

(1982) 07 MAD CK 0022

In the Madras High Court

Case No : W.A. No's. 59 and 336 of 1982

D.S. Mohammed Khan

APPELLANT

Vs

The Secretary to Government, Rural Development and Local
Administration Department and Others

RESPONDENT

Date of Decision : 28-07-1982

Acts Referred:

Citation : (1983) ILR (Mad) 244 : (1983) 2 LLJ 219 : (1983) 96 LW 288 :
(1983) 2 MLJ 134

Hon'ble Judges : Sengottuvelan, J;G. Ramanujam, J

Bench : Division Bench

Judgement

Ramanujam, J.—Since both the matters are interconnected and the points arising in both the cases are the same, they are dealt with

together.

2. W.A. No. 59 of 1982 is against the dismissal of W.P. No. 9704 of 1981 filed by one Mohammed Khan against the order of suspension

pending enquiry by Mohan, J., and W.A. No. 336 of 1982 is against the order of Padmanabhan, J., in W.P. 8641 of 1981 allowing the writ

petition filed by one Pappiah against whom a similar order of suspension has been passed by the Commissioner, Corporation of Madurai.

3. Thiru Mohammed Khan, the petitioner in W.P. No. 9704 of 1981 was functioning as Manager, in Madurai City Municipal Corporation from

October, 1976. He was in charge of the stationery department and Thiru Pappiah, the petitioner in W.P. 8641 of 1981 was the Chief Accountant

who is said to have been in charge of the stationery department as manager for one day in the absence of Thiru Mohammed Khan. On the ground

that certain acts of malfeasance and misfeasance occurred in the year 1976

which came to light in the year 1979, by an order, dated 2nd July, 1979, both of them had been suspended pending enquiry into allegations of misconduct in the stationery department. The order of suspension proceeded on the as is that certain allegations had been made with reference to the transactions in the stationery department when both of them functioned as managers, that an enquiry into the same is going to be conducted and that in the interests of administration they should be placed under suspension. The said orders of suspension have been questioned by each of them in their respective writ petitions. According to the petitioners (1) they had been kept under suspension indefinitely without any indication of its finality, and though the suspension order was passed on 2nd July, 1979 no charges had been framed and, therefore, the orders of suspension are liable to be quashed; and (2) as per G.O.Ms. No. 211, Personnel and Administrative Reforms (Personnel) Department dated 27th February, 1980, the time limit of three months has been fixed as the normal duration of order of suspension and that no person can be kept under suspension pending enquiry beyond three months and in cases where the contemplated enquiry is not completed within the said period officers should be restored to duty, that the principle contained in the said G.O. has been applied to persons on the establishment of the Corporation of Madurai in G.O.Ms. 1988 R.D. and L.A. department, dated 24th December, 1980 and as three months have elapsed by 2nd October, 1979, the petitioners should be restored to duty with full wages for the period beyond 2nd October, 1979 on the ground that the order of suspension imposed on both of them should be deemed to have been revoked in view of the said two Government Orders; (3) that the petitioners sent representations to the State Government on various dates for setting aside the orders of suspension but there is no response from the Government though the Government has entertained similar representations from one Duraiswami who had also functioned as Manager in Madurai Corporation during the year 1976 and who had been earlier suspended pending enquiry, and on his representation the order of suspension has been revoked by the Government and the inaction on the part of the Government with reference to their representations are concerned should be taken to amount to a hostile discrimination; (4) that they have not committed any

illegality or irregularity when they were functioning in the stationery department and as such the orders of suspension which do not indicate how the

petitioners are involved in the irregularities subsequently found in the stationery department, and (5) whatever be the allegations of misconduct or

the charges framed in relation thereto, the continuous suspension of the petitioners for a period of more than two years, cannot at all be justified.

4. In the counter-affidavit filed in both the writ petitions, the Commissioner, Corporation of Madurai, has taken up the stand that in the year 1979

certain allegations of misconduct came to be made against the petitioner and Duraiswami and others who were working in the stationery

department, that on the basis of the said allegations the Accounts Officer was deputed to probe into the affairs of the said department, that he had

submitted a report bringing to light serious irregularities and lapses on the part of the petitioners and others in passing the requirement of papers for

printing registers required for the Corporation and issue of papers thereby causing a loss of Rs. 1,35,495.56 to the Corporation. Thereafter the

matter was reported to the police who are investigation into the matter. Having regard to the fact that the allegations were of grave nature, the

petitioners and other were kept under suspension pending enquiry into the said allegations and the police authorities had already started their

investigations. He has also stated that the the time-limit fixed in G.O.Ms. No. 211 Personnel and Administrative Reforms (Personnel) Department,

dated 27th February, 1980 and G.O.Ms. No. 1980 R.D. & L.A. Department, dated 24th December, 1980 will not apply to the case of the

petitioners as criminal complaint has been filed against them and the matter is under investigation, and therefore, the petitioners cannot seek the aid

of the said Government orders or invalidating the orders of suspension. So far as the petitioner's allegation that similar order of suspension passed

against one Duraiswami had been set aside by the Government and that similar protection had not been given to the petitioners, the Commissioner,

Corporation of Madurai has stated in his counter-affidavit that Duraiswami was not functioning in the Madurai Corporation at the time of

suspension but was functioning as the Commissioner of some other Municipality and therefore, it might have been felt by the Government that even

without his suspension the investigation will not be handicapped. As regards the contention of the petitioners that they are not responsible for any

loss of Corporation funds or for misappropriation of the same and therefore the orders of suspension cannot be legally sustained, the counter-

affidavit proceeds to state that the extent to which they are involved in the misconduct is being investigated by the police and it can be ascertained

only after the trial and at this stage one cannot presume that the petitioners are not involved in the matter. As regards the petitioner's complaint of

long and inordinate delay in framing the charges and the continued suspension, the contention of the Corporation is that the delay is due to the

prolonged investigation by the police, that the case involves going through voluminous records to determine the extent of involvement of the

petitioners in the various transactions and, therefore, the delay cannot be avoided.

5. The writ petition filed by Mohammed Khan came to be heard by Mohan, J., who by his order, dated 20th January, 1982, held that the time-

limit fixed in the two Government orders referred to by the petitioners cannot apply and as the petitioner is suspected to have misappropriated the

funds of the Municipal Corporation and actually a police complaint has been preferred and a First Information Report has been recorded and that

as the charge-sheet is about to be filed, it is not desirable to direct restoration of the petitioners to office, revoking the order of suspension and that

instead, without unduly prolonging the agonising situation in which the petitioner is placed, he directed the police to file the charge-sheet within three

months from the date of the order. In that view, he dismissed the writ petition with the above directions.

6. The order writ petition filed by Pappiah came to be heard by Padmanabhan, J., who by his order, dated 18th June, 1982, held that the order for

suspension has been issued on the contemplation of departmental enquiry and, therefore, the Corporation cannot take advantage of the fact that

they had made a complaint to the police, that even if the order of suspension is taken to be based on a criminal complaint, the charge-sheet should

have been filed within a reasonable time and that it is not open to the Corporation to keep the petitioner under suspension beyond three months

under the pretext of pending criminal investigation. It was also held that the Government having set aside a similar order of suspension passed

against one Duraiswami who is similarly placed as the petitioner, the same treatment should be given to the petitions also and the orders of

suspension against them should have also been vacated. The learned Judge relied on a judgment of a Division Bench of this Court in K. Balan v.

The Commissioner of Police, Egmore, Madras v. The Commissioner of Police, Egmore, Madras (W.A. 461 of 1979) in support of his view that

the Corporation had no justification to keep the petitioner under suspension indefinitely without his knowing what his future is as no charge-sheet

has been filed so far and no further indulgence should be given to the Corporation by continuing the suspension till the filing of the charge-sheet.

But, the learned Judge has, however, stated :

I make it clear that my quashing the order of suspension will not exonerate the petitioner in the event of the department deciding to prosecute the

petitioner in a criminal court or taking any departmental action. I further make it clear that once the respondent reaches a definite stage as to the

action to be taken against the petitioner, my order in this writ petition will not prevent them from placing the petitioner under suspension if the fact

and circumstances so warrant.

7. The learned counsel appearing for the appellant in W.A. No. 59 of 1982, D. S. Mohammed Khan v. Secretary to Government R and L. A.

Department and another, questions the validity of the order passed by Mohan, J., dismissing the writ petition and contends that the order passed

by Padmanabhan, J., is the proper one in the circumstances of the case. The learned Advocate General appearing for the appellants in W.A. No.

336 of 1982, on the other hand questions the correctness of the order of Padmanabhan, J. and contends that in the circumstances of the case the

view taken by Mohan, J., is the proper one.

8. It cannot be disputed that more than three years have passed as on date since the order of suspension was passed on 2nd July, 1979. Till now

no departmental proceedings have been initiated before the Criminal Court by filing a charge-sheet. No doubt it is now said by the learned counsel

appearing for the Corporation that the charge-sheet is ready to be filed by it could not be filed in view of the interim order passed in W.A. No. 59

of 1982, granting interim suspension of the order of Mohan, J. which directed the police to file the charge-sheet within three months, and therefore,

the non-filing of the charge-sheet after Mohan, J., dismissed the writ petition on 20th January, 1982 cannot amount to a delay on the part of the

police and in fact the police is ready to file the charge-sheet within a week or two. The question is whether on the facts and circumstance of this

case the continued suspension of the petitioner in the writ petitions should be taken to be justified.

9. It is no doubt true the Government Orders referred to above cannot strictly be applied to cases of Corporation servants against whom criminal

proceedings have been initiated, for, in paragraph 8 in G.O.Ms. No. 1989 R.D. and L.A. Department, dated 24th December, 1980 it is stated

that the time-limit ordered in the above paragraphs will not be applicable to the cases of Corporation servants against whom criminal proceedings

have been initiated. The question is even if the said Government Orders do not apply to the cases of the petitioner, whether they can be kept under

suspension indefinitely without any time-limit awaiting framing of the charges for the departmental enquiry of filing of the charge-sheet by the Police.

Even assuming that the investigation by the police takes a longer time than the time taken at the departmental enquiry to frame charges, as the

police may need a longer time for investigating into the matter, there years period taken by the police in this case cannot be said to be reasonable.

The order of suspension is penal in nature and it is for this reason the Government in the above two orders have directed that the cases of

suspension have to be reviewed within a period of three months and continue the suspension beyond three months only if the circumstance warrant

and that too for another period of three months. The submission of the Corporation that the police was ready to file the charge-sheet after the

direction given by Mohan, J., but could not be filed because of the interim directions made by this Court in W.A. No. 59 of 1982 cannot be

accepted as a proper explanation for not filing the charge-sheet. The Corporation should have moved the Court to vacate the interim order or seek

permission to file the charge-sheet without prejudice to the pendency of the writ appeal. Not having taken any such steps, the police cannot take

that as an excuse for not filing the charge-sheet even though they were ready to file the same. Whatever be the reason for non-filing or the charge-

sheet for nearly three years, that is a fact that should be taken by this Court for quashing other order of suspension as has been done by

Padmanabhan, J. However, we have to make it clear that the quashing of orders of suspension passed against the petitioner in the writ petitioner

will not stand in the way of the Corporation of Madurai taking any departmental action or prosecuting them in any criminal court and that once the charge-sheet is filed before the criminal court of the charges framed in departmental action, the Corporation is at liberty to place them under suspension if the facts and circumstances so warrant.

10. In this view, we allow W.A. No. 59 of 1982, and dismiss W.A. No. 336 of 1982. There will however be no order as to costs.