



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.10396 of 2021

and W.M.P. (MD)Nos.8079 and 8080 of 2021

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Mohankumar

... Petitioner

vs.

1.The Superintending Engineer,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
Tirunelveli Electricity Distribution Circle,
Tirunelveli - 11.

2.The Assistant Executive Engineer,
Distribution TANGEDCO,
Vallioor,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the 1st respondent in memo No.ADM/IV/A1/F.Suspension/c.no.528/2019, dated 26.07.2019 and the consequential order of rejection of petitioner's representation vide Ka.No.008337/326/Ni.Pi.4/ol/Ko.Th.Pa.Nee/2021, dated 17.04.2021 and quash the same as erroneous and may direct the respondents to reinstate the petitioner into service within a stipulated period.

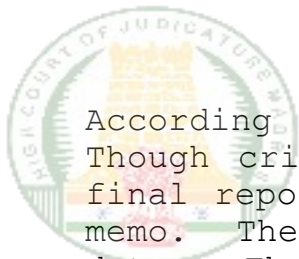
For Petitioner : Mr.K.P.Narayana Kumar

For Respondents : Mr.T.Sakthikumaran

ORDER

The present Writ petition is filed challenging the order of the first respondent in memo No.ADM/IV/A1/F.Suspension/C.No.528/2019, dated 26.07.2019 and the consequential order of rejection of petitioner's representation vide Ka.No.008337/326/Ni.Pi.4/ol/Ko.Th.Pa.Nee/2021, dated 17.04.2021, and for a consequential direction to the respondents to reinstate the petitioner into service within a stipulated period.

2. The petitioner while working as Assistant Engineer (Distribution) in T.Kallikulam, Vallioor Division, a criminal case was registered and in view of the said criminal case, petitioner was suspended from service with effect from 26.07.2019. In the Writ Petition, the petitioner denied that he demanded and accepted bribe.



According to the petitioner, a false case is foisted against him. Though criminal case was registered on 26.07.2019, till date, no final report is filed. The respondents have not issued any charge memo. The petitioner is kept under suspension from 26.07.2019 till date. The petitioner gave a representation to the respondents to revoke the suspension and filed W.P.(MD)No.25266 of 2019. This Court, by order dated 02.02.2021, directed the respondents to consider the representation of the petitioner, in the light of the decision of the Hon'ble Apex Court in **Ajay Kumar Choudhary Vs. Union of India** reported in **2015 (7) SCC 291**, and pass orders within a period of one week from the date of receipt of a copy of the said order. The first respondent, by the impugned order, rejected the request of the petitioner. Challenging the said order, the petitioner has come out with the present Writ Petition.

3. 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** reported in **2015 (7) SCC 291**.

4. The respondents filed counter affidavit. The learned counsel appearing for the respondents submitted that the petitioner demanded and received bribe and he was got red-handed and was arrested. The petitioner is facing grave charges and it will not be in interest of the Department to revoke the order of suspension. If the petitioner is reinstated into service, it will project bad image to the public. The learned counsel appearing for the respondents relied on the judgment of the Division Bench of this Court in **W.A.No.599 of 2020 [Tamil Nadu Generation & Distribution Corporation Limited (TANGEDCO) and others vs. A.Srinivasan]**, dated **02.09.2020**. 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.?

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



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

6. From the materials placed on record, it is seen that a criminal case is registered against the petitioner and he was arrested on 26.07.2019, for demanding and accepting bribe. In view of the same, by the impugned order dated 26.07.2019, the petitioner was suspended from service. From these facts, it is seen that the petitioner was kept under suspension for two years. According to the petitioner, no final report is filed and no charge memo is issued to the petitioner. Such contention is not denied by the learned counsel for the respondents. In such circumstances, the judgment of Hon'ble Apex Court in **Ajay Kumar Choudhary Vs. Union of India** reported in **2015 (7) SCC 291** is squarely applicable to the facts of the present case.

7. Paragraphs 21 and 22 of the said of judgment are relevant to decide the issue in the present Writ Petition and the same reads 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

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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.''

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It has been held by the Hon'ble Apex Court that if delinquent employee is suspended from service on registration of a criminal case or in contemplation of disciplinary proceedings, if charge sheet or charge memo is not served on the delinquent employee within three months, the suspension has to be revoked. If charge memo is issued within three months, then it is for the employee to give representation for revoking the suspension. The employer may revoke or reject the representation. The said order is subject to judicial review. Further the employer has to review the order of suspension periodically and pass orders either revoking or continuing the suspension. If the employer continued suspension, he must give valid reason for the same. In the present case, it is not the case of the respondents that suspension of the petitioner is reviewed periodically and continued for valid reasons. On the other hand, it is not the case of the respondents that the petitioner will tamper with the documents and influence with witnesses.

8. The judgment of Division Bench of this Court relied on by the learned counsel for the respondent is not applicable to the facts of present case. In that case, charge sheet was filed and trial in criminal case was in progress. In the present case, no charge sheet has been filed and trial in criminal case is yet to commence.

9. Considering the above materials, the impugned order is set aside. The respondents are directed to reinstate the petitioner into service. It is open to the respondents to transfer the petitioner to some other place.

10. With the above direction, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsm

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ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Superintending Engineer,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
Tirunelveli Electricity Distribution Circle,
Tirunelveli - 11.

2.The Assistant Executive Engineer,
Distribution TANGEDCO,
Vallioor,
Tirunelveli District.

+1 CC to M/s.T.SAKTHI KUMARAN, Advocate (SR-23447[F] dated
22/07/2021)

+1 CC to M/s.K.P.NARAYANAKUMAR, Advocate (SR-23429[F] dated
22/07/2021)

W.P(MD)No.10396 of 2021
and W.M.P. (MD)Nos.8079 and 8080 of 2021
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RD(4.08.2021) 7P 5C