



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD)No.11871 of 2021

W.D. M.Anbu Selvam

... Petitioner

Vs.

The Division Engineer (Highways)
Construction & Maintenance,
Madurai.

... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in Memorandum No.13/2020/Aa2/dated 23.04.2021 on the file of the respondent and quash the same and consequently, direct the respondent to revoke the order of suspension dated 17.10.2019.

For Petitioner : Mr.S.Kumar

For Respondent : Mr.P.Subbaraj,
Government Advocate.

ORDER

This writ petition is filed to quash the impugned order, dated 23.04.2021, passed by the second respondent and for a direction to the respondent to revoke the order of suspension dated 17.10.2019.

2. According to the petitioner, he was appointed as Gang Mazoor on 01.08.1998. Due to ulterior motive, a false case has been registered against the petitioner in Crime No.16 of 2019, by the All Women Police Station, Melur, for the offences under Sections 417, 406 and 420 of I.P.C. He was remanded to judicial custody from 14.10.2019. Thereafter, he was released on bail. Due to the arrest and remand of the petitioner, the respondent placed the petitioner under suspension, by order dated 17.10.2019. Though charge sheet has been filed as early as on 24.01.2020, trial has not been completed and no charge memo has been issued by the respondent. Till date, the respondent has not revoked the order of suspension. Hence, the petitioner gave a representation on 04.06.2020, to revoke the order of suspension. Since the same was not considered, the petitioner has filed W.P.(MD)No.8597 of 2020, challenging the order of suspension dated 17.10.2019. By order dated 04.08.2020, this Court directed the respondent to consider the representation of the petitioner and pass orders on merits within a period of eight weeks. However, the respondent refused to revoke the order of suspension by communication dated 08.09.2020. Challenging the said communication, the petitioner filed W.P.(MD)No.5455 of 2021. By order dated 12.03.2021, this Court directed the petitioner to make a representation for revocation of suspension and the same shall be considered in accordance with the decision of Hon'ble Apex Court in **Ajay Kumar Choudhary Vs. Union of India** reported in **2015 (7) SCC 291**. However, the respondent without considering the said judgment, rejected the request of the petitioner for revocation of suspension, on the ground that criminal case is pending.

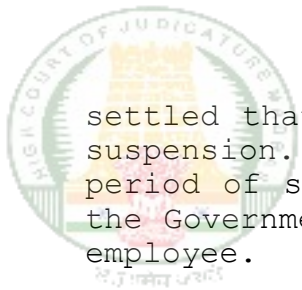


Challenging the said order, the petitioner has come out with the present Writ Petition.

3. The learned counsel appearing for the petitioner submitted that though charge sheet has been filed as early as on 24.01.2020, trial has not been completed so far. The respondent has also not reviewed 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 keeping 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**.

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

5. From the materials available on record, it is seen that the petitioner was arrested on 14.10.2019 in Crime No.16 of 2019, for the offences under Sections 417, 406 and 420 of I.P.C., and thereafter, he was enlarged on bail. The respondent, by proceedings dated 17.10.2019, suspended the petitioner from service, in view of the registration of criminal case and arrest of the petitioner. Though the charge sheet has been filed as early as on 24.01.2020, trial has not been completed so far and no charge memo has been issued by the respondent. Therefore, the petitioner gave a representation on 04.06.2020. Since the same was not considered, the petitioner filed a writ petition in W.P(MD)No.8597 of 2020. This Court by order dated 04.08.2020, directed the respondent to consider the representation of the petitioner and pass orders within a period of eight weeks. However, the respondent refused to revoke the order of suspension by communication dated 08.09.2020. Hence, the petitioner filed W.P.(MD)No.5455 of 2021, challenging the said communication. By order dated 12.03.2021, this Court directed the respondent to consider the request of the petitioner in accordance with the decision of the Hon'ble Apex Court. However, the respondent rejected the representation of the petitioner citing the pendency of the criminal case. The issue of consideration of suspension of delinquent employee and revocation was considered by 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 the judgment referred to above, held that when an employee was suspended from service in contemplation of domestic enquiry or pending criminal case, charge memo must be served within three months from the date of suspension or charge-sheet must be served within three months. If employer fails to serve the charge memo within three months, the order of suspension has to be revoked. If charge sheet/charge memo is served, it is open to the delinquent employee to make a representation to the employer for revocation of suspension. Any order passed by the employer on the representation is subject to judicial review. When the employer rejects the request for revocation, valid reasons must be given. It is well



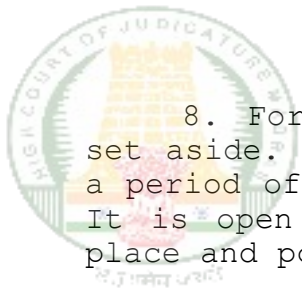
settled that long period of suspension is not a ground for revocation of suspension. At the same time, it is also held that protracting the period of suspension is not advisable as it will cause financial loss to the Government and also cause mental agony and hardship to the delinquent employee.

6. The Hon'ble Apex Court in **Ajay Kumar Choudhary' case** at paragraphs- 21 and 22, 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."

7. It has been also held by the Hon'ble Apex Court that the Department is free to transfer the concerned person to any Department in any of its offices so as to sever any local or personal contact that he may have and which he may misuse for obstructing the trial of the criminal case and disciplinary proceedings initiated against him. In the present case, though the petitioner was suspended on 17.10.2019, the respondent has not revoked or reviewed the order of suspension of the petitioner till date. As per the judgment of this Court and the Hon'ble Apex Court especially, as per the ratio in the judgment of Hon'ble Apex Court in **Ajay Kumar Choudhary' case [Supra]** the suspension of the petitioner is liable to be revoked.



8. For the above reasons, the impugned order dated 23.04.2021, is set aside. The respondent is directed to reinstate the petitioner within a period of four weeks from the date of receipt of a copy of this order. It is open to the respondent to transfer the petitioner to some other place and posting him in an insignificant post.

9. Accordingly this Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1.The Division Engineer (Highways)
Construction & Maintenance,
Madurai.

+1CC to Special Government Pleader (SR23696)

W.P. (MD) No.11871 of 2021
22.07.2021

SAR (CO)

RS (06.08.2021) 4P 3C