



W.P.(MD).No.17695 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.08.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.17695 of 2023

K.Ramachandran

... Petitioner

Vs.

1.The Chief Educational Officer,
Office of the Chief Educational Officer,
District Collectorate Campus,
Ramanathapuram District.

2.The District Elementary Educational Officer,
Office of the District Elementary Education,
Government Boys Higher Secondary School Campus,
Paramkudi,
Ramanathapuram District.

3.The Block Development Officer,
Office of the Regional Education Officer,
Bogalur Union,
Ramanathapuram District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the second respondent to revoke the suspension order vide R.C.No.828/A32023, dated 26.02.2023 by considering the petitioner's representation, dated 13.07.2023 in the light of G.O(MS)No.81, Human Resources Management (N) Department, dated 04.08.2022 and consequently,



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directing the third respondent to pay subsistence allowance during the suspension period from 26.02.2023 to till date.

For Petitioner : Mr.A.B.Jeeva

For Respondents : Mr.N.Ramesh Arumugam
Government Advocate

ORDER

The present Writ Petition has been filed by the petitioner for issuance of a Writ of Mandamus, to direct the second respondent to revoke the suspension order vide R.C.No.828/A32023, dated 26.02.2023 by considering his representation, dated 13.07.2023 in the light of G.O(MS)No.81, Human Resources Management (N) Department, dated 04.08.2022 and consequently, to direct the third respondent to pay subsistence allowance to him during the suspension period from 26.02.2023 to till date.

2.Heard Mr.A.B.Jeeva, learned counsel appearing for the petitioner and Mr.N.Ramesh Arumugam, learned Government Advocate appearing for the respondents and perused the materials available on record.



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3.The petitioner had worked as a Secondary Grade Teacher before the Panchayat Union Primary School, Keezhambal, Bogalur Union, Ramanathapuram District. Though he has received several awards including the National Best Teacher Award, on 24.02.2023 he was arrested by the CBI authorities, Madurai in connection with his brother's criminal case. Thereafter, the second respondent suspended him from service vide proceedings, dated 26.02.2023. The CBI, ACB, Madurai, registered the F.I.R in Crime No.RC 229 of 2021/A/0001 for the offences under Sections 120(b) and 420 of I.P.C r/w Section 13(2), 13(1)(d) of the Prevention of Corruption Act, 1988, against his brother one Panchatcharam, who was arrayed as Accused No.1 and in the same case, the petitioner was arrayed as Accused No.3. Pursuant to the same, on 24.02.2023, the CBI arrested the petitioner and remanded him to judicial custody and the petitioner was enlarged on bail on 14.06.2023. After being released on bail, the petitioner made a representation, dated 13.07.2023 to the respondents seeking to revoke his suspension order in the light of G.O(MS)No.81, Human Resources Management (N) Department, dated 04.08.2022 and also to direct the third respondent to pay subsistence allowance. The said representation was not considered and hence, this Writ Petition came to be filed.



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4.The learned counsel appearing for the petitioner relying upon G.O(MS)No.81, Human Resources Management (N) Department, dated 04.08.2022, submitted that immediately after filing this Writ Petition, the respondents have provided him with subsistence allowance, however, his suspension was not revoked and since already more than five months has elapsed from the date of his suspension ie. from 26.02.2023, necessarily his suspension should be revoked in the light of the aforesaid G.O, for which, he relied upon paragraph Nos.3 to 5 of the aforesaid G.O(MS)No.81, Human Resources Management (N) Department, dated 04.08.2022, which is extracted as follows:-

"3. In the Government letter third read above, based on the directions of the Hon'ble Supreme Court of India in Ajay Kumar Choudhary Vs Union of India through its Secretary and Another in Civil Appeal No.1912 of 2015 (Arising out of SLP (C) No.31761 of 2013) dated 16.02.2015, the Departments of the Secretariat and the Heads of Department were requested to follow the directions ordered by the Hon'ble Supreme Court on the limitations in the period of suspension in letter and spirit as follows:-



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i) *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.*

ii) *If the Memorandum of Charges / Charge sheet is served, a reasoned order must be passed for the extension of the Suspension.*

4. *Subsequently, in view of the admitted fact that the gravity of misconduct in a disciplinary proceeding arising out of vigilance case / criminal case is alarmingly more than that of the other disciplinary proceedings and considering the sensitiveness of corruption cases, orders were issued that the limitation of suspension specified in the letter third read above will be applicable only to the departmental disciplinary case / inquiries pertaining to non-vigilance cases and/or non-criminal cases vide Government letter fourth read above.*

5. *The full Bench of Madras High Court in its common order dated 15.03.2022 in W.P.Nos.2165 of 2015 and 21628 of 2018 in the case of P.Kannan and another Vs. The Commissioner of Municipal Administration and others has held as follows:-*

"(i) The judgement of the Apex Court in the case of Ajay Kumar Choudhary supra, does



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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 is served without reasoned order of extension."

5.The learned counsel appearing for the petitioner relied upon the order passed by the Hon'ble Apex Court in the case of ***Civil Appeal No.8427-8428 of 2018 [State of Tamil Nadu represented by Secretary to Government (Home) Vs. Promod Kumar IPS and another]***, wherein the suspension of an IAS Officer was dealt with and favourable order has been passed in favour of the petitioner thereat and the relevant portion of which is extracted as follows:-

"20.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



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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.

.....

22. In the minutes of the Review Committee meeting held on 27.06.2016, it was mentioned that the first Respondent is capable of exerting pressure and influencing witnesses and there is every likelihood of the first Respondent misusing office if he is reinstated as Inspector General of Police. Only on the basis of the minutes of the Review Committee meeting, the Principal Secretary, Home (SC) Department ordered extension of the period of suspension for a further period of 180 days beyond 09.07.2016 vide order dated 06.07.2016.

23. This Court in Ajay Kumar Choudhary v. Union of India, (2015) 7 SCC 291 has frowned upon the practice of protracted suspension and held that suspension must necessarily be for a short duration. On the basis of the material on record, we are convinced



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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."

6.He also relied upon the order passed by the Hon'ble Division Bench of this Court in **W.A(MD)No.599 of 2020, dated 02.09.2020 [Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) and others Vs. A.Srinivasan]**, wherein the suspension of a Government employee was directed to be revoked and the relevant portion of which is extracted as follows:-

"4.On the contrary, Mr.Sankaran submitted that the Respondent was wrongly framed in the trap case and that the allegation is that he demanded a sum of Rs.2,100/- for getting permission to fix the change over switch. On that basis, he was suspended on 09.01.2017. In spite of the lapse of more than three years, the suspension order has not been revoked. In support of his submissions, the learned counsel referred to and relied upon the following judgments:

(i) S.Ravi and Others v. District Collector and Others [2015-4-LW.811](S.Ravi), wherein a Full Bench of this Court concluded that it is not proper to keep a government servant under prolonged suspension



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without revocation or review. Therefore, it was suggested that a proper legislation should be enacted to regulate suspension.

(ii) Ajay Kumar Choudhary (cited supra). In this judgment, the Hon'ble Supreme Court, at paragraph-21, held that the currency of a suspension order should not extend beyond three months if the memorandum of charges/charge sheet is not served on the delinquent officer/employee. If it is served, it was held that a reasoned order must be passed for the extension of the suspension.

(iii) State of Tamil Nadu v. Promod Kumar [2018 (17) SCC 677], wherein, at paragraphs 26 and 27, the Hon'ble Supreme Court concluded, after reviewing the minutes of the review committee meeting, that no useful purpose would be served by continuing the first respondent under suspension.

(iv) The Agricultural Production Commissioner and Principal Secretary to Government and another v. J.Udayakumar, W.A.(MD)No.1260 of 2015, judgment dated 20.04.2017, wherein the Division Bench of this Court confirmed the judgment of the learned single Judge whereby the order of suspension was revoked on the ground that the suspension order had continued for a prolonged period.



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(v) *The District Collector, Chengalpattu v. K.Devendran in W.A.No.613 of 2017, judgment dated 15.06.2017, wherein the Division Bench of this Court relied upon Ajay Kumar Choudhary and upheld the revocation of the order of suspension.*

.....

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 Agarwal* (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



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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 non-sensitive 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.”

7.Relying upon the said Judgments, the learned counsel appearing for the petitioner vehemently submitted that the currency of suspension of the petitioner should not be extended any further considering the fact that he has been awarded various prestigious awards appreciating his service as a Teacher and the case which has been registered by CBI as against him has nothing to do with his



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service as a Teacher, and it has emanated as a result of a crime which has been committed by his brother Panchatcharam, in which he was implicated only for the reason that certain transactions made by his brother for which the petitioner's account was also utilized. That apart, he also submitted that with respect to other two criminal cases, one of which is a matrimonial dispute as against which a quash petition has been filed before this Court and the same is pending. As far as another criminal case in C.C.No.284 of 2022 on the file of the learned Judicial Magistrate No.I at Ramanathapuram is concerned acquittal order has already been passed on 05.08.2023. Considering the facts and circumstances of this case as to the fact that the petitioner is a bona fide Teacher, the learned counsel for the petitioner pressed for allowing the Writ Petition.

8.Per contra, the learned Government Advocate appearing for the respondents vehemently submitted that a part of the petitioner's relief which he has sought for before this Court has already been complied with and the subsistence allowance has been fully granted and the same has also been received by the petitioner. As far as the revocation of suspension is concerned, the learned Government Advocate relied upon paragraph 11(viii & ix) of the same

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G.O(MS)No.81, Human Resources Management (N) Department, dated 04.08.2022, which has been relied on by the learned counsel appearing for the petitioner and the same is extracted as follows:-

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

.....

(viii) When the disciplinary authority comes to a conclusion suo-motu or after conclusion of the investigation by the Director of Vigilance and Anti-Corruption, the disciplinary authority shall, while initiating action by issue of charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules or under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal Rules, 1955, as the case may be, examine with reference to the facts established, which form the basis for the charges, whether public interest or the needs for further proceedings will require continued suspension of the Government Servant already under suspension.

(ix) The time limits mentioned above will not be applicable to cases of Government Servants against whom criminal proceedings have been



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initiated However, while sanctioning prosecution in such a criminal case, an examination similar to the one mentioned in item (viii) above shall be made by the competent authority."

9.That apart, the learned Government Advocate also relied upon the Hon'ble Division Bench of this Court in W.A(MD)No.1827 of 2021, dated 20.01.2022 [The Superintending Engineer and another Vs. Mohan Kumar], wherein the Hon'ble Division Bench of this Court while dealing with the similar case has passed a verdict against the petitioner thereat and the relevant portion of which is extracted as follows:-

"16. In the case on hand, the writ petitioner/non-appellant is facing a criminal case for the offence under the provisions of the Prevention of Corruption Act, 1988. He was caught red-handed accepting the bribe. The learned Single Judge passed the judgment under appeal without referring to the Regulations applicable to the case and without realizing the seriousness of the offence. This is apart from the fact that there exist government instructions dated 26.4.2016, where referring to various judgments of the Supreme Court, which include Ajay



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Kumar Choudhary (supra) and R.P.Kapur (supra), it was instructed that the time limit of three months on suspension cases is applicable only to the cases arising out of departmental disciplinary enquiries pertaining to non-vigilance and/or any non-criminal cases and the said time limit is not applicable to suspension of an employee facing criminal case or grave corruption charges pending against him. The learned Single Judge has not referred to the aforesaid government directives, despite a resolution by the appellants for adoption of the guidelines to their Corporation as well.

17. The Larger Bench judgment of the Apex Court in the case of R.P.Kapur (supra) has been referred by the Division Bench of this court in A.Srinivasan (supra). The judgment in the case of R.P.Kapur (supra) was not cited in the case of Ajay Kumar Choudhary (supra) despite being a Larger Bench judgment and, thus, was distinguished by the Division Bench of this court in A.Srinivasan (supra) on facts as well as on legal position after discussing the judgment in the case of Ajay Kumar Choudhary (supra). As stated supra, the judgment in the case of Ajay Kumar Choudhary (supra) otherwise provides the period of three months in reference to Section 167(2) of the Cr.P.C., which stipulates time period for filing the final report in criminal cases, if accused is behind the bars. Thus, the judgment in the case of



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Ajay Kumar Choudhary (supra) does not lay down the ratio that a suspension order would be illegal if it is continued beyond the period of three months of registration of the criminal case, rather in the case of Ajay Kumar Choudhary (supra) itself the order of suspension was not interfered because charge-sheet was later on filed, though after three months since the date of initial suspension of the delinquent therein."

10. On that basis, even as against the petitioner in this case already a criminal case is pending and the same has culminated in filing a charge-sheet as against the petitioner as a result of which, it is not mandatory on the part of the respondents to revoke the currency of suspension immediately and hence, the other limb of the argument made by the learned counsel appearing for the petitioner seeking revocation of the suspension of the petitioner is not sustainable and pressed for dismissal of the Writ Petition.

11. Considering the facts and circumstances of the case and keenly considering the fact that the petitioner is a Teacher who has to set an example before the student community, I am not inclined to direct the respondents to consider the representation made by the



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petitioner as far as revocation of suspension is concerned. However, this Court records that the subsistence allowance has already been paid in favour of the petitioner and the request of the petitioner to keep the petitioner atleast in a non-sensitive post could not be heeded to. In view of the same, this Court is inclined to dismiss the Writ Petition.

12. Accordingly, this Writ Petition stands dismissed. There shall be no order as to costs.

24.08.2023

NCC : Yes
Index : Yes
Internet : Yes
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To

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L.VICTORIA GOWRI, J.

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