

(2014) 08 MAD CK 0269

In the Madras High Court

Case No : Writ Appeal No. 2806 of 2012 and M.P. Nos. 1 of 2014 and 1 of 2012

Chairman, Tamil Nadu Electricity Board

APPELLANT

Vs

S. Venkatesan

RESPONDENT

Date of Decision : 01-08-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 338

Citation : (2015) LabIC 671 : (2015) 1 LLN 236 : (2014) 5 MLJ 769

Hon'ble Judges : N. Paul Vasantha Kumar, J; Meenakshi Sundaram
Sathyanarayanan, J

Bench : Division Bench

Judgement

M. Sathyanarayanan, J.—The official respondents in W.P. No. 3616/2011 are the appellants and aggrieved by the order dated 02.07.2012 made in the said writ petition, which was disposed of along with other writ petitions in a batch of cases, wherein order of suspension came to be passed against the first respondent herein/writ petitioner came to be set aside with a direction to the respondents in the writ petition that they are at liberty to post the writ petitioners in a far away place from the station of occurrence and post them in a non-sensitive post and if for any reason, the authorities are of the opinion that their continuance in service is a hindrance for the action initiated them, they can re-examine the issue and they are at liberty to take appropriate action, had filed this writ appeal. The first respondent/writ petitioner joined the services of then Tamil Nadu Electricity Board (TNEB), now Tamil Nadu Generation of Electricity and Distribution Company Limited (TANGEDCO) as Junior Engineer/Electrical Grade-II, vide order dated 28.03.1995 issued by the first appellant. According to him, every since from the date of his appointment, he has been discharging his duties honestly and sincerely and is having unblemished record. According to the writ petitioner, one Murugan from Velacherry, a civil contractor, had given a false complaint against him on the file of the Department of Vigilance and Anti Corruption (DVAC), as if he has demanded a sum of Rs. 10,000/- for fixing a meter for the new connection obtained by him and it was subsequently reduced

to a sum of Rs. 2,000/-. The petitioner would further state that he did not oblige him and therefore, the said person threatened him with dire consequences and thereafter, lodged the above said false complaint, which resulted in a alleged trap and the first respondent/writ petitioner was arrested and kept in custody for 3 days and as the period of custody exceeded 48 hours, he was placed under suspension by the second respondent/second appellant herein, vide order dated 10.11.2008.

2. The grievance expressed by the petitioner is that though the criminal case, after investigation, has culminated into a charge sheet, which was taken on file in C.C. No. 12/2009 on the file of the IV Additional City Civil Court, Chennai, no progress took place in respect of the case and the first respondent/writ petitioner is kept under suspension for more than 5 years and though he submitted number of representations for revoking the order of suspension, it was not done so and therefore, came forward to file this writ petition praying for quashment of the impugned order of suspension dated 10.11.2008, with a direction to restore him back to work as Junior Engineer with back-wages and other attendant benefits.

3. The learned Judge has taken up this writ petition along with batch of writ petitions wherein orders of suspension have been passed against the officials belonging to Police, TANGEDCO and other departments, which have been revoked/reviewed, vide common order dated 02.07.2012, by taking into consideration G.O.Ms. Na. 40, Personnel and Administrative Reforms Department dated 30.01.1996 and found that no progress has been made after placing the concerned individuals under suspension and instead keeping them under suspension and paying them subsistence allowance which may be more than 75% of the emoluments, felt that keeping them idle and paying 75% of the salary by way of subsistence allowance, by transferring them from far away place and posting them in a non-sensitive post after extracting work, would meet the ends of justice and accordingly, disposed of all the writ petitions including W.P. No. 3616/2011 filed by the first respondent/writ petitioner and aggrieved by the same, the official respondents had filed these writ appeals.

4. Ms. R. Varalakshmi, learned counsel appearing for the appellants would submit that admittedly the first respondent/writ petitioner was trapped while receiving bribe of Rs. 2,000/- from one Murugan/defacto complainant and was arrested and kept in custody for 3 days and since the period of custody exceeded 48 hours, was rightly placed under suspension, vide impugned order dated 10.11.2008 and the criminal prosecution launched against him, after investigation, has culminated into a charge sheet and the same was taken on file in C.C. No. 12/2009 on the file of the IV Additional City Civil Court, Chennai and the trial is also in progress and therefore, at this point of time, cannot pray for quashment of the order of suspension with a further direction to reinstate him and transferring him to a far away place and posting him in a non-sensitive pose, may give a wrong signal that such a kind of persons can get away with serious delinquency like receipt of bribe. The learned counsel appearing for the

appellants has also drawn the attention of this Court to the Tamil Nadu Electricity Board Employee's Discipline and Appeal Regulations, especially to Regulation 9(e) and would submit that an order of suspension made or deemed to have been made under this regulation may at any time be revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate and since the case of the first respondent/writ petitioner is a case of deemed suspension, discretion is vested with the Disciplinary Authority either to continue or revoke the order of suspension and the case of the first respondent/writ petitioner is not a fit one for revoking the order of suspension and therefore, the reasons assigned by the learned Judge for setting aside the order of suspension with a consequential direction are unsustainable and prays for interference.

5. Per Contra, Mr. M. Ravi, learned counsel appearing for the first respondent/writ petitioner has drawn the attention of this Court to the counter affidavit of the first respondent dated 17.06.2014 and also the typed set of documents and would submit that the appellants are guilty of resorting to selective suspension and drawn the attention of this Court to the criminal cases relating to various officials of TANGEDCO and other Government officials and would submit that in respect of the above said officials, inspite of pendency of criminal cases, the orders of suspension passed against them have been revoked and therefore, it is not open to the appellants/official respondents to treat the first respondent herein/writ petitioner differently and in all fairness, they should have revoked the order of suspension and given posting order to him, posting him in a non-sensitive post in a far away place, as directed in the impugned common order passed in the writ petitions and therefore, no prejudice would be caused to him in the event of such a thing being done. It is further submitted by the learned counsel appearing for the first respondent that admittedly, the first respondent/writ petitioner is kept under suspension for nearly 5 years and the appellants are also paying 75% of salary as subsistence allowance and instead of paying such amounts without extracting any work, they should have reinstated the first respondent/writ petitioner and extracted the work and hence, prays for dismissal of the writ appeal.

6. The appellants, in response to the counter affidavit filed by the first respondent/writ petitioner, filed their reply affidavit and would submit that the suspension order came to be revoked against some of the officials, based on the recommendation of Additional Director General of Police, Vigilance attached to TNEB as well as after obtaining clearance from DVAC and in some cases, it was done as per the orders passed by this Court and orders of acquittal passed by the Criminal Court and each matter of suspension is to be looked into on the basis of merits of each case and after due consultation with the competent authority and based on the recommendation only, the decision has been taken and therefore, the allegation made by the first respondent herein/writ petitioner that the appellants herein are resorting to selective suspension is malicious and without any valid basis.

7. The first respondent/writ petitioner, in response to the same, filed rejoinder stating among other things that out of 50 employees, orders of suspension passed against 36 employees have been revoked and also given tabular column wherein in some cases the orders of suspension have been revoked without any consultation with DVAC and the same would disclose that the appellants are resorting to selective suspension/revocation of suspension for the reasons best known to them and the same also amounts to arbitrary exercise of power.

8. The learned counsel appearing for the first respondent/writ petitioner has also drawn the attention of this Court to the proceedings of the National Commission for Scheduled Castes dated 12.06.2014 in F. No. 9/115/2014 Rep. (SG) and would submit that the respondent herein left with no other option, has submitted a representation dated 12.06.2014 praying for revocation of the order of suspension and the said Commission having took serious view of the allegation, punitive action against 30 non-scheduled caste officials has been revoked based on Court order and requested the first appellant herein to consider the plea of the first respondent/writ petitioner and permit him to join service and inspite of that, the appellant did not chose to comply with the directions issued by the said Commission, which is a constitutional body set up under Article 338 of the Constitution of India.

9. This Court paid its best attention to the rival submissions and also carefully scrutinized the materials placed before it in the form of typed set of papers.

10. It is relevant to take note of the relevant rules and regulations and guidelines as to the placing the officials under suspension in the services of then Tamil Nadu Electricity Board (TNEB), now TANGEDCO.

11. Regulation 9 of the Tamil Nadu Electricity Board Employee Discipline and Appeal Regulation speaks about suspension and it is relevant to extract the same:

"9. Suspension:

(a) A member of a class of service may be placed under suspension from service, where-

(i) an enquiry into grave charges against him contemplated, or is pending, or

(ii) a complaint against him of any criminal offence is under investigation or trial and if such suspension is necessary in the public interest.

(b) An employee who is detained in custody whether on a criminal charge or otherwise, for a period longer than forty-eight hours shall be deemed to have been suspended under this regulation.

(c) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an employee under suspension is set aside on appeal or on review under these regulations and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal,

removal or compulsory retirement and shall remain in force until further orders.

(d) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an employee of the Board is set aside or declared or rendered void in consequences of or by a decision of a Court of Law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal/removal or compulsory retirement was originally imposed, the employees shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

(dd) Where a Board employee is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceedings or otherwise) and if any other disciplinary proceedings is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Board employee shall continue to be under suspension until/the termination of all or any such proceedings.

(e) An order of suspension made or deemed to have been made under this regulation may at any time be revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate."

12. Regulation 9(e) speaks about deemed suspension and it gives discretion to the concerned authority to revoke the same. Admittedly, the case of the first respondent/writ petitioner is one of deemed suspension for the reason that he was said to have received bribe from one Murugan and at that time, he was trapped and arrested by the officials of DVAC and kept in custody for about 3 days and since his period of custody exceeded 48 hours, he was placed under suspension in terms of Regulation 9(b). A clarification has also been issued by TNEB/TANGEDCO in Memorandum (Per)No. 1938/A18/A181/2010-1 dated 24.02.2010 and Chapter 11(3) speaks about implications of suspensions and as per the said instructions, in cases involving corruption, if the matter has been referred to DVAC, the suspension may be revoked after consulting the DVAC not only as a measure to avoid hardship to the Board employee concerned, but also to reduce additional expenditure to Board and the competent authority should make a review of such cases and examine whether suspension need not be revoked pending disciplinary proceedings, in the light of the criteria laid down in the matter of suspension. As per para 2 sub-clause (1) of the said circular, it is stated that if the period of suspension of an employee exceeds five years and the criminal proceeding is not yet finalized, then, such case may be considered for revocation of suspension, after following the due process, subject to the outcome of the order of the Criminal Court.

13. A perusal and understanding of the above said regulations would disclose

that ultimate discretion vest with the Disciplinary Authority either to continue or revoke the order of suspension by resorting to review, even in the case of deemed suspension.

14. The learned counsel appearing for the appellants has placed reliance upon the following decisions:

- (i) Allahabad Bank and Another Vs. Deepak Kumar Bhola, ;
- (ii) Judgment dated 05.11.2007 made in W.A. No. 1114 of 2007 Secretary to Government of Tamil Nadu and Another v. N. Shanmugasundaram;
- (iii) M. Rajambal Vs. The Principal District Judge, ;
- (iv) C. Balasubramanian v. Commissioner, Tiruchirappalli Corporation and Another 2011 (1) CWC 319 : LNIND 2011 BMM 17
- (v) Order dated 05.10.2010 made in W.P. No. 12590/2009.

and would submit that in all cases, the concerned employees were suspended on account of pendency of criminal prosecution and in some cases, suspended for demand and acceptance of bribe and it has been held that the concerned individual/official has no right to seek revocation of the order of suspension merely because of prolonging of criminal cases for long years and therefore, in the case on hand, it is not open to the first respondent/writ petitioner to seek for revocation of the order of deemed suspension, as a matter of right.

15. Per contra, learned counsel appearing for the first respondent/writ petitioner has drawn the attention of this Court to the judgments in (i) K. Sukhendar Reddy Vs. State of Andhra Pradesh and Another, and (ii) Union of India and Another v. Ashok Kumar Aggarwal Civil Appeal No. 9454/2013 dated 22.11.2013 and would submit that in those cases, orders of suspension came to be passed against concerned officials on account of pendency of criminal prosecution and in the judgment in K. Sukhendar Reddy v. State of A.P and Another (supra), it has been observed that in the criminal case a number of senior IAS officers, even senior to the appellant therein, may be found involved, but nothing positive or definite can be said as yet as the investigation is likely to take time and it has been further held that the Government cannot be permitted to resort to selective suspension. In Union of India & Another v. Ashok Kumar Aggarwal (supra), it was found that in spite of quashing of the suspension order and direction issued by the Tribunal to reinstate the respondent, which was also confirmed by the High Court, his suspension was directed to be continued. Therefore, this is a fit case in which the impugned order of suspension is to be revoked and accordingly, it was quashed in the impugned order passed in the writ petition and therefore, prays for confirmation of the order.

16. In Allahabad Bank and Another v. Deepak Kumar Bhola (supra), a bank official was prosecuted for committing forgery and wrongfully withdrawing the money and the concerned employee was placed under suspension pending trial

and it was put to challenge before the High Court of Allahabad and it was quashed and thereafter, appeal was preferred before the Hon''ble Supreme Court of India. The Hon''ble Supreme Court of India has considered the scope of offences involving moral turpitude and held that moral turpitude must depend upon facts of each case, but whatever may be the meaning which may be given to the term "moral turpitude" it appears to it that one of the most serious offences involving "moral turpitude" would be where a person employed in a banking company dealing with money of the general public, commits forgery and wrongfully withdraws money which he is not entitled to withdraw and the very fact that the investigation was conducted by CBI which resulted in filing of the charge sheet, alleging various offences committed, was sufficient for the appellant Bank to conclude that pending prosecution, the respondent/concerned individual should be suspended.

17. In *M. Rajambal v. Principal District Judge, Salem District, Salem* (supra), the concerned Court staff was proceeded for theft of stamp papers under the service rules as well as under criminal law and he was placed under suspension and it was put to challenge and a Division Bench of this Court held that the authority is entitled to appoint a public servant and would be entitled to suspend him pending departmental enquiry into his conduct or pending criminal proceedings, which may eventually result in departmental enquiry against him.

18. In yet another decision in *C. Balasubramanian v. Commissioner, Tiruchirappalli Corporation and Another* (supra), a Division Bench of this Court has considered the case of the appellant, who was placed under suspension on account of demand acceptance of bribe and it was put to challenge and even after filing of the charge sheet in the criminal case, his suspension continued and it has been held in the said decision that simply because criminal trial is pending for more than 3 years, it is not fair to interfere with the order of suspension, especially when the employee suspended on account of corruption.

19. In the order dated 05.10.2010 made in W.P. No. 12590/2009 delivered by learned Single Judge of this Court (Hon''ble Mr. Justice S. Manikumar), the judgments rendered by the Hon''ble Supreme Court of India as well as this Court has been elaborately considered and the facts of the case would disclose that the writ petitioner therein was arrested and remanded to judicial custody while accepting bribe and after extracted the rations laid down in various decisions and on the facts of the case, the learned Judge has held as follows:

"88. The order of suspension for a misconduct, involving moral turpitude, in the instant case, alleged act of corruption and the further order, refusing to revoke the order of suspension, both being discretionary and administrative in nature, should not ordinarily be interfered with by the High Court under Article 226 of the Constitution of India. Allowing a person charged with serious acts of corruption or any other misconduct, involving moral turpitude, to discharge his duties and enjoy the fruits of the post, would be against a public policy and it would not be in public interest or to maintain a clean and effective administration.

89. Cases involving serious charges of corruption and misappropriation of money, certainly involve moral turpitude, where there is implied depravity and villiness of character. As right observed by the Supreme Court, by allowing a government servant, facing serious charges of corruption or misappropriation or embezzlement etc., to be retained in service, public interest would be affected. Allowing such persons to be retained in service, in my view, would give a signal to the erring government servants that if the trial is not taken up, for sometime, then the order of suspension would be revoked automatically. A person charged with a serious offence of corruption, for which, punishment may even extend to 10 years, cannot at any stretch of imagination, be inducted or retained in the department, pending disposal of the trial, as the very conduct, reputation of the person is questionable.

90. In the case on hand, powers exercised in good faith and for legitimate reasons in public interest and social interest and to effectuate the purpose for which it is conferred on the authorities, cannot be said to have been exercised arbitrarily. Courts being the custodian of law should not interfere with the orders of suspension, in the case of corruption, embezzlement or misappropriation of government money and retention of such persons would pollute and contaminate the department. The effect of retention of such persons in service, pending trial would demoralise the other government servants, frustrate the object of Prevention of Corruption Act. Therefore, the action of the respondent, in keeping such government servant away from the sphere of his activities, no matter whether the trial is prolonged for a considerable time, cannot clothe any right to seek for retention in service. Though Courts are designated exclusively for the purpose of dealing with corruption cases, for so many reasons, sometimes not bona fide, they are delayed. No doubt, pendency of the trial for an offence under the Prevention of Corruption Act, causes agony and humiliation, but it is always open to the government servant to approach the Court seeking for early disposal of the trial.

91. It is the responsibility of the appointing/disciplinary authority/government to take into consideration that other employees/servants of the department are not de-moralised and restoring the services of such person, in service, would be certainly deleterious to the efficiency of others. Powers exercised by the appointing/disciplinary authority in rejecting the request, cannot be said to be arbitrary. The appointing/disciplinary authority/government has to maintain honesty, good conduct, efficiency in administration and to keep away persons, facing serious charges."

20. It is the primordial submission of the learned counsel appearing for the first respondent/writ petitioner that in some cases TNEC/TANGEDCO without even consulting DVAC, based on the recommendation given by the Additional Director General of Vigilance, had revoked the orders of suspension against persons, who are also facing criminal prosecution for the alleged demand and acceptance of bribe and therefore, by applying the principle of parity, the case of the petitioner

is also to be considered.

21. The fact that the first respondent/writ petitioner is facing criminal prosecution for the alleged demand and acceptance of bribe in C.C. No. 12/2009 on the file of the IV Additional City Civil Court, Chennai and further that he was also arrested at the time of alleged acceptance of bribe and kept in custody for over 48 hours, are not under serious dispute. The power of the appellants herein to place the first respondent/writ petitioner under suspension in terms of Regulation 9 of the Tamil Nadu Electricity Board Employee's Discipline and Appeal Regulations is also not disputed. The grievance expressed by the first respondent/writ petitioner is that there is no progress in the criminal case launched against him and he is continuing his suspension for more than 5 years and is also being paid with 75% of the subsistence allowance and in the light of the above facts, the suspension order is to be revoked and he is also to be reinstated into service and it was also found acceptance by the learned Judge.

22. This Court can take judicial notice of the fact that corruption is becoming monstrous and has spread its tentacle in almost every walks of life and it is high time to be dealt with sternly.

23. The Hon"ble Supreme Court of India in State of Madhya Pradesh and Others Vs. Shri Ram Singh, has observed as follows:

"8. Corruption in a civilised society is a disease like cancer, which if not detected in time, is sure to malignise (sic) the polity of the country leading to disastrous consequences. It is termed as a plague which is not only contagious but if not controlled spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS, being incurable. It has also been termed as royal thievery. The socio-political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti-people, but aimed and targeted against them. It affects the economy and destroys the cultural heritage. Unless nipped in the bud at the earliest, it is likely to cause turbulence--shaking of the socio-economic-political system in an otherwise healthy, wealthy, effective and vibrating society.

9. The menace of corruption was found to have enormously increased by the First and Second World War conditions. Corruption, at the initial stages, was considered confined to the bureaucracy which had the opportunities to deal with a variety of State largesse in the form of contracts, licences and grants. Even after the war the opportunities for corruption continued as large amounts of government surplus stores were required to be disposed of by the public servants. As a consequence of the wars the shortage of various goods necessitated the imposition of controls and extensive schemes of post-war reconstruction involving the disbursement of huge sums of money which lay in the control of the public servants giving them a wide discretion with the result of luring them to the glittering shine of wealth and property. In order to consolidate and amend the laws relating to prevention of corruption and matters connected

thereto, the Prevention of Corruption Act, 1947 was enacted which was amended from time to time. In the year 1988 a new Act on the subject being Act 49 of 1988 was enacted with the object of dealing with the circumstances, contingencies and shortcomings which were noticed in the working and implementation of the 1947 Act. The law relating to prevention of corruption was essentially made to deal with the public servants, not as understood in common parlance but specifically defined in the Act.

10. The Act was intended to make effective provisions for the prevention of bribery and corruption rampant amongst the public servants. It is a social legislation intended to curb illegal activities of the public servants and is designed to be liberally construed so as to advance its object. Dealing with the object underlying the Act this Court in *R.S. Nayak Vs. A.R. Antulay*,

"18. The 1947 Act was enacted, as its long title shows, to make more effective provision for the prevention of bribery and corruption. Indisputably, therefore, the provisions of the Act must receive such construction at the hands of the court as would advance the object and purpose underlying the Act and at any rate not defeat it. If the words of the statute are clear and unambiguous, it is the plainest duty of the court to give effect to the natural meaning of the words used in the provision. The question of construction arises only in the event of an ambiguity or the plain meaning of the words used in the statute would be self-defeating. The court is entitled to ascertain the intention of the legislature to remove the ambiguity by construing the provision of the statute as a whole keeping in view what was the mischief when the statute was enacted and to remove which the legislature enacted the statute. This rule of construction is so universally accepted that it need not be supported by precedents. Adopting this rule of construction, whenever a question of construction arises upon ambiguity or where two views are possible of a provision, it would be the duty of the court to adopt that construction which would advance the object underlying the Act, namely, to make effective provision for the prevention of bribery and corruption and at any rate not defeat it."

24. The case of the petitioner is one of deemed suspension and merely because criminal prosecution is keeping prolonged and that the first respondent/writ petitioner is also kept under suspension for over 5 years, cannot be a ground to revoke the order of suspension with an consequential order of reinstatement. The cases referred to by the learned counsel appearing for the first respondent/writ petitioner would disclose that in some cases pursuant to the Court orders and orders of acquittal passed by the Criminal Court, orders of suspension have been revoked and in some cases, based on the recommendation made by the Chief Vigilance Officer, ADGP-Vigilance attached to TANGEDCO, orders of suspension have been revoked and each case depends upon its own facts and circumstances and in cases involving bribery and moral turpitude, there cannot be any uniform guideline especially with regard to revoking the orders of suspension.

25. It is also to be pointed out at this juncture that if the circular/instructions of

TANGEDCO stipulates that clearance from DVAC is required for revoking the orders of suspension in respect of cases where criminal prosecution is pending, the appellants are duty bound to follow the same as the said Agency, being a prosecuting agency, may have a say for the reason that in the event of reinstatement there may be likelihood of tampering with the material witnesses also and de hors the acquittal, it may open to the authorities to initiate departmental action also. The appellant, while reviewing such kinds of cases, are expected to apply their mind objectively and carefully.

26. Therefore, in the light of the factual discussion and legal position, this Court is unable to subscribe to the reasons assigned by the learned Judge in allowing the writ petition and the grounds raised by the appellants in this writ appeal, merits acceptance. In the result, this writ appeal is allowed and the order dated 02.07.2012 made in W.P. No. 3616/2011 is set aside. However, it may open to the appellants to review the case of the first respondent/writ petitioner in the light of Tamil Nadu Electricity Board Employee's Discipline and Appeal Regulations coupled with the instructions and pass orders in accordance with law as and when the need or occasion arises. No costs. Consequently, connected miscellaneous petitions are closed.