

P. Sureshkumar Vs. The Commissioner of Municipal Administration, Chennai

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Court : Chennai Madurai

Decided On : Oct-09-2015

Judge : T. Raja

Appeal No. : W.P.(MD)No. 20658 of 2014 & M.P.(MD)Nos. 1 & 2 of 2014

Appellant : P. Sureshkumar

Respondent : The Commissioner of Municipal Administration, Chennai

Judgement :

(Prayer: Petition is filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the respondent in Roc.No.34859/2014/V2, dated 31.10.2014, and quash the same and consequently direct the respondent to reinstate the petitioner in service.)

1. The petitioner was placed under suspension by the Commissioner of Municipal Administration, Chennai, in Roc.No.34859/2014/V2, dated 31.10.2014, under rule 8(2) of the Tamil Nadu Municipal Public Health Services (Discipline and Appeal) Regulation, 1973, with effect from 28.10.2014, until further orders. The relevant portion of the suspension order, reads as under:-

During the period of suspension, the said Thiru.P.Suresh Kumar, Sanitary Inspector, Srivilliputhur Municipality will be paid subsistence allowance and dearness allowance as admissible under Rule 53(1) of Fundamental Rules.

The Headquarters of the said Thiru.P.Suresh Kumar, Sanitary Inspector, Srivilliputhur Municipality during the period of suspension shall be in Srivilliputhur and the said Thiru.P.Suresh Kumar, Sanitary Inspector Srivilliputhur shall not leave the Headquarters without obtaining prior permission of the concerned authorities. ?

2. Pursuant thereto, the petitioner has given his representation dated 17.11.2014 to the respondent requesting for revocation of the suspension order, however, after waiting for long time and finding no response to the said representation, the petitioner has come to this Court.

3. Mr.V.Rajasekaran, learned counsel appearing for the petitioner would submit that the petitioner has been placed under suspension from 31.10.2014 and he is going to complete one year. The petitioner has been paid with 75% of the last drawn salary without extracting any work, therefore, as per the Apex Court's Judgment, he should be reinstated in service. The learned counsel, in support of his contention, has relied upon a Judgment of the Hon'ble Apex Court, in Ajay Kumar Choudhary Vs. Union of India through its Secretary and Another made in Civil Appeal No.1912 of 2015, wherein the Hon'ble Apex Court has given some guidelines in the matter of revocation of suspension order stating that the currency of suspension 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 suspension. In the light of the above order passed by the Hon'ble Apex Court, the Government has also issued letter No.12519/N/2015-1, dated 23.07.2015. The relevant portion of the letter reads as follows:-

3. We are spurred to extrapolate the quintessence of the provision of Section 167(2) of 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.

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". |

3) In view of the above, the Hon'ble Supreme Court of India while fixing limitation on the period of suspension directed that,

(i) 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;

(ii) if the Memorandum of Charges / Chargesheet is served a reasoned order must be passed for the extension of the suspension.

The Departments of Secretariat and Heads of Departments are -therefore requested to follow the directions ordered by the Hon'ble Supreme Court of India on the limitations in the period of suspension in letter and spirit. ?

4. In the light of the above, the learned counsel appearing for the petitioner submitted that after placing the petitioner under suspension, till date, the petitioner was not issued with any charges or charge sheet. Therefore, in view of the letter No.12519/N/2015-1, dated 23.07.2015 issued by the Government complying the order passed by the Hon'ble Apex Court in the case of Ajaikumar Soudrai Vs.

Union of India, the case of the petitioner squarely falls within the ratio of the Apex Court's Judgment, mentioned supra.

5. Mr.K.P.Krishnadoss, learned Government Advocate appearing for the respondents submitted that no departmental proceedings have been initiated.

6. Therefore, this Court considering the fact that the petitioner has been placed under suspension about one year ago and 75% of the Subsistence Allowance also being paid, without extracting any work, hereby directs the respondent to consider his representation in the light of the letter dated 23.07.2015 and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order.

7. With the above direction, the writ petition stands disposed of. No costs. No costs. Consequently, connected miscellaneous petitions are closed.

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