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W.P.No.20180 of 20--

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.02.2024

PRONOUNCED ON : 29.04.2024

CORAM

THE HON'BLE MR. JUSTICE **BATTU DEVANAND**

W.P.No.20180 of 2018
and WMP.No.23644 of 2018

N.Kuppan

... Petitioner

Vs.

1. The Chairman,
Tamil Nadu Generation and Distribution Corporation Ltd.,
(TANGEDCO),
NPKRR Maaligai,
144, Anna Salai,
Chennai 600 002.
2. The Chief Engineer – Personnel
Tamil Nadu Generation and Distribution Corporation Ltd.,
(TANGEDCO),
144, Anna Salai,
Chennai 600 002.
3. The Chief Engineer – Distribution,
Tamil Nadu Generation and Distribution Corporation Ltd.,
(TANGEDCO),
Vizhupuram Region,
Vizhupuram.
4. The Superintending Engineer,
Thiruvannamalai Electricity Distribution Circle,
(TANGEDCO),
Thiruvannamalai.

... Respondents



PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for records of the fourth respondent with respect to the suspension order Ku.A.No.569/NE PE.3/VU1/Ko.V.I.A.C/2013, dated 22.04.2013 and quash the same and consequently direct the respondents 1 to 4 to permit the petitioner to rejoin duty/service as Commercial Assistant with all attendant/consequential benefits.

For Petitioner : M/s.Sai Sankar
For Respondents : Mr.K.Rajkumar

ORDER

This Writ Petition has been filed against the order in Ku.A.No.569/NE PE.3/VU1/Ko.V.I.A.C/2013, dated 22.04.2013 issued by the fourth respondent, wherein the petitioner was suspended from service.

2. Though this Writ Petition was admitted and Rule Nisi was ordered on 13.03.2019, till now no counter affidavit is filed by the respondents.

3. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents and perused the materials available on record.



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4. The case of the petitioner is that he was appointed as Helper in the respondent Corporation and subsequently promoted as Commercial Assistant Class III. A case was registered against the petitioner on 19.04.2013 by the Vigilance and Anti Corruption, Department and subsequently he was placed under suspension indefinitely by the fourth respondent by the impugned order dated 22.04.2013. The said criminal case was pending on the file of the Chief Judicial Magistrate, Thiruvannamalai. The fourth respondent, who placed the petitioner under suspension, neither served charge memo nor passed a reasoned order for extension of suspension period and this has allowed the suspension order to prolong indefinitely. The petitioner was paid subsistence allowance and dearness allowance. On 03.07.2018, he submitted a representation to the first respondent to reinstate him, but it was not considered.

5. The learned counsel for the petitioner contends that the action of the respondent Department in keeping the petitioner under suspension for an indefinite period without serving any charge memo or passing a reasoned order for extension of suspension is not sustainable in law and also against the principles of natural justice.



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6. The learned counsel would submit that the failure on the part of the respondents in reinstating the petitioner into service and deliberately prolonging the suspension period of the petitioner from 22.04.2013 to till date without any reasoned order is against the well settled law laid down by the Hon'ble Apex Court and by this Court.

7. The learned counsel further contends that the respondents erred in placing the petitioner under suspension indefinitely without serving charge memo. The respondents cannot place the petitioner under suspension till completion of the criminal case pending before the concerned Court.

8. The learned counsel further submits that the criminal proceedings and disciplinary proceedings are different as held by the Apex Court and as such without waiting for the conclusion of the criminal proceedings, the respondents can proceed with the disciplinary proceedings.

9. The learned Standing Counsel appearing for the respondents submitted that in view of the pendency of the criminal case against the



petitioner, which was registered by Vigilance and Anti-Corruption Department, the respondents could not conclude the disciplinary proceedings.

10. The learned counsel for the petitioner has drawn attention of this Court to the judgment in ***Ajay Kumar Choudhary vs. Union of India through its Secretary and another*** reported in 2015 7 SCC 291. At paragraph 11, 12, and 21, the Apex Court has opined as follows:

“11.Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perform be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the Memorandum of Charges, and eventually culminate after even longer delay.

12.Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and



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the derision of his Department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement. Indubitably the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of common law jurisprudence, antedating even the Magna Carta of 1215, which assures that - "We will sell to no man, we will not deny or defer to any man either justice or right." In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial.

...

....

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



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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 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 the 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.”

11. The learned counsel for the petitioner also placed reliance on the judgment dated 31.07.2023 of a Division Bench of this Court in



the Director General of Police vs. the Joint Commissioner of Police in

Writ Appeal No.1657 of 2019. The relevant paragraphs in the said judgment is extracted hereunder:

“7.Insofar as the direction given by the learned Judge after setting aside the suspension order is only to accommodate him in a non-sensitive post.

8.If these kind of cases where without initiating any disciplinary proceedings merely on the basis of the pendency of the criminal cases if the Government employee is suspended, such a suspension cannot be extended endlessly without any reason.

9.In this context, every quarter of the year i.e., at the end of third month, the employer has to review the necessity for extending the suspension.

10.Here in the case on hand, the consistent stand taken by the appellant Department is that since the criminal case was pending, at this moment it may not be conducive for the employer to revoke the suspension.

11.The said reason cannot be stated endlessly for several years as the criminal case was pending trial before the concerned Court.”



12. On the other hand, learned Standing Counsel appearing for the respondents placed reliance on the judgment of a Division Bench in Writ Petition Nos.2165 of 2015 and 21628 of 2018, dated 15.03.2022 contending that the judgment of the Apex Court in the case of **Ajay Kumar Choudhary**, does not laid down the absolute proposition of law.

13. On perusal of the judgment relied on by the learned Standing counsel while answering the reference by the learned Single Judge is on account of 2 conflicting judgments delivered by a Division Bench and challenge to the order of suspension, the reference was answered holding as extracted hereunder:

“34.....(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/charge-sheet 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.



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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.”

14. In the above directions, the Division Bench held that revocation of suspension with a direction 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 memorandum of charges/charge sheet. This direction is squarely applicable to the facts and circumstances of the present case.

15. Admittedly, the petitioner was suspended on 22.04.2013. The contention of the petitioner is that till now, charge memo was not issued and order of extension of suspension was not passed by the respondents. A period of 11 years keeping the petitioner under suspension without concluding disciplinary proceedings, whatever the reason it may be it is



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illegal, unjust and contrary to the settled principles of law. As rightly held by the Division Bench of this Court in its judgment in WA.No.1657 of 2019 every quarter of the year, i.e., once in 3 months, the employer has to review the extension of suspension. The Division Bench also held that the consistent stand taken by the Department that since the criminal case was pending, it will not be conducive to the employer to revoke the suspension. The Division Bench held that the said reasons cannot be given for several years as the criminal case was pending before the concerned Court.

16. Considering the fact that the petitioner was kept under suspension since 22.04.2013 and in the light of the order dated 31.07.2023 in W.P.No.1657 of 2019, in the considered opinion of this Court, the action of the respondents in keeping the petitioner under suspension since 22.04.2013 is held as illegal and against the settled principles of law and violation of principles of natural justice.

17. Accordingly, this Writ Petition is allowed with the following directions:

- i) The order impugned in this Writ Petition in



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Ku.A.No.569/NE PE.3/VU1/Ko.V.I.A.C/2013, dated
22.04.2013, is hereby set aside.

ii) The respondents are directed to reinstate the petitioner
into service forthwith.

iii) The respondents can accommodate the petitioner in a
non-sensitive post, till conclusion of disciplinary proceedings.

iv) The respondents are directed to conclude disciplinary
proceedings as expeditiously as possible.

No costs.

Consequently, connected miscellaneous petition is closed.

29.04.2024

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
pvs



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BATTU DEVANAND.J.,
pvs

Pre-delivery order in

W.P.No.20180 of 2018

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