
(1982) 02 MAD CK 0044
In the Madras High Court

M. Chengaiah

APPELLANT

Vs

The State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 18-02-1982

Acts Referred:

Constitution of India, 1950 — Article 14
Penal Code, 1860 (IPC) — Section 420, 468, 471

Citation : (1983) ILR (Mad) 177 : (1983) 96 LW 388 : (1983) 2 MLJ 348

Hon'ble Judges : T. Sathiadev, J

Bench : Single Bench

Judgement

T. Sathiadev, J.—Petitioner was working as L.G.G.S. in Taluk Office, Egmore, Nungambakkam, Madras-8. He was placed under suspension by an order, dated 29th May, 1979, under Rule 17(e)(i), (ii) of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules, with effect from the forenoon of 24th April, 1979, passed by the second respondent. Having been kept under suspension for more than two years and three months, he is seeking for quashing the order of suspension, on the ground that no further step had been taken on the Crime No. 908 of 1979 registered as against him in Rule 1, Myapore police station under Sections 420, 468 and 471, Indian Penal Code. Along with him as against four other persons also, crime numbers were registered but so far no charge-" sheet had been laid. He refers to G.O. Ms. No. 211, P. & A.R., dated 27th February, 1980, wherein Government had impressed upon the concerned authorities the need to reduce the period of suspension to the berets minimum. The order of suspension for an indefinite period without any review is against F.R. 53, and the continued suspension affects him greatly.

2. In the counter-affidavit the second respondent has stated that petitioner and three others who were all Last Grade Government Servants indulged in criminal acts in fabricating bogus cement permits, and all the four persons were taken into custody by police for interrogation and they were arrested. The matter is still under investigation. Petitioner! is being paid subsistence allowance and dearness allowance admissible under F.R. 53(1). The Deputy Commissioner of Police

(Crimes) has reported on 28th August, 1981, that the case is still under investigation, and "for want of cement permit register and original cement permit from the Tahsildar, Mylapore", he is unable to complete the investigation. G.O. Ms. No. 211 would not apply to the petitioner, since the period prescribed therein would not be applicable to cases of Government servants against whom criminal proceedings have been initiated. The records asked by the Deputy Commissioner of Police are not immediately traceable, and action is being taken to file the charge-sheet expeditiously. The suspension is not indefinite, and since emergent steps have already been initiated to complete investigation and also for filing the charge-sheet, it does not violate either F.R. 53 or any of the rules under Tamil Nadu Civil Service (Classification, Control and Appeal) Rules. Petitioner filed an additional affidavit claiming that one L.K. Nassod, Watchman of Gopalapuram godown of Tamil Nadu Civil Supplies Corporation Ltd., was also arrested along with petitioner and three others, and the same complaints were made against all of them and a case was registered against him in the same police station in Crime No. 1334 of 1979. All of them were kept in police custody together, and allegations made are common in respect of all the five persons. The said Masood had since been restored to service by order, dated 21st August, 1981, of the Senior Regional Manager, TNCSC Ltd., on the ground that-

the Divisional Deputy Inspector of Police, Mylapore, was addressed to furnish copy of the charge-sheet filed against L.K. Masood, the matter was under correspondence with the police till date. But the police have not furnished a copy of the charge-sheet so far., A show-cause notice was issued to Thiru L.K. Masood in reference 5th cited asking him to show cause as to why appropriate disciplinary action should not be taken against him and his services terminated for his alleged involvement in a custody for ten days from 24th April, 1979 to 4th May, 1979. Thiru L. K. Masood in his explanation submitted in reference 6th cited has stated that he has not committed any malpractices and that he is not connected in any way with the issue of bogus permits. He has also submitted that no enquiries were conducted and no charge-sheet was laid against him by the police. In the circumstance: he requested to restore him to duty. The explanation of the delinquent has been carefully examined. Despite, a long correspondence with the police officials a definite report as to the stage of the case has not been received from them. The delinquent was under suspension for more than two years now. The police charge-sheet is still awaited. It is therefore not desirable to keep Mm under suspension any longer. Disciplinary action can be taken against him as and when the charge-sheet against him is received from the police. It is decided to restore him to duty pending further disciplinary action as may be warranted By the future course of the police case. It is, therefore, now ordered that he be restored to duty with immediate effect without prejudice to the disciplinary action which may be warranted in the event of the police filing a charge-sheet or in the face of material evidence which the management may come to have otherwise incriminating him in the alleged acts of cheating and misconduct.

Therefore, it is claimed that when a person, similarly placed and alleged to have been involved in the commission of the same offence, had been already restored to service, for the reasons stated in the aforesaid order, the continued suspension of the petitioner for an indefinite period, is violative of Article 14, and in any event being unreasonable, tantamount to a punishment being imposed, without trial and hence under the impugned order deserves to be set aside.

3. The first point taken by the petitioner is that, the indefinite suspension of the petitioner is in contravention of G.O. Ms. No. 211, Personnel and Administrative Reforms (Personnel) Department, dated 27th February, 1980. This Government order graphically brings out, how far indefinite suspension of Government servants is ruinous not only to the suspended persons, but also affects the Government immeasurably. Rather the Government order itself exposes the unreasonable methods adopted in keeping Government servants under suspension for prolonged periods, which results also in monetary loss to the Government. The G.O. contains several commendable directives to Heads of Departments, to reduce the period of suspension to the barest minimum. In paragraph 5 (ix), it is stated that the time limits ordered in the earlier paragraph would not be applicable to cases of Government servants against whom criminal proceedings have been initiated. As against the petitioner, when a case has been registered in the police station, it tantamounts to initiation of a criminal proceeding, and, therefore, he cannot, by relying on the said Government Order, claim that the continued suspension is in contravention of the said Government Order.

4. The next contention of the petitioner is that, in any event, an indefinite suspension without any progress in the criminal proceedings, is virtually an imposition of punishment, when no charge having been framed and established as against him. Payment of subsistence allowance and dearness allowance are not satisfactory reliefs in these days, when the cost of living has gone up and what he has asked for, is an early determination as to whether he is to be prosecuted or he could be restored to service.

5. It is to find out whether the concerned persons have taken diligent steps to justify a continued suspension or they have allowed the matter to simply drift away, which affects the valuable rights of a Government servant being restored to service, the relevant correspondence between concerned authorities has to be? looked into.

6. Correspondence had been exchanged between the Tahsildar, Collector of Madras, the Deputy Commissioner of Police (Crimes) and the Government. The Tahsildar, Mylapore-Triplicane, addressed the Collector of Madras on 25th April, 1979, stating that the Deputy Inspector of Police (Crime) had informed him that the four persons mentioned therein inclusive of the petitioner have been taken into police custody for interrogation along with other persons in connection with the preparation and selling of bogus cement permits. On 29th May, 1979, the impugned order of suspension was passed. On 31st March, 1980, in G.O. Ms. No.

355, Revenue, Government ordered further continuance of the suspension of the petitioner and others for a further period of six months from 1st April, 1980, or till the enquiry by the Director of Vigilance and Anti-Corruption is completed and final orders are passed. Thereafter, on 30th April, 1980, the Collector addressed the Deputy Commissioner of Police (Crimes) (hereinafter referred to as "Commissioner"), stating that the individuals have been under suspension for more than 11 months and further delay in reinstating them to service is questionable by Government, and therefore, the stage of the matter may be informed. On 4th June, 1980, he stated that the investigation involves examination of more than forty witnesses and it might take another two months to complete and that he will report the progress made after two months. On 16th July, 1980, Government addressed Collector stating that the Director of Vigilance and Anti-Corruption has reported that the Government servants were not suspended at the instance of the Director of Vigilance and Anti-Corruption and hence the reasons for which they were placed under suspension and also whether they are still under suspension may be stated. On 24th July, 1980, a reply was sent stating about the crime numbers in which cases have been registered and that the Deputy Commissioner is expected to send the report within two months. On 18th August, 1980, 2nd November, 1980, 29th November, 1980, 6th December, 1980, 21st January, 1981, 23rd March, 1981, 6th May, 1982, 22nd June, 1981 and 25th July, 1981, reminders have been sent to Commissioner, but in spite of them, in further progress has been made an the investigation nor was he in a position to disclose what has been made out.

7. When these reminder letters wore being sent to Commissioner, in the meanwhile on 10th November, 1980, Government asked the Collector to inform the present stage of the investigation. Petitioner and others have also submitted petitions to Government stating that prolonged suspension is putting them to unbearable hardship everyday. On 2nd April, 1981, the Commissioner for Revenue Administration informed the Collector that the time-limit prescribed in G.O. Ms. No. 211, would not be applicable to these cases, and hence there is no need for the case to be reviewed. As stated above, in spite of nine letters sent by Collector, beginning from 18th August, 1980 to 29th July, 1981 spread over a period of one year, Commissioner for the first time, realising that he could not complete the investigation for want or cement permit register and original cement permit from the Tahsildar, Mylapore, has stated that on receipt of them, the case will be completed and charge-sheet filed. This he wrote on 28th August, 1981. When the Tahsildar, Mylapore-Triplicane had been asked to submit a report he has stated that on a careful and thorough search made, only two files were found and sent to the Crime branch and that the police had returned them stating that they are irrelevant and wanted his office to send two other files and that in spite of all efforts taken by the staff, the files could not be traced and a reply was already sent to him to that effect, and a police constable had taken delivery of that report in person on that day itself.

8. The Tahsildar in his communication, dated 18th November, 1981 would also

add that by keeping the three persons under suspension indefinitely, on account of subsistence allowance, a sum of Rs. 15,300 had been spent, in addition to the pay and allowances paid to the officials who are actually working in their places. He also refers to the instructions issued by Government to quickly dispose of cases involving additional expenses, consequent to personnel being placed under suspension, and that the concerned officials who having been placed under suspension for more than two years have requested the Collector for reinstatement, on the ground that they are suffering everyday, for their bread and they are looking forward to get rid of their mental agony, Restoration to service of one Masood by the Senior Regional Manager, T.N.C.S. Corporation Ltd., was also referred to by him.

9. This writ petition was admitted on 15th September, 1981. The counter-affidavit filed does not disclose as to what has been done by the Deputy Commissioner of Police (Crimes) subsequent to 28th August, 1981 wherein he has promised that an early charge-sheet would be laid. By referring to the correspondence, an endeavour has been made to show that subsequent to registering the crimes number in the police station, continually active steps had not been taken by the Deputy Commissioner of Police (Crimes) to complete investigation. Even if he has taken steps, the Collector had not been informed of if, even though the Government had asked the Collector to state about the progress of the matter by letter, dated 10th November, 1980. Not only for the purposes of this case, but in the larger interests of Government servants, it will be significant to take note of, what has been done by the Deputy Commissioner of Police (Crimes). He would not even condescend to reply to the Collector of Madras. Having suspended four Government servants working under her, naturally being anxious and particularly when the Government had asked for report, letters have been addressed on nine occasions, i.e., for a period spread over one full year. It is startling to note that a situation had come by in which, a Collector of Madras is not even considered fit to be replied and had been put to a predicament of being disabled from taking a decision as to what is to be done to Government servants working in his her office. They are not routine reminders for despatch of files or receipts, etc. not to be acknowledged or replied promptly. The Deputy Commissioner of Police (Crimes) who had assumed the responsibility of investigating about Government servants cannot avoid informing Head of Department or the concerned officer of what is the matter under investigation, when letters are addressed to him. If this is the lot of the Collector of Madras and the Government servants working in that office, what would be the lot of citizens, who look to such police officials for prompt action and response, can well be imagined. This aspect is relevant, because where the power under Rule 17(e) is invoked, it has to be reasonably exercised, failing which, it would turn out to be an abuse of the exercise of powers.

10. In contrast to what has happened, on a reading of G.O. Ms. No. 211, it would straightaway show, how far the Government has shown, earnest concern towards its employees, who may be kept under suspension pending disciplinary

proceedings or when the matter is referred to Directorate of Vigilante and Anti-Corruption for enquiry. There could be no error committed by police personnel, if the salient principles, the Government has borne in mind while formulating the G.O. are taken as guidance, for energetic action. It is not as if, by incorporating Clause 5(ix) Government has abandoned the lot of Government servants in the hands of the Police pending investigation by it. The said G.O. is only for guidance, but the power exercised being under Rule 17(e) of the Rules, if the continued suspension pending investigation is made out to be outcome of [indifference or inaction, it would only result in the order being vitiated by failure to exercise power justly and equitably.

11. It is pertinent at this juncture to take note of the various circulars issued by the Central Government relating to suspension of its employees. Evidently, adopting what has been done by it, G.O. No. 211, had come to be passed by State Government. The concerned circulars found in the book "Suspension and Reinstatement", V Edn., by Muthuswami, disclose that the entire emphasis is laid on speedy follow-up action in suspension cases, and that every endeavour should be made to reduce the period of suspension to the barest minimum. Neither what the Central Government nor the State Government thinks of its employee, the police officials in charge of this case consider, as enabling characteristics to safeguard them. If the Government servants are guilty they should be punished at the earliest point of time. If not, they should be restored to duty, awaiting filing of charge-sheet, or on the trial being taken up, at which point of time, they must certainly be placed under suspension till the case is over.

12. The progress of the investigation so far made, had not been reported to the Collector nor to the Government and the counter-affidavit does not even state that they have been apprised of what has been done. The mere claim that the investigation is being carried on, cannot be a valid ground for indefinite and prolonged suspension of Government servants. Whether a Government servant occupies a higher or a lower post, all of them without exception are necessary for effective functioning of Government, and if any one of them is to be dissociated from functioning in his post, it cannot be lightly looked upon by police taking their own time to complete their report. If ultimately they are not found guilty, for the inaction of the police, they would have lost not only their continuity of acquaintance with service but it also results in mental agony and loss of reputation. One of the essential features of a Government servant is that he should have a continuity of acquaintance with work, which adds to the efficiency of the Government. Therefore, whether they are to be prosecuted or not, should be decided at the earliest point of time. In the instant case, as stated earlier, the Government itself has expressed its concern in its letters dated 16th July, 1980 and 11th October, 1980, to know what is happening by addressing the Collector. In spite of that sort of concern shown by the Government and earnest desire of the Collector to decide as to what should be done regarding continued suspension, the matter is still delayed. If paragraph 5 (ix) is to be taken as a final say in the matter, it would only encourage police authorities never to

complete proceedings, except to register a complaint in police station, resulting in untold misery and mental agony to Government servants.

13. Realising what is transpiring, the Senior Regional Manager, T.N.C.S. Corporation Ltd., was able to take a decision by stating "despite long correspondence with the police officials, a definite report as to the stage of the case has not been received from them. The delinquent was under suspension for more than two years now. The police charge-sheet is still awaited. It is therefore not desirable to keep him under suspension any longer". What a Corporation was able to realise about the inaction of the police and give relief to one of the persons, who had been similarly placed and together apprehended with the petitioner and others, the Collector of Madras is unable to do! If, in spite of one of them being restored pending forming of charge-sheet, it would be unjust to on continue the suspension of the petitioner for an indefinite period. In *Satkari Chatterji v. Commissioner of Police, Calcutta 1*, an indication is there to the effect that if suspension not followed by charge-sheet within a reasonable time it would be bad.

14. On what has been thus made out, it appears that in G.O. No. 211, it would not be unwise to add a stipulation that police authorities should report to Government, once in three months of the steps taken by them which would enable it to know as to whether any diligent steps are being taken, and if not, it could at least issue the necessary directives, though the periods stipulated cannot be relied upon by such suspended employees. Such a procedure would prevent this sort of suspension for indefinite period, which Government itself would not tolerate, nor would like to happen to its employees. Submitting a report is different from any entitlement to demand that, by lapse of time, a person should be restored. If the Government, thereafter from time to time considers that in public interest the suspension should continue, then the employee cannot have any lawful grievance.

15. No doubt, the question of Article 14 of the Constitution of India has been raised, but it is not now taken into account, because it is now well within the confines of the Government to decide how long this hiatus should continue.

16. Petitioner states in conclusion that, if only Government is to look into what has happened, it would restore him to service. When such is not only the fond hope, but also the firm belief entertained by him, the respondents are granted time till 18th March, 1982, to take a decision on the petition submitted by him on 21st November, 1980 and pass orders thereon. To this limited extent, a mandamus shall issue. "No costs".