

M.Vinoth Vs. The Regional Manager / Disciplinary Authority,

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Court : Chennai

Decided On : Jul-24-2015

Judge : S.Vaidyanathan

Appellant : M.Vinoth

Respondent : The Regional Manager / Disciplinary Authority,

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

24. 07.2015 CORAM THE HON'BLE MR.JUSTICE S.VAIDYANATHAN
W.P.(MD)No.10240 of 2015 M.Vinoth ... Petitioner -vs- The Regional Manager /
Disciplinary Authority, Regional Office, Syndicate Bank, Velmurugan Nagar, Bye-
Pass Road, Madurai-625 010. ... Respondent PRAYER: Writ Petition is filed under
Article 226 of the Constitution of India for the issuance of a Writ of Certiorari,
calling for the records relating to the impugned charge memo issued by the
respondent in Ref.No.CGS/MRO/01/2014 dated 03.07.2014 and quash the same.
!For Petitioner : Mr.V.Meenakshi Sundaram For Mr.S.Rajeshkanna For
Respondent : Mr.K.R.Laxman :

ORDER

The petitioner has filed this writ petition, seeking to quash the impugned charge memo dated 03.07.2014, passed by the respondent in Ref.No.CGS/MRO/01/2014, in and by which, explanation was sought from the petitioner within 7 days.

2. The facts leading to filing of this writ petition are that the petitioner joined the Syndicate Bank, Thiruvavarur Branch on 16.11.2009 and that he was placed under suspension on 23.08.2013 for the alleged charge of misappropriation of money in Savings Bank Account. In consequence of the same, he was served with a charge memo in Ref.No.CGS/MRO/01/2014 dated 03.07.2014 and he has also given his reply on 14.07.2014. The petitioner has submitted that despite receipt of the explanation from him, no enquiry has been conducted and that on a complaint given by the respondent Bank for the very same set of facts, a case was also registered in Crime No.14 of 2013 before the District Crime Branch, Thiruvavarur for offences under Sections 409, 468, 471 and 420 IPC. The petitioner has assailed the impugned charge memo stating that there is no prima facie evidence regarding the charges levelled against him and that the respondent had issued the charge memo without any documentary proof and no documents were supplied to him.

3. The respondent Bank has not filed any counter in this matter, but however, contested the writ petition through its counsel. Learned counsel for the respondent has contended that apart from misappropriation committed by the petitioner, he had also sanctioned jewel loans to his own relatives thereby misused the loan proceeds of the customers. Therefore, there is no irregularity or perversity in issuance of charge memo, which does not warrant any interference by this Court. However, he has fairly conceded that enquiry proceedings have not been commenced so far. Learned counsel for the respondent has also relied upon a Circular No.072-2002-BC-IRD dated 27.04.2002, published by the respondent Bank, wherein it has been stated as follows: ?4. If after steps have been taken to prosecute an employee or to gete him prosecuted, for an offence, he is not put on trial within a year of the commission of the offence, the management may then deal with him as if he had committed an act of ?.gross misconduct?. or of ?.minor misconduct?., as defined below; provided that if the authority which was to start prosecution proceedings refuses to do so or comes to the conclusion that there is no case for prosecution it shall be open to the management to proceed against the employee under the provisions set out below in Clauses 11 and 12 infra relating to discharge, but he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full wages and allowances and to all other privileges for such period. In the event of the management deciding, after

enquiry, not to continue him in service, he shall be liable only for termination with three months' pay and allowance in lieu of notice as provided in Clause 3 above. If within the pendency of the proceedings thus instituted he is put on trial such proceedings shall be stayed pending the completion of the trial, after which the provisions mentioned in Clause 3 above shall apply.?

4. Heard the learned counsel on either side and perused the material documents available on record.

5. The order of suspension is not a punishment and the relationship between the employer and the employee subsists even during the period of suspension. When there is master and servant relationship, the suspension can be effected by the employer and it cannot be questioned except on certain grounds like competence of the Authority issuing the said order, want of jurisdiction, contrary to the Rules, etc. Hence, as long as the competence of the authority issuing the suspension order is not challenged, this Court is not inclined to interfere with the order of the suspension.

6. The Apex Court in the case of Union of India and another vs. Ashok Kumar Aggarwal, reported in 2013 (14) Scale 323 has relied on a number decisions and considered the issue relating to the order of suspension. The relevant paragraphs of the judgment (supra) are extracted hereunder: "7. During suspension, relationship of master and servant continues between the employer and the employee. However, the employee is forbidden to perform his official duties. Thus, suspension order does not put an end to the service. Suspension means the action of debarring for the time being from a function or privilege or temporary deprivation of working in the office. In certain cases, suspension may cause stigma even after exoneration in the departmental proceedings or acquittal by the Criminal Court, but it cannot be treated as a punishment even by any stretch of imagination in strict legal sense.(Vide: O.P. Gupta v. Union of India and Ors. MANU/SC/0670/1987: AIR 1987 SC2257 and Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Anr. MANU/SC/0225/1999 : AIR 1999 SC1416.

8. In State of Orissa v. Bimal Kumar Mohanty MANU/SC/0475/1994 : AIR 1994 SC2296 this Court observed as under: "... the order of suspension would be

passed taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of evidence placed before the appointing authority and on application of the mind by the disciplinary authority. Appointing authority or disciplinary authority should consider..... and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law should be laid down in that behalf. In other words, it is to refrain him to avail further opportunity to perpetuate the alleged misconduct or to remove the impression among the members of service that dereliction of duty will pay fruits and the offending employee may get away even pending inquiry without any impediment or to provide an opportunity to the delinquent officer to scuttle the inquiry or investigation to win over the other witnesses or the delinquent having had an opportunity in office to impede the progress of the investigation or inquiry etc. It would be another thing if the action is actuated by mala fide, arbitrarily or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The Authority also should keep in mind public interest of the impact of the delinquent's continuation in office while facing departmental inquiry or a trial of a criminal charge.(Emphasis added) (See also: R.P. Kapur v. Union of India and Anr. MANU/SC/0275/1963 : AIR 1964 SC787 and Balvantrai Ratilal Patel v. State of Maharashtra MANU/SC/0321/1967 : AIR 1968 SC800."

9. The power of suspension should not be exercised in an arbitrary manner and without any reasonable ground or as vindictive misuse of power. Suspension should be made only in a case where there is a strong prima facie case against the delinquent employee and the allegations involving moral turpitude, grave misconduct or indiscipline or refusal to carry out the orders of superior authority are there, or there is a strong prima facie case against him, if proved, would ordinarily result in reduction in rank, removal or dismissal from service. The authority should also take into account all the available material as to whether in a given case, it is advisable to allow the delinquent to continue to perform his duties in the office or his retention in office is likely to hamper or frustrate the inquiry.

10. In view of the above, the law on the issue can be summarised to the effect that suspension order can be passed by the competent authority considering the gravity of the alleged misconduct i.e. serious act of omission or commission and the nature of evidence available. It cannot be actuated by mala fide, arbitrariness, or for ulterior purpose. Effect on public interest due to the employee's continuation in office is also a relevant and determining factor. The facts of each case have to be taken into consideration as no formula of universal application can be laid down in this regard. However, suspension order should be passed only where there is a strong prima facie case against the delinquent, and if the charges stand proved, would ordinarily warrant imposition of major punishment i.e. removal or dismissal from service, or reduction in rank etc.

11. In *Jayrajbhai Jayantibhai Patel v. Anilbhai Nathubhai Patel and Ors.* MANU/SC/4080/2006: (2006) 8 SCC200 this Court explained:

"8. Having regard to it all, it is manifest that the power of judicial review may not be exercised unless the administrative decision is illogical or suffers from procedural impropriety or it shocks the conscience of the court in the sense that it is in defiance of logic or moral standards but no standardised formula, universally applicable to all cases, can be evolved. Each case has to be considered on its own facts, depending upon the authority that exercises the power, the source, the nature or scope of power and the indelible effects it generates in the operation of law or affects the individual or society. Though judicial restraint, albeit self-recognised, is the order of the day, yet an administrative decision or action which is based on wholly irrelevant considerations or material; or excludes from consideration the relevant material; or it is so absurd that no reasonable person could have arrived at it on the given material may be struck down. In other words, when a court is satisfied that there is an abuse or misuse of power, and its jurisdiction is invoked, it is incumbent on the court to intervene. It is nevertheless, trite that the scope of judicial review is limited to the deficiency in the decision-making process and not the decision."

12. Long period of suspension does not make the order of suspension invalid. However, in *State of H.P. v. B.C. Thakur* (1994) SCC (L and S) 835, this Court

held that where for any reason it is not possible to proceed with the domestic enquiry the delinquent may not be kept under suspension.

13. There cannot be any doubt that the Rules 1965 are a self contained code and the order of suspension can be examined in the light of the statutory provisions to determine as to whether the suspension order was justified. Undoubtedly, the delinquent cannot be considered to be any better off after the charge sheet has been filed against him in the court on conclusion of the investigation than his position during the investigation of the case itself. (Vide: Union of India and Ors. v. Uday Narain MANU/SC/1061/1998 : (1998) 5 SCC535.

14. The scope of interference by the Court with the order of suspension has been examined by the Court in a large number of cases, particularly in State of M.P. v. Sardul Singh MANU/SC/0510/1969 : (1970) 1 SCC108 P.V. Srinivasa Sastry v. Comptroller & Auditor General of India MANU/SC/0207/1993 : (1993) 1 SCC419 Director General, ESI and Anr. v. T. Abdul Razak MANU/SC/0585/1996 : AIR 1996 SC2292 Kusheshwar Dubey v. Bharat Cooking Coal Ltd. and Ors. MANU/SC/0246/1988 : AIR 1988 SC2118 Delhi Cloth General Mills v. Kushan Bhan MANU/SC/0228/1960 : AIR 1960 SC806 U.P. Rajya krishi Utpadan Mandi Parishad and Ors. v. Sanjeev Rajan MANU/SC/0844/1993 : (1993) Supp. (3) SCC483 State of Rajasthan v. B.K. Meena and Ors. MANU/SC/0008/1997 : (1996) 6 SCC417 Secretary to Govt., Prohibition and Excise Department v. L. Srinivasan MANU/SC/1108/1996 : (1996) 3 SCC157 and Allahabad Bank and Anr. v. Deepak Kumar Bholia MANU/SC/1126/1997 : (1997) 4 SCC1 wherein it has been observed that even if a criminal trial or enquiry takes a long time, it is ordinarily not open to the court to interfere in case of suspension as it is in the exclusive domain of the competent authority who can always review its order of suspension being an inherent power conferred upon them by the provisions of Article 21 of the General Clauses Act, 1897 and while exercising such a power, the authority can consider the case of an employee for revoking the suspension order, if satisfied that the criminal case pending would be concluded after an unusual delay for no fault of the employee concerned. Where the charges are baseless, mala fide or vindictive and are framed only to keep the delinquent employee out of job, a case for judicial review is made out. But in a case where no conclusion can be arrived at without

examining the entire record in question and in order that the disciplinary proceedings may continue unhindered the court may not interfere. In case the court comes to the conclusion that the authority is not proceeding expeditiously as it ought to have been and it results in prolongation of sufferings for the delinquent employee, the court may issue directions. The court may, in case the authority fails to furnish proper explanation for delay in conclusion of the enquiry, direct to complete the enquiry within a stipulated period. However, mere delay in conclusion of enquiry or trial can not be a ground for quashing the suspension order, if the charges are grave in nature. But, whether the employee should or should not continue in his office during the period of enquiry is a matter to be assessed by the disciplinary authority concerned and ordinarily the court should not interfere with the orders of suspension unless they are passed in mala fide and without there being even a prima facie evidence on record connecting the employee with the misconduct in question. Suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered. Suspension is an interim measure in aid of disciplinary proceedings so that the delinquent may not gain custody or control of papers or take any advantage of his position. More so, at this stage, it is not desirable that the court may find out as which version is true when there are claims and counter claims on factual issues. The court cannot act as if it an appellate forum de hors the powers of judicial review."

7. The Honourable Supreme Court in the recent decision in Ajay Kumar Choudhary vs. Union of India through its Secretary and another, reported in 2015 (3) CTC119 has held as follows:- "8. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce 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.

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 Code of Criminal Procedure 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 v. State of Bihar*, 1986 (4) SCC481 and more so of the Constitution Bench in *Antulay*, we are spurred to extrapolate the quintessence of the proviso of Section 167(2) of the Code of Criminal Procedure 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) Code of Criminal Procedure 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 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.

15. So far as the facts of the present case are concerned, the Appellant has now been served with a Chargesheet, and, therefore, these directions may not be relevant to him any longer. However, if the Appellant is so advised he may challenge his continued suspension in any manner known to law, and this action of the Respondents will be subject to judicial review."

8. In view of the above, I find no reason to interfere with the order of suspension and the Writ Petition is dismissed.

9. However, it is open to the respondent to proceed against the petitioner departmentally and the respondent shall also review the suspension order periodically. It is made clear that periodical review of suspension does not amount to setting aside the departmental proceedings, when the employee is under suspension. It is also made clear that both criminal proceedings as well as departmental proceedings can go on simultaneously and it is only in exception cases, where the case is of such a grave nature or involves question of fact or law which are not simple, it would be advisable for the employer to await the decision of the trial court so that the defence of the employee in the criminal case may not be prejudiced. If Criminal Proceedings are not initiated or concluded within one year from the date of suspension, there is no hindrance on the part of the employer to proceed with the departmental proceedings on day today basis and bring the issue to a logical end within six months and the employ will have to participate in the departmental proceedings and shall not attempt to adopt dilatory tactics.

10. In this regard, the Hon'ble Supreme Court in the case of Stanzen Toyotetsu India Private Limited vs. Girish v. and others, reported in (2014) 3 SCC636 has clearly laid down a dictum as under: ?19. In the circumstances and taking into consideration all aspects mentioned above as also keeping in view the fact that all the three Courts below have exercised their discretion in favour of staying the on-going disciplinary proceedings, we do not consider it fit to vacate the said order straightaway. Interests of justice would, in our opinion, be sufficiently served if we direct the Court dealing with the criminal charges against the respondents to conclude the proceedings as expeditiously as possible but in any case within a period of one year from the date of this order. We hope and trust that the Trial Court will take effective steps to ensure that the witnesses are served, appear and are examined. The Court may for that purpose adjourn the case for no more than a fortnight every time an adjournment is necessary. We also expect the accused in the criminal case to co-operate with the trial Court for an early completion of the proceedings. We say so because experience has shown that trials often linger on for a long time on account of non-availability of the defense lawyers to cross-examine the witnesses or on account of adjournments sought by them on the flimsiest of the grounds. All that needs to be avoided. In case, however, the trial is not completed within the period of one year from the date of this order, despite the steps which the Trial Court has been directed to take the disciplinary proceedings initiated against the respondents shall be resumed and concluded by the Inquiry Officer concerned. The impugned orders shall in that case stand vacated upon expiry of the period of one year from the date of the order.

20. In the result, we allow these appeals but only in part and to the extent indicated above. The parties are left to bear their own costs.?. In this case, it is represented that charge memo has already been issued against the petitioner. Therefore, the respondent is directed to complete the enquiry as early as possible preferably within a period of six months from the date of receipt of a copy of this order. The enquiry proceedings shall not be adjourned beyond two days at any point of time and the petitioner shall also co-operate with the enquiry for early conclusion. As far as the payment of subsistence allowance is concerned, it shall be considered and paid, if it is payable in terms of the provisions applicable to the respondent. The circular dated 27.04.2002 relied upon by the respondent (supra)

is not relevant to the present issue and therefore, this Court is not inclined to render any findings on that. No costs. Consequently, connected miscellaneous petitions are closed. To: The Regional Manager / Disciplinary Authority, Regional Office, Syndicate Bank, Velmurugan Nagar, Bye-Pass Road, Madurai-625 010. .

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