



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.(MD)No.11741 of 2021

and

W.M.P(MD)Nos.9227 and 9229 of 2021

Jeeva

... Petitioner

Vs.

1.The District Collector,
Sivagangai,
Sivagangai District.

2.The District Revenue Officer,
Sivagangai,
Sivagangai District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings of the 2nd respondent in her proceedings Roc.A2/2871/2020 dated 14.02.2020 and consequential proceedings in Na.Ka.A2/2871/2020, dated 09.06.2021 and quash the same as illegal and to direct the 2nd respondent to reinstate the petitioner along with back wages continuity of service and other attendant benefits.

For Petitioner : Mr.P.Venkata Subramanian
For Respondents : Mr.K.S.Selvaganesan,
Government Advocate

ORDER

This writ petition is filed to quash the impugned order, dated 14.02.2020 passed by the second respondent in Roc.A2/2871/2020 and the consequential proceedings in Na.Ka.A2/2871/2020 dated 09.06.2021 and for a direction to the second respondent to reinstate the petitioner along with back wages, continuity of service and other attendant benefits.

2. According to the petitioner, he was appointed as Junior Assistant in the Taluk Office, Thiruppathur, Sivagangai District, on 16.07.2003. Subsequently, he was promoted as Revenue Inspector at Sakkottai Taluk Office, Sivagangai District, on 08.10.2018. On 13.02.2020, due to previous motive, one Subbu preferred a false complaint against the petitioner before the Vigilance and Anti



Corruption Wing, Sivagangai, stating that the petitioner demanded him a sum of Rs.1,000/- as bribe for issuance of an income certificate. Hence, the Deputy Superintendent of Police, Vigilance and Anti Corruption, Sivagangai, registered a case against the petitioner in Crime No.1 of 2020 under Section 7(a) of Prevention of Corruption (Amendment) Act, 2018. The petitioner was arrested and remanded to judicial custody on 14.02.2020. Due to registration of F.I.R, the second respondent issued suspension order on 14.02.2020. Thereafter, the petitioner was released on bail, by this Court on 15.04.2020. The petitioner gave a representation on 14.05.2020 to the first respondent, seeking to revoke his suspension. But the same was not considered by the first respondent. Hence, the petitioner has filed W.P.(MD)No.19642 of 2020, challenging the proceedings of the second respondent dated 14.02.2020 and for consequential direction to the second respondent to reinstate the petitioner into service. This Court, by order dated, 23.12.2020, directed the petitioner to give a representation to the second respondent and also directed the second respondent to consider the representation of the petitioner within a period of eight weeks. Therefore, the petitioner gave a representation on 06.01.2021, along with the order of copy of the above said writ petition to the second respondent. However, the second respondent, without considering the order of this Court, simply rejected the said representation on 09.06.2021, on the ground that criminal case registered against the petitioner is pending. Hence, the petitioner has come out with the present Writ Petition.

3. The learned counsel appearing for the petitioner submitted that till date, no charge memo was issued and no charge sheet was filed in Crime No.1 of 2020. 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 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 respondents and perused the materials available on record.

5. From the materials available on record, it is seen that the petitioner was arrested on 14.02.2020 in Crime No.1 of 2020, for the offence under Section 7(a) of Prevention of Corruption (Amendment) Act, 2018 and thereafter, he was enlarged on bail. The respondent by proceedings dated 14.02.2020, suspended the petitioner from service, in view of the registration of criminal case and arrest of the petitioner. Till date, no charge memo was issued to the petitioner and no charge sheet was filed in Crime No.1 of 2020.



Therefore, the petitioner gave a representation on 14.05.2020. Since the same was not considered, the petitioner filed a writ petition in W.P(MD)No.19642 of 2020. This Court by order dated 23.12.2020, directed the second respondent to consider the representation of the petitioner and pass orders within eight weeks. Hence, the petitioner gave a fresh representation on 06.01.2021, to the second respondent along with a copy of the said order. However, the the second 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 on her 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 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 14.02.2020, the respondents have not revoked the order of suspension subsequently. Even after rejecting his request by impugned order dated 09.06.2021, the respondents have not 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 14.02.2020 and the consequential impugned order dated 09.06.2021 passed by the second respondent are set aside. The respondents are 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 respondents to transfer the petitioner to some other place and posting him in an insignificant post.

9. Accordingly this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS II)

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/ /2021

Sub Assistant Registrar(CS)

am



To

1.The District Collector,
Sivagangai,
Sivagangai District.

2.The District Revenue Officer,
Sivagangai,
Sivagangai District.

+1 CC to M/s.GP (SR-23724[F] dated 23/07/2021)

W.P. (MD) No.11741 of 2021

and

W.M.P (MD) Nos.9227 and 9229 of 2021

22.07.2021

MGJ(06.08.2021) 5P 4C