



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.12.2021

CORAM:

THE HONOURABLE DR JUSTICE ANITA SUMANTH

W.P. (MD) No.21132 of 2018

and

W.M.P (MD) Nos.18951 and 18592 of 2018

G.Thilagam

...Petitioner

Vs.

The District Collector,
Trichy District, Trichy.

...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the respondent in RC.No.1050/2013, TP.2, dated 09.05.2013, placing the petitioner under suspension from service, quash the same and direct the respondent to pass necessary orders for her reinstatement into services.

For Petitioner : Mr.M.Sankaralingam
for Mr.R.Subramanian

For Respondent : Mr.A.K.Manikkam
Special Government Pleader

ORDER

Heard Mr.M.Sankaralingam, learned counsel appearing for Mr.R.Subramanian, learned counsel on record for the petitioner and Mr.A.K.Manikkam, learned Special Government Pleader appearing for the District Collector, Trichy/respondent.

2.The petitioner has come before this Court challenging an order dated 09.05.2013 placing the petitioner under suspension. The petitioner's case is that he joined as an Junior Assistant in the Department of Town Panchayat on 27.02.1997 and was promoted through the ranks.

3.While employed as Executive Officer Grade - I in Poovalur Town Panchayat at Trichy District, on 11.07.2012, a contract had been awarded to an individual by name Rajendran on 28.02.2013. A charge thereafter came to be laid as against the petitioner, based on a complaint filed by the said Rajendran to the effect that the petitioner had sought illegal gratification for release of a cheque to him.



4.An explanation is set forth by the petitioner at paragraph No.3 of the affidavit pointing out various discrepancies in the work entrusted and carried out by the said contractor. The petitioner would contend that while the complainant had insisted upon the payment of the amount, the petitioner had sought sanction for the same from the Assistant Director of Town Panchayat in that regard.

5.Thus, at the time of the alleged occurrence, funds had not been allotted by the Assistant Director for issuance of the cheque. All in all, he would submit that the complaint has absolutely no basis. A criminal case was initiated in Crime No. 5 of 2013 and taken on file by the learned Special Judge for Vigilance and Anti-corruption, Trichy. The matter is stated to be pending as on date.

6.Reliance of the petitioner upon the judgments of the Hon'ble Supreme Court in *Ajay Kumar Choudhary Vs. Union of India through its Secretary and another* in 2015(7) SCC 291 and *State of Tamilnadu represented by Secretary to Government (Home) Vs. Promod Kumar IPS and Another* dated 21.08.2018.

7.Reliance placed by the petitioner upon a decision of a Division Bench of this Court in W.A.No.64 of 2021 in *Chairman-cum-Managing Director, TANGEDCO, Chennai and two others Vs.R.Balaji* dated 27.08.2021 is of no avail as the nature of charges in that case arose from an interpretation of the Tamilnadu Electricity Board Employees Discipline and Appeal Regulations.

8.Mr.Manikkam, has relied upon two decisions of this Court and one of the Delhi High Court to the effect that the ratio of the judgements of the Supreme Court relied upon by the petitioner must not be construed to be a hard and fast rule, but must be applied bearing in mind the circumstance that arise on a case on case basis. He relied upon:

i) *Govt of NCT of Delhi Vs. Dr.Rishi Anand* in W.P(C)8134 of 2017 dated 13.09.2017

ii) *Director General of Police, Chennai and another Vs. T.Kamarajan* dated 19.11.2019 in W.A.No.3957 of 2019

iii) *Tamil Nadu Generation & Distribution, Corporation Limited (TANGEDCO), Chennai - 2 Vs. A.Srinivasan* in W.A.No.599 of 2020 dated 02.09.2020.

9.In the cases of *T.Kamarajan* and *A.Srinivasan*, the First Bench of this Court dealt with an appeals filed by the State against orders of learned Single Judges founded basically upon the ratio of the Judgment of the Supreme Court in *Ajay Kumar Choudhary's* case.

10.In both cases, the learned Single Judges had directed that the criminal proceedings pending before the competent Courts be ~~concluded~~ ^{concluded} within a fixed timeframe and that in the interim, the



respondents in Writ Appeal / the employees, be posted in a non-sensitive post.

11.The Bench refers to an earlier decision of the Division Bench in the case of *Arignar Anna Sugar Mills Ltd. v. R.Vengatasamy and another* (2017 SCC OnLine Mad 33673) and the Delhi High Court in the case of *Dr.Rishi Anand* (supra).

12.The ratio that they cull from the judgment in *Ajay Kumar Choudhary's* case is that the principles of expedition and diligence at every stage of criminal trial must be applied in the case of departmental enquiry as well. They specifically note that no absolute proposition has been laid down to the effect that an suspension order should be set aside, if charges were not served within a specific timeframe.

13.At paragraph 10 of the order in the case of *T.Kamarajan*, they state as follows:

10. There is another decision in the case of *Arignar Anna Sugar Mills Ltd. v. R.Vengatasamy and another*, reported in 2017 SCC OnLine Mad 33673 of a Division Bench, whereunder, while referring to the judgment of *Ajay Kumar Choudhary* (supra), it has been held in paragraphs (6) to (12) as follows:

"6. With the greatest of respect to the learned Single Bench, *Ajay Kumar Choudhary* (supra) does not lay down any absolute proposition that a suspension order should be set aside whenever charges are not served within three months. On the other hand, the Supreme Court propounded the proposition that the principles of expedition and diligence at every stage of a criminal trial ought to be applied in case of departmental enquiries. At all stages, i.e., investigation, inquiry, appeal, revision, the burden lies on the prosecution and in this case on the employer to justify and explain the delay. The Court is to engage in a balancing test to determine whether this right had been denied in the instant case.

7. In the case before the Supreme Court, the Central Administrative Tribunal had, having regard to the facts and circumstances of the case, directed that the suspension of the appellant in that case could not be extended beyond 90 days from 19.3.2013. The High Court had set aside the aforesaid direction viewing it as a substitution of a judicial determination to the authority possessing the



WEB COPY

power, i.e., the Government. The Supreme Court set aside the pronouncement of the High Court as unsustainable.

8. In *Ajay Kumar Choudhary (supra)*, the Supreme Court observed that if within three months the memorandum was not served, a reasoned order must be passed for the extension of the suspension. The Supreme Court also observed that the Government was free to transfer a 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 might have and which he might use for obstructing the investigation against him.

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:

'9. 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



WEB COPY

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.

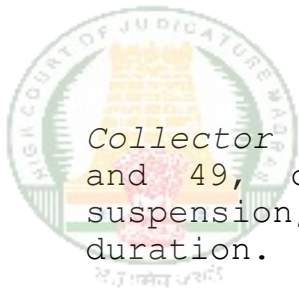
12. The decision of the Supreme Court in *Ajay Kumar Choudhary* (supra) enunciates the proposition that principles of criminal law should be applied to departmental proceedings. Even criminal law permits incarceration beyond three months in serious and grave cases pending trial."

14. The emphasis by way of highlight in paragraph 9 extracted above is by this Court to bring home the point that there is no cast-iron rule in this regard and that a view would have to be taken such matters, in a case on case basis, in line with the judgment of the Hon'ble Supreme Court and applying the observations therein to the facts and circumstances of that particular case.

15. A Bench of Delhi High Court in the case of *Dr. Rishi Anand* is to similar effect and at paragraph 17, they note that it may not always be possible for the government to serve a charge sheet within 90 days, or even thereafter for several justifiable reasons. In such a case reinstating the Government servant, even in a non-sensitive post, cannot be prudent.

16. On a reading of the Judgment of the Hon'ble Supreme Court, they opine that the Court has not denuded the government of its authority to continue/extend the suspension of the government servant before or after service of the charge sheet.

17. In the case of *A. Srinivasan*, a detailed reference is made to the Full Bench Judgment in the case of *S. Ravi and Others v. District*
<https://hcservices.ecourts.gov.in/hcservices/>



Collector and Others (2015 (4) LW 811), particularly paragraphs 48 and 49, concluding that there was no automatic revocation of suspension, if the period of suspension exceeded a specific duration.

18. In counter, the District Collector/respondent points out that the Department of Vigilance and Anti-corruption (DVAC), which has initiated the criminal case, has not been made as a party to the matter. That is true. In such a circumstance, and bearing in mind the close identity of the facts based upon which the criminal as well as disciplinary proceedings turn, it would suffice to direct the criminal court to proceed with the matter expeditiously and conclude the same expeditiously, at any rate, within ten (10) months from today.

19. This writ petition is dismissed with the direction as above. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

CM/sm

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 Special Judge for vigilance and anti corruption, Trichy.

2. The District Collector,

Trichy District, Trichy.

+1 CC to M/s.SPL GP (SR-39278[F] dated 17/12/2021)

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-39212[F] dated 17/12/2021)

W.P. (MD) No.21132 of 2018

and W.M.P(MD) Nos.18951 and 18592 of 2018

16.12.2021

nsn(CO)

TR(04.02.2022) 6P 5C