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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.03.2022

PRONOUNCED ON : 30.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.NO.32561 OF 2016

Dr.Sri.Pa.Dhevarajan

... Petitioner

.Vs.

1. The Principal Secretary to Government,
Higher Education (FI) Department,
Fort St. George,
Chennai - 600 009.

2. The Director of Collegiate Education,
D.P.I Company, College Road,
Chennai - 600 006.

3. The Principal,
Government Arts College,
Salem - 7.

... Respondents

PRAYER:-

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the first respondent dated 17.09.2013 made in G.O.(Ms).No.165, Higher Education (FI) Department, pursuant to the order dated 17.02.2016 issued by the first respondent in Letter No.14007/F1/2015-4, quash the same and direct the first respondent to permit the petitioner to resume his work as Assistant Professor in English in the third respondent College.

For petitioner : Mr.V.Vijayashankar
For Mr.K.Rajasekaran

For Respondents : Mr.V.Veluchamy
Additional Government Pleader
For R1 to R3



ORDER

This writ petition has been filed to issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the first respondent dated 17.09.2013 made in G.O.(Ms).No.165, Higher Education (FI) Department, pursuant to the order dated 17.02.2016 issued by the first respondent in Letter No.14007/F1/2015-4, quash the same and direct the first respondent to permit the petitioner to resume his work as Assistant Professor in English in the third respondent College.

2. The case of the petitioner is as follows:

(i) The petitioner was working as Assistant Professor in English in the third respondent College since 13.10.2008. His services were regularised on 04.10.2012. Subsequently, he was selected and appointed as Professor in the Department of English, Periyar University, Salem vide order 03.08.2013. The petitioner belongs to S.C. community. At this development, the 3rd respondent College requested the 2nd respondent to relieve the petitioner to enable him to join the newly selected post vide their letter dated 06.08.2013. In the meanwhile, a criminal case was filed against him on the charge of receiving Rs.3,00,000/- for securing a Government Job for one C.Thangavelu. He was booked for the offences under Sections 420, 506(ii) and 109 of IPC. The petitioner was arrested and remanded to judicial custody and subsequently, enlarged on bail.

(ii) As the petitioner was in custody for more than 48 hours, he was placed under suspension with effect vide order in G.O.Ms.No.165, Higher Education (F1) department dated 17.09.2013. The deemed effect of the suspension was the date of his arrest on 05.09.2013. Thereafter, the petitioner continued to remain under suspension without periodical review in terms of the rule position. The petitioner therefore, submitted his representation on 25.04.2015, seeking review of the suspension order. According to the petitioner, there was no progress at all in the criminal case registered against him and hence, the prolonged suspension required, reconsideration.

(iii) As no action was forthcoming from the authority concerned, the petitioner moved this Court by filing a writ petition in W.P.No.16130 of 2015. The writ petition was disposed of on 08.06.2015, directing the respondent to pass orders on the continued suspension of the petitioner in accordance with law. In pursuance of the direction of this Court, an order was passed on 17.02.2016, rejecting the request of the petitioner by citing the pendency of the criminal case. The petitioner is before this Court challenging the suspension order G.O.Ms.No.165 dated 17.09.2013 and the subsequent rejection order dated 17.02.2016.



3. After notice, Mr.V.Veluchamy, learned Additional Government Pleader entered appearance on behalf of the respondents and filed a counter affidavit. In the counter affidavit, the facts as stated above have not been disputed. However, the reasons for rejecting the request of the petitioner, are stated in paragraph Nos.7 & 8 of the counter, which are extracted hereunder:-

"7. It is submitted that the disciplinary action proposed against the petitioner is kept in abeyance as the criminal case against him is pending before the Court of law. Hence, there is no delay on the part of the respondents in pursuing the departmental action against him. Consequently, his suspension has to be in force as per relevant rules under Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1973.

8. It is submitted that there is no specific rule exists that the order of suspension shall not be continued after the expiry of 90 days in the case of persons suspended under criminal action pending before this Court."

4. The reason for the rejection to review the suspension order in favour of the petitioner is that no rule exists that after expiry of 90 day period, suspension ought not to be continued in the case of persons suspended on the ground of criminal case pending against him. It is also admitted that no departmental action has been initiated in view of the pendency of the criminal case against the petitioner.

5. The learned counsel for the petitioner Mr.V.Vijayashankar, after reiterating the facts, briefly, would submit that 90 day period laid down by the Hon'ble Supreme Court in Ajay Kumar Choudhry's case may not be applied in all cases. But even otherwise, this Court in numerous decisions even earlier to the decision of the Supreme Court in Ajay Kumar Choudhry's case has held that the prolonged suspension like the present one for years together, without valid reason cannot be maintained in law. This Court both Division Bench as well as the Single Bench have consistently held that in the absence of progress in the criminal case and also in the absence of any disciplinary action, keeping the official of the Government under continued suspension is against public interest. The learned counsel would straight away draw the attention of this Court to the following decisions in support of his contention.

(i) W.A [MD] No.100 of 2017 dated 13.02.2017, in the case of M.Murugan Vs. The Deputy Inspector General of Police. This



Court's attention has been drawn to paragraph Nos.7 to 11, which are extracted hereunder:

"7. We are of the opinion that the issue involved in this case has to be decided only based on the decision of the Hon'ble Supreme Court in the case of Ajay Kumar Choudhry Vs. Union of India [2015(2) Scale 432], cited supra, wherein it has been held that the currency of suspension order should not be extended beyond a period of three months, if within this period, the Memorandum of charges/charge sheet is not served on the delinquent official and if charge memo/sheet is served, a reasoned order must be passed for extension of the suspension. Subsequently, the Government of Tamil Nadu has also issued instructions in Letter No.13519/N/2016-1, P &AR (Per.N) Department, dated 23.07.2015, to all Principal Secretaries to Government, Department of Secretariat and Head of Departments to follow the directions of the Hon'ble Supreme Court on the limitation period of suspension, in letter and spirit.

8. Even, in the instant case, it is seen that though the suspension order was passed on 30.06.2015, till date, charge memo has not been issued. Hence, the appellant cannot be kept under prolonged suspension, as a Division Bench of this Court in the case of Ambigapathy, P.S. Vs. The Director of Public Health & Preventive Medicine [1991 Writ L.R. 273], has held that the prolonged suspension is unreasonable and without any justification.

9. In this regard, one more reliance could be placed on the judgment of this Court dated 08.04.2014 in W.P.No.21014 of 2013 [K.Selvamani Vs. State and another], which is reported in 2014(4) MLJ 79. It is relevant to quote paragraph No.10 of the said order dated 08.04.2014, which reads thus:

"10. In this regard, a reference can be placed to an unreported judgment of this Court in W.P.No.291965 of 2010, etc. batch, dated 02.07.2012 (G.Mathivannan Vs. The Director of Municipal Administration, Chempauk, Chennai), wherein it has been held as follows:



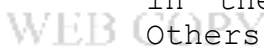
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"7. Apart from this, in all these cases, after a period of 6 months, the petitioners are entitled to get 75% of emoluments as subsistence allowance. Instead of keeping them idle and paying 75% of salary by way of allowance, by transferring them to a far away place and posting them in a non-sensitive post, after extracting work, they can be paid salary. However, the same can be done without detriment to the action initiated against them. In the criminal case, some of them or a few of them may be exonerated or they may be punished. But, as on date, not only finality has not been reached but there is no progress. Under such circumstances, in the opinion of this Court, continuance of their suspension is unreasonable following the judgment of the Division Bench.

8. In view of this, the suspension orders passed in all these writ petitions are set aside. However, the respondents are at liberty to post these petitioners in a far away place from the station of occurrence and post them in a non-sensitive post and if for any reason, the authorities are of the opinion that their continuance in service is a hindrance for the action initiated against them, they can re-examine the issue and they are at liberty to take appropriate action."

10. The dictum laid down in the above said order dated 08.04.2014 in W.P.No.21014 of 2013 would clearly show that the delinquent cannot be kept under prolonged suspension irrespective of the gravity of the allegation/charge levelled against him. The dictum laid down in the said order also shows that by paying 75% of emoluments as subsistence allowance, the delinquent cannot be kept idle without extracting work from him. Therefore, we are of the opinion that applying the dictum laid down by the Hon'ble Supreme Court as well as this Court, the Writ Appeal has to be allowed.

11. In fine, the Writ Appeal is allowed and the order of the learned Single Judge dated 23.01.2017 is set aside. Consequently, the impugned orders dated 30.06.2015 and 08.01.2016 are set aside. The respondent is directed to reinstate the appellant in



(ii) W.P.Nos.48, 49, 175 and 176 of 2017 dated 12.01.2017, in the case of M.S.Jaffar Sait Vs. The Union of India and Others. This Court's attention has been drawn to paragraph Nos.31 to 36 and 64, which are extracted hereunder:

34. The Supreme Court in *Ajay Kumar Choudhary vs. Union of India and another*, 2015(7) SCC 291, deprecated the practice of protracted suspension and repeated renewal and indicated that a reasoned order must be passed for the extension of suspension.



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35. The petitioner has been placed under suspension for five years and 5 months now. He is practically confined at Mandapam, in the District of Ramnad. According to the petitioner, he is not in a position to move, on account of the condition that he should reside at Mandapam, during the period of suspension. His family is stated to be at Chennai. The Government has even dismissed his petition for change of headquarters.

36. The observation made by the Hon'ble Supreme Court in para 11 of the judgment in Ajay Kumar Choudhary, would apply to the case of the petitioner. We have therefore no hesitation in concluding that the petitioner was subjected to protracted suspension without any valid reason and the order extending the suspension was passed without taking into account the relevant materials.

64. In view of the reasons aforesaid, we are in respectful agreement with the views expressed and the findings recorded by the Tribunal that the prolonged suspension in the subject case is nothing but an arbitrary exercise of power and it was not a sound exercise of discretion. We therefore, revoke the suspension with immediate effect."

(iii) W.P.No.25187 of 2018, dated 27.03.2019, in the case of K.Malarvizhi Vs. Commissioner of Police. This Court's attention has been drawn to paragraph Nos.8 and 9, which are extracted hereunder:

"8. If an employee after departmental disciplinary proceedings is convicted by the Competent Court of Law, then further actions shall be taken or the earlier orders shall be reviewed for issuing appropriate orders based on the conviction. There is no impediment for the authorities on initiation of fresh proceedings, if a public servant is convicted in criminal case by the competent Court of Law. Considering all these aspects, the disciplinary authorities shall continue the departmental disciplinary proceedings and pass final orders pending disposal of the criminal case. This being the legal principles settled by the Constitutional Courts, the authorities need not keep an employee under suspension for an unspecified period. Keeping an employee under suspension for long years and paying subsistence allowance for an unspecified period is



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causing financial loss to the State exchequer. Payment of subsistence allowance without extracting work is a financial loss to the State exchequer. Thus, the authorities must be vigilant and review the order of suspension periodically and if there is no impediment, conclude the disciplinary proceedings and pass final orders.

9. In the case on hand, the order of suspension was issued long back and the writ petitioner is under continuous suspension without any progress in the departmental disciplinary proceedings as well as the criminal case. This being the factum of the case, this Court is of an opinion that there is no useful purpose would be served in keeping the writ petitioner under suspension for further period and accordingly the following orders are passed:

(i) The impugned order of suspension passed by the respondent in his order No. No.CPO 1001/2013/C.No.H1/625/29924/2013 dated 15.12.2013 is quashed.

(ii) The respondent is directed to reinstate the petitioner in service.

(iii) The respondent is directed to post the writ petitioner in any one of the non sensitive post till the conclusion of the departmental disciplinary proceedings as well as the criminal case registered against the writ petitioner."

(iv) The decision of the learned Single Judge is affirmed by the Division Bench in W.A.No.4254 of 2019, vide its order dated 06.12.2019, as could be seen in paragraph Nos.9 and 10 herein below:

"9. Reliance placed by the learned counsel for the appellant on the judgment dated 19.11.2019 in W.A.No.3957 of 2019 (supra) is misplaced on the facts of this case. In that case, the department had initiated disciplinary proceedings and in the facts of that case, this Court held that suspension may not be revoked till the culmination of the disciplinary proceedings. In the present case, as noticed above, disciplinary proceedings have not been initiated. In view of the above, no interference is called for with the judgment of the learned Single Judge.



10. The writ appeal is dismissed. It will be open for the appellant to take appropriate steps to get the trial expedited. No costs. Consequently, C.M.P. No.26517 of 2019 is closed.''

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(v) W.P.No.4493 of 2016, dated 14.11.2019, in the case of S.Ramu Vs. Commissioner, Avadi Municipality. This Court's attention has been drawn to paragraph No.15, which is extracted hereunder:

"15. G.O.Ms.No.40, Personnel and Administrative Reforms (N) Department, dated 30.01.1996, also runs counter to the above mentioned judgments. In view of the fact that no disciplinary proceedings have been initiated against the petitioner, the petitioner cannot be kept in suspension for such a long time, merely because the petitioner is facing a criminal case. The writ petition is allowed. The respondents are directed to reinstate the petitioner in a non-sensitive post completely unconnected to the work he has performed. No Costs. Consequently, the connected miscellaneous petition is closed.''

(vi) W.P.No.743 of 2019 dated 18.12.2019, in the case of B.Sundara Prabhu Vs. Principal Secretary to Government. The learned Judge of this Court has extensively adverted to various decisions rendered on the subject matter as could be seen herein in paragraph No.8, which is extracted hereunder:

"8. This Court had an occasion to consider a similar issue in S.Raju v. The Chairman, Tamil Nadu Electricity Board, in W.P.No.11967 of 2018, dated 25.07.2019, wherein, this Court considered the entire law on the point. The relevant portions of the said order are extracted hereunder :

4. Mr.Aravind Subramaniam, learned counsel appearing for the petitioner would submit that while rejecting the representation of the petitioner seeking revocation of the suspension, the 4th respondent did not consider the legal principle laid down by the Hon'ble Supreme Court of India in "Ajay Kumar Choudhary V. Union of India through its Secretary and another reported in (2015) 7 Supreme Court Cases 291".

5. According to the learned counsel, this Court, in a number of decisions, has followed



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the law declared by the Hon'ble Supreme Court in Ajay Kumar Choudhary case and set aside the suspension orders and directed the authorities concerned to reinstate the petitioners in the respective writ petitions and post them in non-sensitive posts. Many of the cases, which were allowed by this Court also, pertaining to the alleged demand of illegal gratification by the petitioner therein. In support of his contention, the learned counsel would rely on the following decisions:

(i) In Ajay Kumar Choudhary V. Union of India through its Secretary and another reported in (2015) 7 Supreme Court Cases 291, he would draw the attention of this Court at paragraph 21, which is extracted hereunder:

"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/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet 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 concerned person 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 recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that 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



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investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us."

(ii) In K.Selvamani V. The State of Tamil Nadu, rep. By the Principal Secretary to Government, Home (Pol-2) Department, Fort St. George, Chennai and another reported in 2017 (1) CTC 795, at paragraph 6 to 8, it has been held by this Court as follows:

"6. I am of the opinion that the issue involved in this case has to be decided only based on the decision of the Hon'ble Supreme Court in 2015 (2) SCALES 432 [Ajay Kumar Choudhry Vs. Union of India], wherein it has been held that the currency of suspension order should not be extended beyond three months, if within this period, the Memorandum of charges/charge sheet is not served on the delinquent official and if charge memo/sheet is served, a reasoned order must be passed for extension of the suspension. Subsequently, the Government of Tamil Nadu has also issued instructions in Letter No.13519/N/2016-1, P & AR (Per.N) Dept, dated 23.07.2015, to all Principal Secretaries to Government, Department of Secretariat and Head of Departments to follow the directions of the Hon'ble Supreme Court on the limitation period of suspension in letter and spirit.

7. Even in the instant case, the facts of the case could show that the respondents have not passed any reasoned order for extension of suspension in respect of the petitioner herein. The petitioner cannot be kept under prolonged suspension. Further, in the case Ambigapathy, P.S. Vs. The Director of Public Health & Preventive Medicine, reported in 1991 Writ L.R. 273, a Division Bench of this Court has held that the prolonged suspension is unreasonable and without any justification. Following the above said decision, I am of the opinion, the petitioner herein is entitled to the relief sought for in the writ petition and the impugned order is liable to be quashed.

8. Accordingly, the writ petition is allowed and the impugned order is quashed. The



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respondents are directed to reinstate the petitioner in any non-sensitive post at a far away place forthwith. Consequently, connected Miscellaneous Petition is closed. No costs.

(iii) In Civil Appeal No.8427-8428 of 2018 arising out of S.L.P.(Civil) No.12112 & 12113 of 2017 dated 21st August, 2018 [between State of Tamil Nadu rep. By Secretary to Government (Home) V. Promod Kumar IPS & another] the Hon'ble Supreme Court in paragraph No.23, has observed as under:

23. This Court in Ajay Kumar Choudhary v. Union of India protracted suspension and held that suspension must necessarily be for a short duration. On the basis of the material on record, we are convinced that no useful purpose would be served by continuing the first Respondent under suspension any longer and that his reinstatement would not be a threat to a fair trial. We reiterate the observation of the High Court that the Appellant State has the liberty to appoint the first Respondent in a non sensitive post.

(iv) In W.P.No.28454 of 2017 dated 01.04.2019 [between T.Soundararajan V. The District Revenue Officer, Villupuram and others], this Court in paragraph 6 has observed as follows:

"6. In the light of the categorical pronouncement of the Supreme Court as aforesaid, the order of prolonged suspension dated 30.03.2017, without even charge sheet being filed till date, is quashed and the petitioner is directed to be reinstated forthwith."

(v) In W.P.No.33806 of 2018 dated 02.04.2019 [between P.Saravanan V. The Superintending Engineer, TANGEDGO, TNEB, Chengalpattu Electricity Distribution Circle, Chengalpattu] in paragraphs No.8 & 9, this Court has held as follows:

"8. In the case on hand, the order of suspension was issued long back and the writ petitioner is under continuous suspension



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without any progress in the departmental disciplinary proceedings as well as the criminal case. This being the factum of the case, this Court is of an opinion that there is no useful purpose would be served in keeping the writ petitioner under suspension for further period.

9. Accordingly, the following orders are passed:-

(i) The impugned order of suspension passed by the respondent in Memo No.50/Adm.2/A.1/F. Suspension/2009, dated 26.5.2009 is quashed.

(ii) The respondent is directed to reinstate the petitioner in service.

(iii) The respondent is directed to post the writ petitioner in any one of the non-sensitive post till the conclusion of the departmental disciplinary proceedings as well as the criminal case registered against the writ petitioner.

(vi) In W.P.No.13961 of 2018 dated 05.04.2019 [between B.Elankovan V. The Chairman, TANGEDCO, Nadippisai Pulavar K.R.Ramasamy Building, No.144, Anna Salai, Chennai - 600 002 and others] in paragraphs No.6 to 8, this Court has observed as follows:

"6. Competent Officials of the State as well as the Departments are the custodians of the tax payers money and they have got every duty to protect the public money and spend the same judiciously and in accordance with law. A public official wasting the tax payers money is committing misconduct and it is necessarily that such officials are also to be booked under the Discipline and Appeal Rules. The money of the tax payers are spend by the public officials without considering the circumstances and other aspects.

7. This apart, an employee is not allowed to take employment anywhere during the period of suspension. If a person is made to sit ideally without any work for number of years,



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the same would cause a mental agony, which is not good for the betterment of the society in general. All these aspects are to be considered, while prolonging the period of suspension. Even, at the time of reviewing the order of suspension, the authorities competent must take into consideration of all these aspects and if necessary, revoke the order of suspension and post such employee in any one of the non-sensitive post till the conclusion of the departmental proceedings or criminal case. In view of the fact that the writ petitioner is under suspension for the past eight years, there is absolutely no progress in the Departmental Disciplinary Proceedings.

8. Under these circumstances, this Court is of an opinion that the present writ petition is to be considered. Accordingly, the following orders are passed:-

(1) The impugned order of suspension issued by the fourth respondent in proceedings dated 26.12.2014 is quashed.

(2) The respondents are directed to reinstate the writ petitioner forthwith.

(3) The respondents are directed to post the writ petitioner in any one of the non-sensitive post till the conclusion of the departmental disciplinary proceedings."

(vii) In W.P.No.33379 of 2018 dated 08.04.2019 [between P.Govindarajan V. The Chairman cum Managing Director, TANGEDCO (Tamil Nadu Generation and Distribution Corporation Ltd.), Tamil Nadu Electricity Board, No.144, Anna Salai, Chennai-2 and others], in paragraphs No.11 & 12, this Court has held as under:

"11. In the case on hand, the order of suspension was issued long back and the writ petitioner is under continuous suspension without any progress in the departmental disciplinary proceedings as well as the criminal case. This being the factum of the case, this Court is of an opinion that there is no useful purpose would be served in



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keeping the writ petitioner under suspension for further period.

12. Under these circumstances, this Court is of an opinion that the present writ petition is to be considered. Accordingly, the following orders are passed:-

(1) The impugned order of suspension issued by the third respondent in proceedings in Memo No.114197/951/G7/G72/2015-1, dated 3.3.2015, is quashed. (2) The respondents are directed to reinstate the writ petitioner in service.

(3) The respondents are directed to post the writ petitioner in any one of the non-sensitive post till the conclusion of the departmental disciplinary proceedings.

(viii) In W.P.No.11328 of 2019 dated 29.04.2019 [between J.Mathialagan V. The Chairman, Tamil Nadu Generation and Distribution Corporation Ltd., (TANGEDCO), NPKRR Maaligai, No.144, Anna Salai, Chennai and others] in paragraphs No.8 to 10, this Court has observed and held as follows:

"8. Competent Officials of the State as well as the Departments are the custodians of the tax payers money and they have got every duty to protect the public money and spend the same judiciously and in accordance with law. A public official wasting the tax payers money is committing misconduct and it is necessarily that such officials are also to be booked under the Discipline and Appeal Rules. The money of the tax payers are spend by the public officials without considering the circumstances and other aspects.

9. This apart, an employee is not allowed to take employment anywhere during the period of suspension. If a person is made to sit ideally without any work for number of years, the same would cause a mental agony, which is not good for the betterment of the society in general. All these aspects are to be considered, while prolonging the period of suspension. Even, at the time of reviewing the



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order of suspension, the authorities competent must take into consideration of all these aspects and if necessary, revoke the order of suspension and post such employee in any one of the non-sensitive post till the conclusion of the departmental proceedings or criminal case. In view of the fact that the writ petitioner is under suspension for the past seven years, there is absolutely no progress in the Departmental Disciplinary Proceedings.

10. Under these circumstances, this Court is of an opinion that the present writ petition is to be considered. Accordingly, the following orders are passed:-

(1) The impugned order of suspension issued by the third respondent in Memo No.115/Adm.II/A4/ F.Suspension/2012 dated 11.5.2012 is quashed.

(2) The respondents are directed to reinstate the writ petitioner forthwith.

(3) The respondents are directed to post the writ petitioner in any one of the non-sensitive post till the conclusion of the departmental disciplinary proceedings."

6. Therefore, the learned counsel would submit that consistently this Court, even in cases of corruption, held that the employee cannot be suspended for an indefinite period. While so, in the present case, from 2016 onwards the petitioner has been placed under suspension.

7. According to the learned counsel, the criminal trial has not progressed at all and the criminal trial is likely to be delayed. Therefore, the petitioner's claim for revocation of suspension notwithstanding the pendency of criminal trial is imperative and the issue is also directly covered by the above decisions of the Hon'ble Supreme Court of India and also of this High Court.

8. Per contra, Mr.J.Pothiraj, learned Special Government Pleader for the respondents would strongly object to grant of any relief



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to the petitioner on the ground that the petitioner was involved in corruption case and therefore, his reinstatement would be against public interest. In fact, when the criminal case is being tried, the petitioner has to wait till the outcome of the criminal proceeding and only if the petitioner comes out unscathed from the criminal proceedings, he can stake his claim for revocation of suspension. In the said circumstances, the authority has rightly rejected the representation of the petitioner, seeking revocation of the suspension.

9. The learned Special Government Pleader for the respondents would rely on the judgment of the Division Bench of this Court, which relied on by the 4th respondent while rejecting the representation of the petitioner, i.e. W.A.No.735 of 2013 dated 24.06.2013, wherein at paragraphs No.9 & 10, it is observed as follows:

"9. Similar provision applicable in respect of workers other than those engaged in clerical works governed under Rule 31(2)(a) of the Tamil Nadu Electricity Board Standing Order was considered by us in W.A.No.1604 of 2012 dated 28.2.2013, wherein the scope of interference in the order of suspension, which was passed due to involvement of a person in a bribery case, was considered and a decision was rendered to the following effect, "7. Whether a person involved in a bribery case can challenge the order of suspension pending investigation in the criminal case in the Tamil Nadu Electricity Board was considered by the Division Bench of this Court in W.A.(MD) No.294 of 2010 Judgment dated 23.2.2011. In the said judgment in paragraphs 8 to 10 it is held thus, "8. In W.A.No.1114 of 2007, dated 05.11.2007 also, a Division Bench of this Court [SJMJ, as he then was and NPVJ], in the case of the Secretary to Government of Tamil Nadu and others vs. N.Shanmugasundaram, set aside the order of a learned Single Judge quashing an order of suspension and allowed the Writ Appeal and upheld the order of suspension on similar grounds.



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Another Division Bench of this Court [NPVJ and NKKJ] in the case of M.Rajammal v. Principal District Judge reported in 2009 (4) MLJ 212 held that Rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules contemplates that a member of a service may be placed under suspension from service, where an enquiry into grave charges against him is contemplated, or is pending or a complaint against him or any criminal offence is under investigation or trial and if such suspension is necessary in the public interest. In the said Judgment, the decisions of the Supreme Court in Hotel Imperial v. Hotel Workers' Union reported in AIR 1959 SC 1342 : 1959 II LLJ 544 and in R.P.Kapur v. Union of India reported in AIR 1964 SC 787 : 1966 II LLJ 164 were followed and upheld the similar order of suspension.

In W.A.No.1818 of 2009, dated 15.12.2009, a Division Bench of this Court [RBIJ and NPVJ], in the case of S.Jeevanantham vs. the Government of Tamil Nadu and others considered an identical issue and confirmed the order of a learned Single Judge dismissing the Writ Petition, which was filed challenging the order of suspension. Suspension orders were also upheld in the case of D.Gnanasekaran v. Chief Educational Officer reported in 2007 (1) MLJ 457 and in the case of S.Jeyasingh Rajan v. President, Kallloorani Panchayat reported in 2006 (4) MLJ 59. The Supreme Court in the case of Allahabad Bank and another vs. Deepak Kumar Bhola reported in 1997 (4) SCC 1, upheld the order of suspension of a bank employee, who was facing a criminal offence involving in moral turpitude. In the said Judgment, the order of the High Court, Allahabad, quashing the order of suspension was set aside and the appeal filed by the bank was allowed.

9. The Supreme Court in the decision in Surain Singh v. State of Punjab reported in 2009 (1) Supreme 458 held that corruption in the administration has hampered the development of the Nation and the persons, who involved in the corruption cases, should be dealt with firmly and the persons indulging in



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corruption practices cannot be allowed to be in public employment to maintain purity of administration, as such attitude will definitely affect public interest. In Paragraph No.7, it is held thus:-

"7. Day in and day out the gigantic problem of corruption in the public servants is on the increase. Large scale corruption retards the nation building activities and everyone has to suffer on that count. Corruption is corroding like cancerous lymph nodes, the vital veins of the body politics, social fabric of efficiency in the public service and moralizing the honest officers. The efficiency in public service would improve only when the public servant devotes his sincere attention and does the duty diligently, truthfully, honestly and devotes himself assiduously to the performance of the duties of his post. [See: Swatantar Singh v. State of Haryana 1997 (4) SCC 14 and State of M.P v. Shambhu Dayal Nagar 2002 (1) SCC 1."

10. The Supreme Court in the decisions in R.P.Kapoor v. Union of India reported in AIR 1964 SC 7871; Balwantray Ratilal Patel v. State of Maharashtra reported in AIR 1968 SC 800; A.K.K.Nambiar v. Union of India reported in 1969 (3) SCC 864; V.P.Gidroniya v. State of Madhya Pradesh reported in 1970 (1) SCC 362; Ministry of Home Affairs v. Tarak Nath Ghosh reported in 1971 (1) SCC 734; Government of Andhra Pradesh v V.Sivaraman reported in 1990 (3) SCC 57; Uttar Pradesh Rajya Krishi Utpadan Manti Samiti Parishad v. Sanjiv Rajah reported in 1993 (2) LLN 11; State of Orissa v. Bimal Kumar Mohanty reported in 1994 (1) LLN 889; State of Madhya Pradesh v. Ram Singh reported in 2000 (5) SCC 88; State Bank of India v. Rattan Singh reported in 2000 (10) SCC 396; K.C.Sareen v. CBI reported in 2001 (6) SCC 584; Union of India v Rajiv Kumar reported in 2003 (6) SCC 516, categorically held that a person involved in a criminal case, particularly in corruption case, can be placed under suspension till he is exonerated and he can claim only subsistence allowance." The order passed by the learned single Judge in setting aside the order of suspension of a



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person involved in the bribery case was set aside and the writ appeal was allowed.

8. It is well settled principle of law that criminal offence is considered as wrong against State and the Judgment of the Supreme Court reported in (2012) 8 SCC 651 (Shyam Babu v. State of U.P.) can be usefully referred for the said proposition."

10. Applying the principles laid down in the above referred decisions and in the light of Regulation 9 of the Tamil Nadu Electricity Board Employee's Discipline and Appeal Regulations, we hold that the order of the learned single Judge is liable to be set aside and accordingly set aside and the writ petition filed by the respondent herein is dismissed. As the respondent is kept under suspension from 15.7.2010 and charge sheet has been filed on 10.8.2011 in the criminal case, we direct the IX Additional Sessions Judge, Chennai, to dispose of C.C.No.26 of 2011 giving priority as expeditiously as possible, at any cost, not later than six months from the date of receipt of copy of this order.

10. He would also rely on the decision in Union of India and another V. Ashok Kumar Aggarwal reported in (2013) 16 Supreme Court Cases 147 wherein the Hon'ble Supreme Court, at paragraph 26, has inter alia held as under:

"..... In case the court comes to the conclusion that the authority is not proceeding expeditiously as it ought to have been and it results in prolongation of sufferings for the delinquent employee, the court may issue directions. The court may, in case the authority fails to furnish proper explanation for delay in conclusion of the enquiry, direct to complete the enquiry within a stipulated period. However, mere delay in conclusion of enquiry or trial can not be a ground for quashing the suspension order, if the charges are grave in nature. But, whether the employee should or should not continue in his office during the period of enquiry is a matter to be assessed by the disciplinary authority concerned and ordinarily the court



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should not interfere with the orders of suspension unless they are passed in mala fide and without there being even a prima facie evidence on record connecting the employee with the misconduct in question."

11. According to the learned Special Government Pleader, the Hon'ble Supreme Court has held that long period of suspension however does not make order of suspension invalid. Therefore, he would submit that in case of corruption, the person, who was accused of corruption, is not entitled to be reinstated in service pending finalisation of the criminal case.

12. This Court is unable to appreciate the arguments advanced by the learned Special Government Pleader on behalf of the respondents particularly with reference to the citation, since those orders cited by him one the Hon'ble Supreme Court and other by a Division Bench of this Court were rendered prior to Ajay Kumar Choudhary case and therefore, it cannot hold the field any further after the pronouncement of the decision by the Hon'ble Supreme Court of India in the Ajay Kumar Choudhary case. In fact, after Ajay Kumar Choudhary case, numerous orders have been passed by the Division Bench as well as the learned single Judges of this Court following the legal principle of the Hon'ble Supreme Court and directed reinstatement of the suspended employees. Therefore, the arguments advanced on behalf of the respondents deserved to be rejected.

13. While so, this Court is in agreement with the submissions made on behalf of the learned counsel for the petitioner. The Hon'ble Supreme Court of India in Ajay Kumar Choudhary case has elaborately held that the suspension is only transitory or temporary in nature and must perforce be of short duration. In fact, in paragraphs No.11 and 12, the Hon'ble Supreme Court has frowned upon the long period of suspension'. Those paragraphs are also extracted hereunder:



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"11. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the Memorandum of Charges, and eventually culminate after even longer delay.

12. Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his Department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement.

Indubitably the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused.

But we must remember that both these factors are legal ground norms, are inextricable tenets of common law jurisprudence, antedating even the Magna Carta of 1215, which assures that - "We will sell to no man, we will not deny or defer to any man either justice or right." In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial."

14. In same lines, various High Courts and particularly this High Court have passed



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numerous orders setting aside the suspension order and directed the authorities concerned to post the suspended officers concerned in non-sensitive posts. This was done keeping in mind public interest, as payment of huge subsistence allowance without extracting work from the employee concerned, drains public exchequer. Moreover, the person accused is entitled to speedy trial under Article 21 of the Constitution of India. Therefore, in order to uphold the public interest and also constitutional imperatives, the suspension orders have been interfered with by the Courts."

After extracting plethora of decisions as above, the learned Judge has concluded in paragraph Nos.9 to 11 as under:

"9. In the above said case, this Court, after considering all the judgments cited therein and while dealing with a case of similar nature, has come to a conclusion, that even in cases involving corruption, an employee cannot be suspended for an indefinite period. This Court held that such suspended officers, who are undergoing suspension for a very long time, should be posted in non-sensitive posts. This observation was made by this Court since a huge amount is being paid as Subsistence Allowance to such persons without extracting any work from them and the same, in fact, drains the public exchequer. This Court also found that the petitioner cannot be made to wait till completion of the criminal trial. Therefore, this Court deemed it fit to give a direction to the respondents concerned to post the petitioner therein in any non-sensitive post.

10. In the present case, the petitioner has been placed under suspension from the year 2015 onwards. It is true that the petitioner is involved in a corruption case. It is informed that the trial has not even commenced in the criminal case. The petitioner has been suffering suspension for more than four years and he is happily receiving Subsistence Allowance, without doing any work. Therefore, this Court is of the considered view that the petitioner must be directed to be posted in some non-sensitive post and work must be extracted from him, before paying him salary from the public exchequer. It will also be expedient to



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fix a time limit for completion of trial in the criminal case.

11. In view of the above discussion, this Court has no hesitation to allow this Writ Petition and, it is, accordingly allowed. The impugned order, dated 30.12.2015, is hereby set aside and the first respondent is directed to reinstate the petitioner in service and ensure that the petitioner is posted in a non-sensitive post. This order shall be complied with by the first respondent within a period of four weeks from the date of receipt of a copy of this order. A further direction is also issued to the learned Chief Judicial Magistrate -cum - Special Judge, Vellore, to complete the proceedings in C.C.No.4 of 2018 on his file within a period of three months from the date of receipt of a copy of this order. It is made clear that trial shall be conducted on a day-to-day basis and no unnecessary adjournments shall be granted in the case. No costs. Consequently, the connected W.M.P.No.826 of 2019 is closed."

(vii) The same learned Judge has passed another order in W.P.No.34542 of 2019, dated 20.12.2019, in the case of A.Sivakumar Vs. Joint Registrar of Cooperative Societies, allowing one other challenge to the prolonged suspension in paragraph Nos.10 to 12, the operative portion of the order, are extracted hereunder:

"10. It is clear from the above order that this Court had taken into consideration all the earlier judgments and it has categorically held that a suspension can only be transitory or temporary in nature. It cannot be extended for a very long time without any justification. This Court also held that huge payments are being made by way of subsistence allowance without extracting any work from the delinquent employees and the same has a direct impact on the public exchequer.

11. It must be borne in mind that even in cases of corruption, an employee cannot be suspended for an indefinite period and if in case an employee has to be kept in suspension, then a reasoned order must be passed justifying the extension of suspension. Without resorting to such a process, an employee cannot be kept under suspension endlessly.



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12. In view of the above discussion, this Court finds that the petitioner has already been kept under suspension for more than two years and there is absolutely no progress in the investigation after an FIR was registered. That apart, no charge memo has been issued by the Society. Therefore, no useful purpose will be served by continuing with the suspension of the petitioner and paying him subsistence allowance without extracting any work. Hence, this Court has no hesitation to interfere with the order of suspension passed by the 2nd respondent in his proceedings dated 18.11.2017 and accordingly the same is quashed. The 2nd respondent is directed to reinstate the petitioner with all attendant benefits and he shall ensure that the petitioner is posted in a non-sensitive post. This order shall be complied with within a period of four weeks from the date of receipt of copy of this order.''

(viii) This Court in consideration of similar challenge, has allowed one other writ petition in W.P.No.23238 of 2020 dated 06.03.2020, in the case of N.Annapoorani Vs.District Collector, the operative portion as found in paragraph Nos.15 to 17, are extracted hereunder:

"15. When the period of suspension is for more than seven years, enormous and severe anguish is experienced by the delinquent impinging upon the right of the delinquent to live with dignity and earn her livelihood. The prolonged suspension even in matters of corruption like the present one, by itself, constitute a grave prejudice to the right of the citizens to have speedy trial and justice. Such prolonged suspension would by itself casts stigma on the delinquent concerned and the stigma would prolong as long as the suspension order operates without any finality to the allegation being enquired into against the delinquent concerned. Such delay in judicial proceedings casts a shadow on the Government servants' character and integrity on one hand and on the other, the subsistence allowance which is required under law to be paid to the suspended employee would be a loss to the public exchequer, as the suspended Government servants draw their subsistence allowance without any corresponding duty to work and earn their livelihood.



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16. Therefore, this Court is of the view that both in the interest of delinquent concerned as well as the public administration, the prolonged suspension like the present case for more than seven years needs to be avoided unless, the administration feels that exceptionally a hard and incorrigible case wherein, reinstatement pending criminal/disciplinary proceeding would put the public interest completely at peril and would shake the confidence and faith of the society in public administration. The prolonged suspension in the normal course is to be discouraged as authorities ought to review the cases of suspension periodically and particularly in long pending criminal cases, the authorities cannot simply take refuge on the reason of the pendency of criminal trial against the delinquent. Such approach of the authority concerned betrays application of mind in evaluating each one of the case of suspension on its merits.

17. In the above circumstances, this Court has no hesitation in allowing the writ petition. Accordingly, the writ petition is allowed and the proceedings of the 1st respondent in Roc.No.27835 of /12/K4 dated 09.11.2012 and Roc.No.27835/12/K4 dated 17.11.2017 are set aside. The first respondent is directed to reinstate the petitioner in any non-sensitive post as far as possible, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed."

(ix) Apart from the above decision, a recent decision of the learned Single Judge has also been referred to in W.P.No.19037 of 2021 dated 09.09.2021, in the case of D.Lakshmi Narayanan Vs. The Principal Secretary to Government, the learned Judge of this Court after referring to various decisions and also considering the circular dated 23.07.2015, has allowed the writ petition. Paragraph Nos.2 to 7 are extracted hereunder:

"2. Under these circumstances, the petitioner had sent a representation dated 22.12.2020 which has culminated in the impugned order dated 27.01.2021. By the impugned order, the respondents have merely informed that the request of the petitioner cannot be considered as per the instructions issued in Letter No.476854/94~10 Personnel and Administrative Reforms (N)



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Department, dated 05.01.1996. The aforesaid Government Order has however been diluted and superseded by several Government Orders. In Letter No.13519/N/2015 dated 23.07.2015 instructions have been issued to All Secretaries/Principal Secretaries to Government, Department of Secretariat following directions in the Hon-ble Supreme Court.

3. The above letter has also been taken note of by the Hon-ble Division Bench of the Madurai Bench of this Court in W.A.(MD).No.100 of 2017 dated 13.02.2017 in the case of M.Murugan Vs. The Deputy Inspector General of Police. In several other decisions of this Court has taken note of the above letter. They are as under:-

(i) W.P.No.25187 of 2018 in the case of K.Malarvizhi Vs. Commissioner of Police;

(ii) W.P.No.4493 of 2016 in the case of S.Ramu Vs. Commissioner, Avadi Municipality;

(iii) W.P.No.5874 of 2019 in the case of O.Baskaran Vs. Additional Director General of Police;

(iv) W.A.No.4254 of 2019 in the case of Commissioner of Police Vs. K.Malarvizhi;

(v) W.P.No.743 of 2019 in the case of B.Sundara Prabhu Vs. Principal Secretary to Government;

(vi) W.P.No.34542 of 2019 in the case of A.Sivakumar Vs. Joint Registrar of Cooperative Societies and

(vii) W.P.No.23238 of 2020 in the case of N.Annapoorani Vs. District collector.

As a matter of fact, the Government Letter No.47685A/94~10, dated 05.01.1996 was also considered in S.Ramu Vs. The Commissioner, Avadi Municipality in W.P.No.4493 of 2016 vide letter dated 14.11.2019 which has been cited above. The aforesaid Government Order has also extracted the above letter which reads as under:

a. If the officers arrested red-handed in the act of demand and or acceptance of bribes are



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released from suspension and allowed to rejoin duty, the Government's objective of maintaining probity in public administration will be belittled;

b. it would be embarrassing to have a public servant on duty, who is facing trial in criminal court or a Tribunal/Departmental enquiry for grave charges which would not only affect the morale of others in service but also would act as a disincentive for the public servants who are committed to honest conduct in public service.

c. The High Court, Madras in a case law in D.Uhirakumaran Vs. The Government of Tamil nadu and another (1988 Writ Law Reporter p-229) has quoted an observation as given below:-

"The seriousness of the allegations and the nature of the allegations and the embarrassment faced by the Government and the necessity to keep the high morale of the public services could also be factors that could legitimately weigh with the Government in making the order of suspension."

d. The Supreme Court of India in a case law in R.P.Kanpur Vs. Union of India and another (1964 AIR Supreme Court p -787) has, held as given below

"On general principles therefore, the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him."

(ii) In addition to the above, detailed guidelines have already been issued in G.O.(Ms). No.40 P & AR (N) department dated 30.01.1996 to curtail (i) prolonged suspension in departmental disciplinary cases. In this G.O itself also, it has been clearly stated that the time limit prescribed therein, does not applicable to the criminal cases.

Noting the above decision, and the letter circular of the Government Order dated 23.07.2015 bearing reference Letter No.13519/N/2015-1. This Court has held as under:-

14. Further no disciplinary action has been taken against the petitioner. The petitioner was



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working as a Junior Assistant. There is no material to show that the petitioner can anyway tamper with the evidence. The above mentioned authorities shows that the Courts have frowned upon the persons being kept in prolong suspension by paying 75% of the emoluments as subsistence allowance, without any work extracting from them.

15. G.O.Ms.No.40, Personnel and Administrative Reforms (N) Department, dated 30.01.1996, also runs counter to the above mentioned judgments. In view of the fact that no disciplinary proceedings have been initiated against the petitioner, the petitioner cannot be kept in suspension for such a long time, merely because the petitioner is facing a criminal case. The writ petition is allowed. The respondents are directed to reinstate the petitioner in a non-sensitive post completely unconnected to the work he has performed. No costs. Consequently, connected miscellaneous petition is closed.

4. All the other decisions rendered above also uniformly have held that suspension beyond the period of three months after without issue a charge memo cannot remain in force following the decision of Hon-ble Supreme Court in Ajay Kumar Choudry Vs. Union of India 2015 (7) SCC 291.

5. Since the impugned order has been passed in the light of the letter dated 05.01.1996, which stands superseded by Government Letter No.13519/N/2015-1 dated 23.07.2015, the impugned orders passed by the 1st respondent are unsustainable and are liable to be quashed.

6. Accordingly, the impugned orders are quashed. Consequently, the 1st respondent is directed to reinstate the petitioner in a non-sensitive posts where the petitioner will have no opportunity to tamper with the evidence against him and or indulge in alleged corruption. The respondent may reinstate the petitioner within a period of 30 days from the date of receipt of a copy of this order.

7. This writ petition stands allowed with the above observations. No costs. Consequently, connected miscellaneous petitions are closed."



6. The learned counsel would therefore submit that no elaborate legal contention is required to be advanced, as repeatedly and consistently the Courts have held that prolonged suspension is legally impermissible, except in extreme cases. The Courts have even in cases of corruption interfered with the prolonged suspension if it is found that the same was unjustified, considering the long period of suspension, coupled with the fact of no progress in the criminal trial and no departmental proceedings pending against the delinquent. The matter herein is therefore squarely covered in all fours.

7. This Court at the outset, is in agreement with the submissions made on behalf of the petitioner. Although the Government has distinguished between non-vigilance and vigilance cases in respect of the application of the ratio laid down by the Ajay Kumar Choudhary's case, nonetheless, there are number of other decisions which uniformly held that the prolonged suspension even otherwise cannot be countenanced in law. In this case, according to the counsel for the petitioner there has been no progress in the criminal case, since its registration in the year 2013. The statement has not been disputed by the respondent either in this oral submission or it has been specifically refuted in the counter affidavit. The respondents have also admitted that the disciplinary action has been kept in abeyance, in view of the pendency of the criminal case against the petitioner. That being the case, keeping the petitioner under suspension for more than 8 years, cannot be justified at all, under any circumstances.

8. Although this Court is conscious of the fact that a person accused of corrupt practices, ought not be reinstated in service as that would demoralize honestly serving employees, but, the fact remains, the suspended employee is entitled to be paid subsistence allowance. The public money cannot frittered away by paying sizable amount towards subsistence allowance to the suspended employee for indefinite period of time, without extracting any work from him. The suspended employee would continue to reap the fruits of hefty monthly payments paid as subsistence allowance and in return, he would contribute nothing to public service.

9. In the overall consideration of the above scenario, the Courts have started interfering with the prolonged suspension when it found that there was no progress in the criminal case or in departmental proceedings. Even before the judgment of the Supreme Court in Ajay Kumar Choudhry Vs. Union of India [2015(2) Scale 432], this Court in K.Selvamani Vs. State and another, reported in 2014(4) MLJ, 79, set aside the prolonged suspension, on the reasoning that the suspended employee had been in receipt of 75% towards subsistence allowance and that there was no



progress in the criminal case, nor any departmental proceedings pending against him. For compelling reasons on periodical review of the prolonged suspension, reflecting proper application of mind, for instance, the employee concerned is entirely responsible for the delay in completion of the criminal trial or the departmental proceedings, in that event, the Court may not be justified in interfering with the suspension merely on the ground, the suspension being prolonged.

10. In the circumstances cliched citing of pendency of criminal case, without advertng to the surrounding facts and circumstances as to the stage of the criminal case or the departmental proceedings as the case may be, the conduct and the attitude of the employee towards early completion of the proceedings etc., cannot justify keeping the employee under suspension for years together, to enable the employee to luxuriate in idleness with monthly remittances to take care of his modest sustenance.

11. Be that as it may, recently the issue of prolonged suspension was the subject matter of reference before a Full Bench of this Court. The reference was due to divergent and conflicting views expressed in two Division Bench Judgments in the matter of The Director General of Police and Another Vs. T.Kamarajan, 2019 SCC Online Mad 35836 and the Chairman-cum-Managing Director, TANGEDCO and others V. R.Balaji [Judgment dated 27.08.2021 passed in W.A.No.68 of 2021]. The essence of consideration of the Full Bench appeared to have been centered around the decision of the Hon'ble Supreme Court in Ajay Kumar Choudhary's case, as to whether a suspension can be continued beyond three months, if within the said period, no charge memo or charge sheet is served on the delinquent. The Full Bench after referring to relevant service rules on the subject and various case laws connected thereto, eventually answered the reference, which would be extracted infra.

12. Before advertng to the answer to the reference by the Full Bench, it is useful to refer paragraph No.30 of the decision to hold that interference with prolonged suspension need not peremptorily and necessarily hinge on the ruling of the Supreme Court in Ajay Kumar Chaudhary's case. A prolonged suspension without justification on facts, even in the case of corruption can be subjected to judicial interference. Paragraph No.30 of the order of the Full Bench passed in W.P.Nos.2165 of 2015 and 21628 of 2018 dated 15.03.2022, is extracted hereunder:

"30. At this stage, we need to refer to the judgment of the Apex Court in the case of Promod Kumar and another, supra. The aforesaid judgment is again to be read in the context of the facts given



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therein. That was a case of deemed suspension, as the employee therein remained behind bars for more than 48 hours. Wherein, largely the issue was in reference to challenge to the charge memo. In paragraph (27) of the said judgment, the court analyzing the facts did not find it appropriate to continue the order of suspension, as there would be no threat to the fair trial. The judgment in the said case was on its own facts. Thus, we are of the view that the judgment of the Apex Court in the case of Ajay Kumar Choudhary, supra, does not lay down absolute proposition of law that an order of suspension cannot be continued beyond the period of three months if the memorandum of charges/charge-sheet is not served within three months. Rather, the issue of challenge to the order of suspension should be analyzed on the facts of each case. It is keeping with the gravity of the charges and the period therein because in case of trap, the order of interference with the order of suspension may have serious consequences.''

13. As a matter of fact, the Division Bench, on the facts of the above case felt compelled to affirm the order of the Central administrative Tribunal directing revocation of prolonged suspension of an IPS officer for more than 3 years. The matter went upto Supreme Court and the Supreme Court confirmed the order and observed as under in 2018(17) SCC 677 (State of Tamilnadu rep. by Secretary to Government(Home) vs. Promod Kumar, IPD and another).

24. The first respondent was placed under deemed suspension under Rule 3(2) of the All India Services Rules for being in custody for a period of more than 48 hours. Periodic reviews were conducted for his continuance under suspension. The recommendations of the Review Committees did not favour his reinstatement due to which he is still under suspension. Mr P. Chidambaram, learned Senior Counsel appearing for the first respondent fairly submitted that we can proceed on the basis that the criminal trial is pending. There cannot be any dispute regarding the power or jurisdiction of the State Government for continuing the first respondent under suspension pending criminal trial. There is no doubt that the allegations made against the first respondent are serious in nature. However, the point is whether the continued suspension of the first respondent for a prolonged period is justified.



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19. The writ petition accordingly allowed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

gsk

To

1. The Principal Secretary to Government,
Higher Education (FI) Department,
Fort St. George,
Chennai - 600 009.
2. The Director of Collegiate Education,
D.P.I Company, College Road,
Chennai - 600 006.
3. The Principal,
Government Arts College,
Salem - 7.

+1cc to Mr.M.Ganesh, Advocate, S.R.No.21214

+1cc to the Special Government Pleader, S.R.No.21795

W.P.NO.32561 OF 2016

SKM(CO)
PBS/11/04/2022