



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P (MD)No.4741 of 2021

and W.M.P. (MD)No.3853 of 2021

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C.Rajendran

... Petitioner

versus

1. State of Tamil Nadu,
Rep. by its Secretary,
Municipal Administration and
Water Supply (ME 4) Department,
Secretariat, St. George Fort,
Chennai - 600 009.

2. The Commissioner of Municipal
Administration,
11th Floor, Urban Administrative
Building,
75, Santhome High Road,
MRC Nagar, Raja Annamalaipuram,
Chennai - 600 028.

3. The Commissioner,
Thiruverkadu Municipality,
No.1, Sivan Koil Street,
Thiruverkadu,
Chennai - 600 077.

4. The Commissioner,
Kovilpatti Municipality,
Park East Street,
Kovilpatti - 628 502,
Thoothukudi District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorari to call for the records of the second respondent impugned proceeding in Roc.No.13443/2020/VI dated 18.02.2021 and quash the same.

For Petitioner	:	Mr.R.Devaraj
For R1 to R3	:	Mr.J.Ashok, Additional Government Pleader
For R4	:	Mr.P.Srinivasa

ORDER

This writ petition is filed against the order of suspension dated 18.02.2021 passed by the second respondent.



2. The petitioner, who is working as a Town Planning Officer in the fourth respondent Municipality, was placed under suspension by the order impugned in this writ petition, pursuant to his involvement in a criminal case in Crime No.8 of 2020.

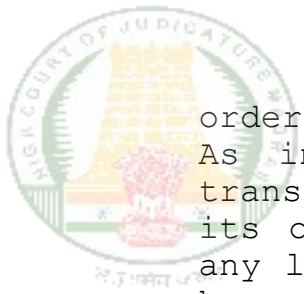
3. The learned counsel appearing for the petitioner, by referring Rule 8(9)(ii) of the Tamil Nadu Municipal Services (Discipline and Appeal) Rules, 1970, submits that if the authority decided to place a person under suspension on account of a criminal case pending against him, then, the authority shall explain the necessity for such suspension in the public interest. Here, in the order impugned in this writ petition, there is no reference about the necessity, which arose for suspending the petitioner on public interest. The learned counsel appearing for the petitioner further submits that as per the decision of the Hon'ble Apex Court in **Ajay Kumar Choudhary vs. Union of India**, reported in **2015 7 SCC 291**, the order of suspension cannot survive for more than 90 days, if the charge memo is not furnished as against the delinquent officer. But, in this case, though the petitioner was placed under suspension in the month of February 2021, neither any charge memo has been served upon him nor the order of suspension has been revoked by the respondents. Therefore, on these two grounds, the impugned order of suspension is liable to be set aside.

4. Mr.J.Ashok, learned Additional Government Pleader appearing for the respondents 1 to 3 submits that a surprise inspection was conducted at Thiruverkadu Municipality on 02.09.2020 by the District Deputy Inspection Cell Officer along with Directorate of Vigilance and Anti Corruption Officials. During the inspection, unaccounted money of Rs.1,48,000/- was seized from one K.Kavitha, T.M.Arun and the petitioner herein. According to him, a sum of Rs.1,25,000/- was recovered from the petitioner. The Vigilance and Anti Corruption Department has also registered a case in Cr.No.8/AC/2020/C-II on 03.09.2020 against the petitioner and others for the offence under Section 7 of Prevention of Corruption Act 1988. However, a final report is yet to be filed in Crime No.8 of 2020. He has also relied upon the Judgment of a Division Bench of this Court passed in W.A.No.599 of 2020, dated 02.09.2020.

5. This Court paid its anxious consideration to the rival submissions made.

6. In the case of **Ajay Kumar Choudhary vs. Union of India**, reported in **2015 7 SCC 291**, the Hon'ble Apex Court has 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/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 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 Chargesheet, 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. However, the First Bench of this Court, in W.A.No.599 of 2020, vide Judgment dated 02.09.2020, has passed the following order:

"10. On perusal of the judgment in Ajay Kumar Choudhary, it is clear that the Hon'ble Supreme Court was dealing with a case wherein the Appellant had been served with a charge sheet before the judgment was pronounced. On that basis, on the facts of that case, paragraph 22 reflects that the order of suspension was not set aside although the suspension period exceeded three months. However, while disposing of the case, the Hon'ble Supreme Court held that the suspension period should not extend beyond three months if the memorandum of charges/charge sheet is not served on the delinquent officer/employee. The judgment in Ajay Kumar Choudhary was dealt with in detail by a Division Bench of this Court in Director General of Police [cited supra]. In the said judgment, this Court held as follows in paragraphs 9-11:

9. We are of the view that Ajay Kumar Choudhary

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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 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 memo had been issued, though after the period of 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."

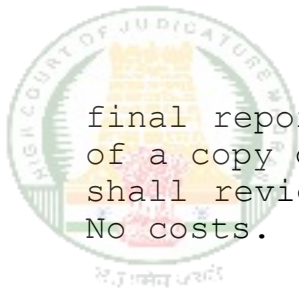
Likewise, the Division Bench of this Court in R.Elumalai District Collector, [2020 SCC online Mad 1472,



considered the Ajay Kumar Choudhary case and the judgment of the Delhi High Court in Government of NCT of Delhi (cited supra) and concluded that in cases relating to suspension for alleged involvement in graft charges leading to a criminal trial, interference with the suspension order on the basis that the suspension period exceeded three months is not justifiable.

11. Upon considering the law laid down in the judgments that have been discussed herein above, it is clear that there is no absolute rule in respect of the validity of suspension orders from the perspective of duration especially when such suspension is in the context of a pending criminal proceeding. In other words, in these situations, the law on suspension as laid down in paragraph 11 of R.P. Kapur v. Union of India, AIR 1964 SC 787, by a Five Judge Bench upholding suspension pending enquiry subject to payment of subsistence allowance as per service conditions and that in Union of India v. Ashok Kumar Aggarwal (2013) 16 SCC 147, wherein it was held that the court does not sit in appeal and that such orders would be interfered with only if the charges are patently baseless, mala fide or vindictive would continue to hold the field. In this case, as stated earlier, there is a pending criminal proceeding, wherein the Respondent is being prosecuted for corruption. In these circumstances, the decision of the learned single Judge to direct the Chief Judicial Magistrate to conclude the proceeding within four months is justified and does not warrant interference. On the other hand, especially in light of the above direction, the revocation of the suspension on the ground that it is prolonged is clearly unsustainable. The consequential direction to post the Respondent in a nonsensitive post is also not sustainable especially in view of the fact that the Respondent is an Assistant Engineer and it is difficult to find a post that may be termed non-sensitive in that cadre. Therefore, we allow the appeal in part insofar as it directs the Appellants to revoke the suspension and to post the Respondent in a non-sensitive post. On the other hand, we affirm the impugned order to the extent that the Chief Judicial Magistrate, Thiruvannamalai, has been directed to conclude the criminal proceedings within a period of four months, albeit with the qualification that the said period shall run from the date of receipt of a copy of the judgment in this appeal."

8. In view of the Judgment passed by the First Division Bench of this Court in W.A.No.599 of 2020, dated 02.09.2020 (cited supra), this Court is not inclined to entertain this writ petition. Accordingly, the writ petition is dismissed. However, the



final report within a period of six months from the date of receipt of a copy of this order. Based on the final report, the respondents shall review the order of suspension passed against the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (W)

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Sub Assistant Registrar(CS)

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To

1. The Secretary,
Municipal Administration and
Water Supply (ME 4) Department,
Secretariat, St. George Fort,
Chennai - 600 009.
2. The Commissioner of Municipal Administration,
11th Floor, Urban Administrative Building,
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4. The Commissioner,
Kovilpatti Municipality,
Park East Street,
Kovilpatti - 628 502,
Thoothukudi District.
5. The Director,
Vigilance and Anti Corruption, Chennai.

+1 CC to M/s.R.DEVARAJ, Advocate (SR-1603[F] dated 12/01/2022)

+1 CC to M/s.SPL.GP (SR-1722[F] dated 19/01/2022)

W.P(MD)No.4741 of 2021

12.01.2022

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