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W.P. No. 11111 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2023

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

**W.P. No. 11111 of 2022
and
W.M.P. No. 10701 of 2022**

K.Anbalagan

... Petitioner

-VS-

1.The Director of Agriculture,
Chepauk, Chennai.

2.Joint Director of Agriculture,
No.1, Cherry Road,
Near Thiruvalluvar Statue,
Salem – 636001.

3.Assistant Director of Agriculture,
TCRS Compound,
Yethapur Village,
Puthiragoundempalayam Post,
Pethanayakkanpalayam Taluk,
Salem District – 636119.

... Respondents

Common 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 relating to the order passed by the 1st respondent in Proc.No.DCS2/2/87341/2020 dated 26.11.2021 and quash the same consequently to direct the respondents to reinstate the petitioner in service with all consequential and other attendant benefits.



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For Petitioner : Mr. S.Conscious Ilango
For Respondents : Mr. B.Vijay
Additional Government Pleader

ORDER

Heard Mr. S.Conscious Ilango, 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 Deputy Agricultural Officer in the Office of the Third Respondent. He was arrested and remanded to judicial custody in furtherance to a criminal complaint lodged against him in Crime No. 02 of 2020 for alleged commission of certain offences punishable under law based on the allegations of one Prakash, who is said to have added ineligible beneficiaries to PM – KISAN Scheme, and he was released on bail on 21.12.2020. The Second Respondent in Proceedings No. B2/12210/2020 dated 24.09.2020 treated the Petitioner as deemed to be under suspension with effect from 22.09.2020. Further, the Second Respondent has issued Charge Memo No. Aa2/12210/2020 dated 15.10.2020 to the Petitioner calling upon him to submit his explanation



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within a period of 15 days from the date of its receipt. In furtherance thereof, the Petitioner sent a representation dated 28.12.2020 on 04.01.2021 requesting 30 days time to submit his explanation to the said charge memo and thereafter sent a detailed reply dated 25.02.2021 denying the charges framed against him. The Petitioner has also sent representation dated 25.02.2021 to the Second Respondent and representation dated 27.04.2021 to the First Respondent for revocation of his suspension and reinstate him in service. Though the Second Respondent has called for the opinion of the CBCID-OCU Police for revoking the suspension of the Petitioner, the Second Respondent by Proceedings in Se. Mu. Aa. No. Aa2/12210/2020 dated 15.09.2021 appointed Enquiry Officer to conduct enquiry on the charges against the Petitioner. In that backdrop, the First Respondent by Proceedings No. DCS 2/2/87341/2020 dated 26.11.2021 informing the Petitioner that his suspension period shall continue until further orders, which is assailed in this Writ Petition.

3. 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



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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 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



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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:-

*“(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)



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(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 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*



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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.”

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.

In the result, the Writ Petition is disposed on the aforesaid terms. Consequently, connected miscellaneous petition is closed.



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Index: Yes/No

Neutral Citation: Yes/No

Note: Issue order copy by 21.08.2023.

To

- 1.The Director of Agriculture,
Chepauk, Chennai.
- 2.Joint Director of Agriculture,
No.1, Cherry Road,
Near Thiruvalluvar Statue,
Salem – 636001.
- 3.Assistant Director of Agriculture,
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P.D. AUDIKESAVALU, J.

KKN

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