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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.08.2023

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
AND
THE HONOURABLE MR.JUSTICE **R.VIJAYAKUMAR**

W.A.(MD)No.888 of 2015

S.Victor

...Appellant

-Vs.-

1.The Chief Engineer (Agr.Eng.(I/C),
Nandanam, Chennai-35.

2.The Assistant Executive Engineer,
O/o.The Assistant Executive Engineer,
Thuckalay-629 175,
Kanyakumari District.

...Respondents

PRAYER:- Writ Appeal - filed under Clause 15 of Letters Patent Act, to
set aside the order dated 15.04.2015 in W.P(MD)No.5663 of 2015 on the
file of this Court.

For Appellant : Mr.J.Jeevin
for Mr.S.Palanivelayutham
For Respondents : Mr.S.Shaji Bino
Special Government Pleader



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JUDGMENT

(Judgment of the Court was delivered by **DR.ANITA SUMANTH, J.**)

The Writ Petitioner/appellant was employed as an Assistant Engineer with the Agricultural Department of the State. He was placed under suspension invoking Rule 17(e)(2) of Tamil Nadu Civil Services (Discipline and Appeal) Rules on 13.12.2012 and was paid subsistence allowance (in short 'SA') as admissible under Rule 53 of Fundamental Rules of the State (in short 'FR').

2.Since his suspension continued beyond a period of six months and even thereafter, several representations were made by him seeking enhanced SA. It is seen that in his representations for enhanced SA, two of which has been placed in the compilation, he takes wavering stands, in one, seeking enhanced SA under the provisions of Section 2(A) of the Tamil Nadu Subsistence Allowance Act 1981 (in short 'SA Act') and in the other, seeking enhancement in terms of Rule 53 of FR. Thus,



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there has been no clarity on the specific ground on which he seeks enhancement.

3.Be that as it may, it was incumbent on the State to have addressed these representations and given him an answer either in the affirmative or in the negative. This was not done. This led to the filing of W.P(MD)No.5663 of 2015 seeking a Mandamus reiterating the prayers in the representations. The prayer in the Writ Petition does not explicitly refer to either the SA Act or FR.

4.The Writ Petition came to be dismissed on 15.04.2015. The Writ Court opined that since the petitioner was an employee of the State Government department, it was only the provisions of the FR that would apply to him and not the SA Act. To be noted, the SA Act excludes employees of the Central and State Government Departments from the applicability of that Act, in terms of Sections 2(c)(i) of that Act.

5.The Writ Court has not proceeded to examine his eligibility under FR. In the present Writ Appeal, the appellant reiterates the prayer



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for enhancement of SA under FR. Rule 53 of FR reads as follows:

“53. (1) A Government servant who is placed or deemed to have been placed or continues to be under suspension shall be entitled to the following payments, namely:-

(a) Subsistence allowance at an amount equal to half of the pay last drawn by the Government servant and in addition dearness allowance, if admissible on the basis of half of the pay last drawn:

Provided that where the period of suspension exceeds six months, the authority which made or is deemed to have made, the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first six months as follows:-

(i) The amount of subsistence allowance may be increased by a suitable amount, not exceeding fifty per cent of the subsistence allowance admissible during the period of the first six months, if, in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the Government servant;

(ii) the amount of subsistence allowance may be reduced by a suitable amount, not exceeding fifty per cent of the subsistence allowance admissible during the period of the first six months, if, in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, directly attributable to the Government servant;

(iii) the amount of dearness allowance shall be based on the increase or the decrease in the amount of subsistence allowance, as the case may be, admissible under clause (i) or (ii) above:



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6. We find that the scheme of payment of SA under Rule 53 of FR is a self-contained one. As a default position, an employee is entitled to SA at an amount equal to half of last drawn pay and dearness allowance additionally. In the event that the order of suspension is extended beyond six months, the authorities is entitled to vary SA pay. Clause (i) states that if the extension beyond six months is not directly attributable to the Government servant, he/she shall be entitled to an enhanced amount of 50% of the originally sanctioned amount.

7. Clause (ii) states that if the extension of suspension beyond six months is directly attributable to the Government servant, the amount of SA shall be reduced by an amount not exceeding 50% of the originally sanctioned amount. In both cases, the authorities is to record in writing the reasons for such variation, either upward or downward.

8. The appellant was dismissed on 04.11.2019 and hence, the tenure of the suspension is in excess of seven years. The question of extended period of suspension and the impact thereof on the service of an



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employee has come to be considered by the Hon'ble Apex Court as well as this Court in several judgements.

9.The first judgment is in the case of *Ajay Kumar Choudary Vs Union of India and another* [(2015) 7 SCC 291] to the effect that prolonged suspension of an employee was impermissible and that in cases where the employee was suspended for an unduly extended period without proper reasons having been assigned for the same, then order of suspension should be interfered with.

10.The aforesaid decision was clarified by the Hon'ble Apex Court in *State of Tamil Nadu vs Promod Kumar and another* [(2018) 17 SCC 677]. In *Ajay Kumar Choudary* (supra), the Court had held that a suspension order can normally not go beyond three months, if within the aforesaid period, a memorandum of charge or charge sheet was not served on the delinquent officer. Even in the said case, it was reiterated by the Hon'ble Apex Court that a reasoned order must be passed by authorities sanctioning such extension or suspension.



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11.While that judgment was being applied in absolute terms, in *Promod Kumar's* case (supra), the Hon'ble Apex Court clarified that the ratio of the judgment in *Ajay Kumar Choudary* (supra) was not absolute and would have to be seen in the context of the allegations. The issue was referred discussed by a Full Bench of this Court in *P.Kannan vs Commissioner for Municipal Administration and others* in W.P.Nos.2165 of 2015 and 21628 of 2018 dated 15.03.2022.

12.The Full Bench, after referring to various judgments including the aforesaid judgements, considered a reference made by a learned Single Judge on account of two conflicting decisions rendered by Division Benches on challenge to orders of suspension. Paragraph No.2, which encapsulates the reference considered by the Full Bench, reads as follows:

*“3. Learned counsel for the petitioners referring to the order passed by the learned Single Judge dated 20.12.2021 by which the reference has been made to the Larger Bench submitted that the issue regarding prolonged suspension of an employee was settled by the Apex Court in the case of *Ajay Kumar Choudhary v. Union of India*, (2015) 7 SCC 291, but holding the said judgment to be not laying down an absolute proposition on a challenge to the*



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order of suspension, the order of suspension was not interfered and for that the judgment of the learned Single Judge was reversed by the Division Bench in the case of T.Kamarajan, supra, while the other Division Bench in the case of R.Balaji, supra, upheld the judgment of the learned Single Judge where interference with the order of suspension was made in the light of the judgment of the Apex Court in Ajay Kumar Choudhary, supra.”

13.The reference has been answered by the Full Bench in the following manner:

“34. For the foregoing reasons, the reference is answered by holding that: (i) 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/chargesheet has not been served within three months, or if memorandum of charges/charge-sheet is served without reasoned order of extension. (ii) The judgment in R.Balaji, supra, has no reference to the earlier judgments of co-equal strength and is thereby rendered per incuriam. (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.”



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14. In arriving at the aforesaid proposition, the judgment of Hon'ble Apex Court in the *State of Orisha vs Bimal Kumar Mohanty* [(1994) 4 SCC 126] has been noted. That judgment would assume importance for the reason that it clarifies that one would take note of the allegations as against the delinquent employee in coming to a conclusion whether the suspension was liable to be extended or not. They clarify therein that suspension was not a punishment per se but was a means of '*forbidding or disabling an employee from discharging the duty of office or post held by him*'.

15. In the present case, the order of dismissal dated 04.11.2019 reveals that the appellant was convicted for criminal charges framed under Sections 420, 468, 471, 409 and 477A IPC and under Section 13(2) r/w 13(1)(c) and 13(1)(d) of Prevention of Corruption Act, 1988. He was awarded a sentence of rigorous imprisonment of five years and a fine of Rs.1,00,000/- by learned Special Judge-cum-Chief Judicial Magistrate, Nagercoil in Spl. Case No.5 of 2015, dated 23.07.2019.



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16. In light of the aforesaid, the appellant was dismissed from service. The records are unavailable, but learned Special Government Pleader would fairly accede to the position, on instructions, that no orders extending the suspension appear to have been passed in this case. It is however their specific contention that the order of suspension passed originally was not limited to any specific period and thus, and in light of the gravity of the offences, there was no necessity to extend the suspension by way of a written order. In fact, they state that such requirement of extension in writing would arise only in the event that there was a need felt to vary the SA either upwards or downwards.

17. We do not agree as the judgements discussed in the preceding paragraphs establish that it is incumbent upon the authority concerned to pass an order in writing setting out reasons for extending orders of suspension. As Courts have consistently held, an extension of suspension cannot be assumed, but would have to be specifically ordered. In this case, however, we are not persuaded to extend any benefit on this account to the Appellant having regard to the gravity of



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offences committed by him leading to his ultimate dismissal on
04.11.2019.

18.In light of the discussion as aforesaid, we see no merit in
this Writ Appeal and dismiss the same, though for reasons at variance
with those expressed by the Writ Court. No costs. Consequently,
connected miscellaneous petition is closed.

[A.S.M.J.] & [R.V.J.]
09.08.2023

NCC :Yes/No
Index :Yes/No
Internet :Yes/No

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