



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.11020 of 2021

and

WMP(MD)Nos.8648 & 8649 of 2021

WEB COPY

A.Paneerselvan

... Petitioner

vs.

The Sub Collector,
Cheranmahadevi,
Tirunelveli District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order of suspension issued by the respondent in Na.Ka.A2/1452/2020, dated 14.02.2020 and quash the same as illegal and consequently to direct the respondent to reinstate the petitioner in service forthwith with all service benefits.

For Petitioner : Mr.V.R.Shanmuganathan
for AL.Kannan

For Respondent : Mr.K.S.Selvaganesan,
Government Advocate.

ORDER

The petitioner has filed this Writ Petition challenging the order of suspension passed by the respondent in Na.Ka.A2/1452/2020, dated 14.02.2020 and for a consequential direction to the respondent to reinstate the petitioner in service forthwith with all service benefits.

2. According to the petitioner, he was selected as Village Administrative Officer in the selection process conducted by the Tamil Nadu Public Service Commission. He was posted as Village Administrative Officer at Nanguneri Village on 06.02.2017. Subsequently, his service was regularised on 20.03.2018 with effect from 09.02.2017. While so, there was a complaint that some malpractice occurred at Illayangudi Centre in the examination conducted for selection of Village Administrative Officer. An FIR was registered against M.Suyambu Rajan, T.Manikandan, R.Vasanth Kumari, B.Jayaprakash, Narayan and certain unknown persons. The petitioner's name was not in the F.I.R. The police arrested the persons named in the FIR and also the persons, who wrote examination in the suspected centre. The petitioner was arrested on 10.02.2020. The respondent by the impugned order dated 14.02.2020, suspended the

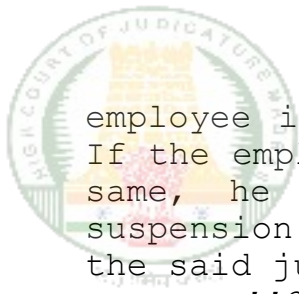


petitioner with effect from 12.02.2020, based on his arrest. The petitioner was enlarged on bail by the learned XI Metropolitan Magistrate, Saidapet, Chennai on 24.06.2020. The petitioner gave a representation on 23.07.2020 for revocation of his suspension. Even after lapse of more than 1 year and five months, the respondent did not revoke the order of suspension of the petitioner. In the criminal case, no charge sheet is filed and no charge memo is issued to the petitioner till date. The respondent has also not revived the order of suspension. The petitioner is kept under suspension for a long period and prayed for setting aside the order of suspension. Keeping an employee under suspension for a long time and paying subsistence allowance causes financial loss to the respondent Department. The learned counsel for the petitioner further submitted that to keep an employee under suspension for indefinite long period, is deprecated by this Court as well as by the Hon'ble Apex Court. In support of his contention, the learned counsel appearing for the petitioner relied on a judgment of Hon'ble Apex Court in **Ajay Kumar Choudhary Vs. Union of India** reported in **2015 (7) SCC 291**.

3. The learned Government Advocate submitted that the petitioner and others were doing some malpractices to get appointment. FIR was registered against the petitioner and others. The petitioner was also arrested. In the criminal case, investigation is pending and if suspension is revoked, it will affect the morale of department and prayed for dismissal of the Writ Petition.

4. Heard the learned counsel appearing for the petitioner, the learned Government Advocate appearing for the respondent and perused the materials on record carefully.

5. From the impugned order of suspension, it is seen that the petitioner was arrested on 10.02.2020 and by the impugned order dated 14.02.2020, the petitioner was placed under suspension with effect from 12.02.2020. From that date onwards, the petitioner is under suspension and subsistence allowance is paid to him without extracting any work from him. The learned counsel for the petitioner submitted that there is no charge sheet is filed and there is no progress in the criminal case. On the other hand, it is the case of the respondent that investigation is under progress and if suspension is revoked, it will affect the morale of the department. In the judgment of **Ajay Kumar Choudhary Vs. Union of India** reported in **2015 (7) SCC 291**, the Hon'ble Apex Court has held that if delinquent employee is suspended from service in view of registration of criminal case or in contemplation of disciplinary proceedings, if a charge sheet or charge memo is not issued to the delinquent employee within three months, then the order suspension has to be revoked. If charge sheet or charge memo is issued to the delinquent employee, then remedy available to the delinquent

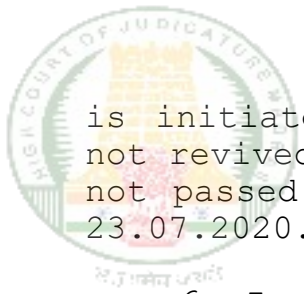


employee is to give a representation for revocation of suspension. If the employer, on consideration of the representation, rejects the same, he must give reason for the rejection. The order of suspension is subject to judicial review. The relevant portions of the said judgment of the Hon'ble Apex Court 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 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.'

Further, it is also held that long period of suspension and paying subsistence allowance without extracting any work is financial loss to the Government. However, long pending criminal case and long period of suspension will cause mental agony and hardship to the delinquent employee. The employer must take steps for conclusion of criminal case as expeditiously as possible. In the present case, FIR was registered in February 2020. The petitioner was arrested on 10.02.2020 and till date, there is no progress in the case. Similarly, the petitioner was suspended by the impugned order on 12.02.2020. No disciplinary proceedings



is initiated against the petitioner. Further, the respondent has not revived the order of suspension from 14.02.2020. They have also not passed any order on the representation of the petitioner dated 23.07.2020.

6. In such circumstances, the ratio in 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. Applying the said ratio, the impugned order of suspension is set aside and the Writ petition is allowed. It is open to the respondent to transfer the petitioner to some other place. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P&A)

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/ /2021

Sub Assistant Registrar(CS)

vsm

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 Sub Collector,
Cheranmahadevi,
Tirunelveli District.

+1 CC to M/s.SPL GP (SR-21687[F] dated 08/07/2021)

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and WMP(MD)Nos.8648 & 8649 of 2021
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RK (22.07.2021) 4P 3C