-21 of the judgment of the Hon'ble Apex Court, the impugned order of suspension is liable to be set aside and is hereby set set aside. It is open to the respondent to transfer the petitioner to some other place so that, the petitioner will not be in a position to tamper with documents or obstruct the investigation pending against him.

10. Accordingly the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)



To

The Superintending Engineer,
Theni Electricity Distribution Circle,
Theni.

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+1 CC to M/s.T.SAKTHIKUMARAN, Advocate (SR-19573[F] dated 18/06/2021)

+1 CC to M/s.S.MANIKANDAN, Advocate (SR-19722[F] dated 21/06/2021)

W.P. (MD)No.8561 of 2021

18.06.2021

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