



W.P.No.18425 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2024

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.18425 of 2021 and
W.M.P.Nos.19638 & 19639 of 2021

A.Tamilmurugan

... Petitioner

Vs.

The District Manager,
TASMAC Limited,
Tirupur.

... Respondent

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records on the file of the respondent in Ref.Na.Ka.No.125/2020/A1 dated 06.07.2021.

For Petitioner : Mr.A.R.Rithik Sushil for
Mr.K.Thilageswaran

For Respondent : No appearance

ORDER

This Writ Petition has been filed seeking issuance of a Writ of Certiorari, to call for the records on the file of the respondent in Ref.Na.Ka.No.125/2020/A1 dated 06.07.2021.



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2. Heard Mr.A.R.Rithik Sushil, learned counsel for the petitioner.

3. The petitioner was working as a Salesman in the respondent Corporation. In an inspection conducted on 05.07.2021, some stock deficit was found and for which he was given with a show cause notice. The petitioner submitted his explanation for the deficit in stock. But without considering the same, the petitioner was placed under suspension and also issued with show cause notice on 06.07.2021.

4. The learned counsel for the petitioner submitted that despite there was a lapse of three years, the petitioner has not been given with any charge sheet and the order in respect of justification for continuing the suspension of the petitioner has also not been passed so far.

5. The position of law on suspension has been laid down by the Hon'ble Supreme Court in the case of *Ajay Kumar Choudhary Vs. Union of India (UOI) and Ors, reported in 2015(3)ABR 694*. In the said



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judgment, it is held that suspension should not be extended beyond the period of three months, if within the said period, the charge sheet is not served on the delinquent. In the event of extending the suspension for beyond three months, a detailed order should be passed. But in the instance case, there is no order passed for revising the earlier suspension that has been made in the year 2021. It is worthwhile to extract the relevant part of the judgment wherein it is held as under:

"13. It will be useful to recall that prior to 1973 an accused could be detained for continuous and consecutive periods of 15 days, albeit, after judicial scrutiny and supervision. The Cr.P.C. of 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorise detention of an accused person beyond period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and beyond a period of 60 days where the investigation relates to any other offence. Drawing support from the observations contained of the Division Bench in [Raghubir Singh vs. State of Bihar](#), 1986 (4) SCC 481, and more so of the Constitution Bench in [Antulay](#), we are spurred to



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extrapolate the quintessence of the proviso of [Section 167\(2\)](#) of the Cr.P.C. 1973 to moderate Suspension Orders in cases of departmental/disciplinary inquiries also. It seems to us that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a Memorandum of Charges/Chargesheet has not been served on the suspended person. It is true that the proviso to [Section 167\(2\)](#) Cr.P.C. postulates personal freedom, but respect and preservation of human dignity as well as the right to a speedy trial should also be placed on the same pedestal.

14. 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 order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any Department in any of its



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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 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."

6. It is further submitted that the petitioner has not been given with subsistence allowance also by placing the petitioner under long



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suspension. Without giving the subsistence allowance and also without issuing the charge memo would affect the valuable right of the petitioner and it is against the principles of natural justice. Hence, the position laid down in the above case is squarely applicable to the facts of this case. Hence the order of suspension is liable to be set aside.

7. In the result, this Writ Petition is allowed and the order passed by the respondent in Ref.Na.Ka.No.125/2020/A1 dated 06.07.2021 is set aside. The respondent is directed to reinstate the petitioner without backwages but with continuity of service and all other benefits within a period of four weeks from the date of receipt of a copy of this order and the respondents shall pay subsistence allowance till the date of revocation of suspension. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes /No
Speaking / Non-speaking
Neutral Citation : Yes / No
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To
The District Manager,
TASMAC Limited,
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R.N.MANJULA, J.

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