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W.P. No. 10616 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2023

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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 10616 of 2023

and

W.M.P. No.10561 of 2023

S.Kandasamy

... Petitioner

-VS-

1 The Divisional Engineer
(Construction and Maintenance)
Highways Department
Gopichettipalayam, Erode (District).

2.The Assistant Divisional Engineer
(Construction and Maintenance)
Thalavadi, Erode District.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent herein culminating in his proceedings vide memo No.422/2021/A3/dated 06.10.2021 and quash the same and consequently direct the respondents herein to reinstate the petitioner in service within the time frame as may be stipulated by this Hon'ble Court.



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For Petitioner : Mr.M.Santhanaraman
For Respondents : Mr.B.Vijay
Additional Government Pleader

ORDER

Heard Mr. M.Santhanaraman, Learned Counsel appearing for the Petitioner and Mr. B.Vijay, Learned Additional Government Pleader appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner is working as Gang Mazdoor in the Highways Department of the Government of Tamil Nadu. He was arrested and remanded to judicial custody on 22.12.2020 in furtherance to a criminal complaint lodged against him in Crime Nos. 771 and 772 of 2020 for alleged commission of certain offences punishable under law and he was released on bail on 30.12.2020. The Second Respondent in proceedings in Se.Mu.Ka. No.665/2020/Aa1 dated 31.12.2020 treated the Petitioner as deemed to be under suspension with effect from 22.12.2020 when he was remanded to judicial custody for more than 48 hours. The Writ Petition in W.P. No. 14397 of 2021 filed by the Petitioner challenging the said order of suspension was disposed by this Court by order dated 14.07.2021 requiring the First Respondent to pass orders on the



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representation dated 19.02.2021 made by him for revocation of his suspension.

The First Respondent by order in Memorandum No.422/2021/A3 dated 06.10.2021 rejected the said representation, which is assailed in this Writ Petition.

3. Learned Counsel for the Petitioner submits that the arrest and remand into judicial custody of the Petitioner is not connected with his employment and there is no necessity for continuance of the suspension indefinitely.

4. In this context, reference must be made at once to the decision of the Hon'ble Supreme Court of India in ***Ajay Kumar Choudhary -vs- Union of India*** [(2015) 7 SCC 291] where it has been laid down as follows:-

“21. We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges /charge-sheet is served, a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the person concerned to any local or personal contact to any department in any of its offices within



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or outside the State so as to sever any local or personal contact that he may have and which he made misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognised principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognise that the previous Constitution Benches have been reluctant to quash proceedings on the ground 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.”

The Full Bench of this Court in ***P.Kannan -vs- Commissioner of Municipal Administration*** [Order dated 15.03.2022 in W.P. Nos. 2165 of 2015 and 21628 of 2018] has further clarified the legal position as follows:-



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“(i) *The judgment of the Apex Court in the case of **Ajay***

Kumar Choudhary -vs- Union of India [(2015) 7 SCC 291],

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 has not been served within three months, or if memorandum of charges /charge sheet has not been served within three months, or if memorandum of charges /charge sheet is served without reasoned order of extension.

(ii)

(iii) *The issue of challenge to the order of suspension should be analyzed on the facts of each case, considering the gravity of the charges and the rules applicable.*

(iv) *Revocation of suspension with a direction to the employer to post the delinquent in a non-sensitive post cannot be endorsed or directed as a matter of course. It has to be based on the facts of each case and after noticing the reason for the delay in serving the memorandum of charges /charge sheet.”*

The Government of Tamil Nadu in G.O. Ms. No. 81, Human Resources Department, dated 04.08.2022, after referring to the aforesaid binding



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decisions, has issued a compendium of instructions to be followed for review of

suspension pending enquiry into grave charges against Government servants

and the directions therein relevant to this case are extracted below:-

“11. The Government, after careful examination, reiterates the guidelines issued in the Government Order second read above with slight modification as follows:-

(i) The power of ordering suspension should be exercised carefully and with restraint. Before a suspension order is issued, the authority concerned must be clear in mind that it is necessary. Prolonged suspension means that Government pays a Government Servant without extracting any work from him. In view of the above position, the suspension should not be resorted to unless the concerned authority has considered all the relevant factors and recorded his reasoned conclusion that it is in the public interest to place the Government Servant under suspension.

(ii) Where a Government Servant has been suspended on disciplinary proceedings contemplated, such proceedings should be initiated immediately and finalized normally within a period of six months.”



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That apart, the Hon'ble Supreme Court of India in **S.Govinda Menon -vs-**

Union of India (AIR 1967 SC 1274) has observed as follows:-

"In our opinion, it is not necessary that a member of the Service should have committed the alleged act or omission in the course of discharge of his duties as a servant of the Government in order that it may form the subject-matter of disciplinary proceedings. In other words, if the act or omission is such as to reflect on the reputation of the officer for his integrity or good faith or devotion to duty, there is no reason why disciplinary proceedings should not be taken against him for that act or omission even though the act or omission relates to an activity in regard to which there is no actual master and servant relationship. To put it differently, the test is not whether the act or omission was committed by the Appellant in the course of the discharge of his duties as servant of the Government; The test is whether the act or omission has some reasonable connection with the nature and condition of his service or whether the act or omission has cast any reflection upon the reputation of the member of the Service for integrity or devotion to duty as a public servant."



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This would obviously mean that it is incumbent upon the concerned authority to examine the necessity or otherwise of the continuance of the suspension of the Petitioner with due regard to the said instructions and shall carry out such exercise by 30.09.2023 and communicate the decision taken to him under written acknowledgment.

5. In the result, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

06.04.2023

kst

Index: Yes/No

Neutral Citation: Yes/No

Note: Issue order copy by 21.08.2023.

To

1. The Divisional Engineer
(Construction and Maintenance)
Highways Department
Gopichettipalayam, Erode (District).
2. The Assistant Divisional Engineer
(Construction and Maintenance)
Thalavadi, Erode District.



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P.D. AUDIKESAVALU, J.

kst

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