



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD)No.15344 of 2020

and

W.M.P (MD)No.12895 of 2020

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K.Saraladevi

... Petitioner

Vs.

1.The Joint Registrar-cum-Managing Director,
Ramnad District Central Co-operative Bank Limited,
Ramanathapuram,
Ramnad District.

2.The Deputy Registrar (Co-operative)
Office of the Deputy Registrar (Co-operative),
Ramanathapuram Circle,
Ramanathapuram. ... 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 pertaining to impugned order of suspension issued by the first respondent in his proceedings in Na Ka No.001267/2020 E1, dated 20.10.2020 and quash the same and consequently direct the respondents to regularise the period of suspension of the petitioner and pay all monetary benefits.

For Petitioner : Mr.C.Jeganathan
For R1 : Mr.D.Shanmugaraja Sethupathi
For R2 : Mr.K.S.Selvaganesan
Government Advocate

ORDER

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

2. The petitioner is challenging the order of suspension, dated 20.10.2020, passed by the first respondent.

3. From the averments made in the affidavit and the contention of the learned counsel appearing for the petitioner, it is seen that the petitioner is challenging the order of suspension on merits. According to the learned counsel appearing for the petitioner, the charges mentioned in the order of suspension are not valid for



suspending the petitioner from service. It is the further contention of the learned counsel appearing for the petitioner that prolonged suspension without assigning any reason is contrary to judgment of this Court as well as judgment of the Hon'ble Apex Court.

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4. The first respondent has filed counter affidavit denying various averments made in the affidavit. In addition to that, the learned counsel appearing for the first respondent further submitted that the chargememo, dated 02.12.2020, was issued based on the inspection report, dated 22.07.2019 and directed the petitioner to submit her explanation. The petitioner did not submit any explanation.

5. The issue of revocation of suspension of an employee is considered by the Hon'ble Apex Court in **Ajay Kumar Choudhary Vs. Union of India** reported in **(2015) 7 SCC 291**. The Hon'ble Apex Court in paragraphs- 21 and 22 of the judgment 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.''

6. In the judgment referred to above, the Hon'ble Apex Court held that when an employee is suspended from service pending criminal case or in contemplation of disciplinary proceedings, the suspension order cannot be extended beyond three months. If chargesheet or chargememo is not served on the delinquent employee within three months from the date of suspension, the suspension has to be revoked. The Hon'ble Apex Court has also held that if the memorandum of charges/charge-sheet is served on the delinquent employee, an order by giving valid reason, must be passed for extension of suspension. In the present case, no charge-sheet is filed in the criminal case but chargememo is issued to the petitioner. As per the judgment of the Hon'ble Apex Court referred to above, when a chargememo is served on the delinquent employee, the delinquent employee can give a representation for revocation of suspension. The employer has to consider the said representation and if he decides to continue the suspension, then a reasoned order must be passed. The said order is subject to judicial review. The order of suspension must be reviewed periodically and to continue the suspension, reason must be given by the employer. When a delinquent employee submits the representation for revocation of suspension, the employer must consider the same and pass order either revoking the suspension or continuing the suspension. In the present case, the respondents have not reviewed the order of suspension from the date of suspension ie., on 20.10.2020 and has not given any reason for continuing the suspension for prolonged period.

7. The respondents are continuing the suspension of the petitioner without passing any reasoned orders. The learned counsel appearing for the first respondent submitted that the first respondent is paying the subsistence allowance regularly to the petitioner. The first respondent without extracting any work from the petitioner is paying subsistence allowance for prolonged period which causes financial loss to the respondents Bank.

8 In view of the ratio laid down in the judgment of the Hon'ble Apex Court referred to above, the impugned order of suspension is liable to be set aside and is hereby set aside. It is open to the respondents 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 disciplinary proceedings pending against him. The petitioner is directed to co-operate with respondents in conducting and concluding disciplinary proceedings.



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

Sd/-

Assistant Registrar (T&P)

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/ /2021

Sub Assistant Registrar(CS)

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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

1.The Joint Registrar-cum-Managing Director,
Ramnad District Central Co-operative Bank Limited,
Ramanathapuram,
Ramnad District.

2.The Deputy Registrar (Co-operative)
Office of the Deputy Registrar (Co-operative),
Ramanathapuram Circle,
Ramanathapuram.

+1 CC to M/s.SPL GP (SR-21037[F] dated 02/07/2021)

+1 CC to M/s.D.SHANMUGA RAJA SETHUPATHI, Advocate (SR-21128[F]
dated 05/07/2021)

W.P. (MD)No.15344 of 2020

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SAR (CO)

LR (05.08.2021) 4P 5C