

**THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA**

**WRIT PETITION No.18448 OF 2022**

**ORDER:-**

The present Writ Petition is filed under Article 226 of the Constitution of India, seeking the following relief:

*“...to issue an appropriate writ, Order or Direction, more particularly one in the nature of ‘Writ of Mandamus’ declaring (i) the action of the respondents 2 and 3 in placing the petitioner under suspension orders dated 14.08.2017 vide proceedings TB/Vig/Sairam/LDC/2017/51 (ii) Continuing the petitioner under suspension since 14.08.2017 and (iii) Not paying 100% of the salary as subsistence allowance as illegal, discriminatory and arbitrary, and consequently direct the respondent authorities to allow the petitioner to discharge his duties as Lower Division Clerk by paying all salaries and emoluments and pass such other order or orders...”*

2. The brief facts of the case are as follows:
3. The petitioner herein was appointed as Lower Division Clerk (LDC) in the Respondent No.2 Board vide orders dated 30.12.2013. He has been discharging his duties as Lower Division Clerk (LDC) without any remarks. While so, on 31.07.2017, a crime was registered against the petitioner at Nagarampalem Police Station of Guntur Urban vide Crime No.197/2017, under Sections 417, 376(2)n, 506 r/w 34 IPC, pursuant to the written report submitted by one Sandhu Madhavi Latha. Due to the said Crime against the petitioner as well as on his parents, the petitioner was arrested by the

Police and he was in jail for a period of more than 48 years. As per the report of the defacto complainant, she alleged that the petitioner had been developed physical intimacy with her for long time and thereafter went back from the promise of marrying the defacto complainant. Later the petitioner was enlarged on bail. Ultimately, on 14.08.2017 the petitioner was put under suspension by the Respondent No.2 by invoking the Sub Rule (2) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short "CCS(CCA) Rules, 1965").

4. Learned Assistant Solicitor General of India filed counter affidavit on behalf of the Respondent Nos.2 and 3, wherein it is stated that after the due selection by the Respondent No.2 Board vide order dated 30.12.2013, the petitioner was joined at Respondent No.2 Board on 06.01.2014. On 10.08.2017 a letter was received from the father of the petitioner wherein it is informed that the petitioner was arrested and was remanded to judicial custody on 04.08.2017 and he detained in Police custody for a period exceeding 48 hours, pursuant to the Crime registered against him on 31.07.2017. Later, the petitioner was released on bail on 18.08.2017 and he was put under suspension as per Sub Rule (2) of Rule 10 of CCS (CCA) Rules, 1965 and the said suspension of the petitioner has been reviewed from time to time as required for every 180 days . It is further stated that the petitioner was involved in criminal case no separate enquiry was conducted by the Respondent No.2 and necessary action will be initiated basing on the outcome of the criminal case filed against the petitioner.

5. The learned counsel for the petitioner submits that the action of the Respondent No.3 in extending the period of suspension vide order dated 14.08.2017 without assigning any reasons and due to allegation in the criminal case which is totally outside the purview of the employment of the petitioner is not justifiable. He further submits that the alleged criminal case is nothing to do with the employment of the petitioner which is totally unconnected to the petitioner official duty and it is also not known when the criminal case will end because of continuing the suspension due to criminal case is against the public interest and public policy. Moreover, the petitioner is not responsible for a delay being caused in concluding the criminal case. Even though the charge sheet is filed, the criminal case is still pending even after lapse of nearly six years.

6. Learned counsel for the petitioner further submits that prolonged suspension of an employee on the ground of alleged involvement in a crime which has nothing to do with the employment and in connection with matrimonial disputes is not justified either under law or contrary to the ratio laid down by the Hon'ble Supreme Court as well as this Court. He further submits that as per the guidelines of the Central Government, if the suspension of an employee is continued for more than a period of one year is entitled for 100% of the salary as subsistence allowance. In the present case still the respondents have been paying 50% of the subsistence allowance is contrary to the said guidelines. He further submits that in the present case the charge sheet was also filed as such the petitioner cannot be continued under suspension for a longer period which is against the public

interest and more so, the alleged offence is not a heinous offence. He further submits that the prolonged suspension without there being any reasons, except on ground of pending alleged offence, which was not related to the employment is against the public interest as ratio laid down by the Hon'ble Supreme Court as well as this Court.

7. Learned counsel for the petitioner relied upon ratio laid down by the this Court in **P. Rajender Vs. Union of India and Another**<sup>1</sup> in para Nos.7, 8, 11, 19, 28 and 30, wherein it is held as follows:

*7. Suspension pending investigation, inquiry or trial is interim in nature. The aforementioned rule clearly suggests that an order of suspension is not required to be passed only because it will be lawful to do so. An application of mind on the part of the competent authority is sine qua non for passing such order of suspension. Before passing of an order of suspension, therefore, it is expected that the appropriate authority shall not only take into consideration the public interest but shall also take into consideration the relevant facts and attendant circumstances as to how far and to what extent the public interest may suffer if the delinquent officer is not placed under suspension.*

*8. An order of suspension, in such cases, may have to be considered upon taking into consideration the relevant facts. The authority empowered to place an employee under suspension, must, therefore, pose to itself a correct question and answer it*

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<sup>1</sup> (2001) SCC Online AP 626

*having regard to the material on record. In Dr. Shyamanand Singh v. State of Bihar, 1978 PLJR 588. Sanvar Ali, J., speaking for the Bench stated the law thus:*

*Learned Counsel for the State contended that the order of suspension is passed on subjective satisfaction of the State Government. Such an order was not justiciable. We do not think that this argument can be accepted, contrary as it is to the decision of the Supreme Court. Had there been factual foundation on the basis of which reasonable conclusion could be arrived at that the petitioners were guilty of actual misappropriation it would have been a different matter. Here it appears that the authority passing the impugned order did not ask itself the right question and take reasonable step to acquaint itself with the relevant information to enable it to answer it correctly. This amounts to misdirection in law. See Secretary of State v. Tameside, 1976 (3) All. ER 665, per Lord Diplock.*

*11. The question as to when the petitioner had undertaken the second marriage and whether it had any impact on the petitioner's continuing to work in public service despite the fact that investigation had ready been completed and charge-sheet had also been filed in a case filed by the petitioner's wife, were relevant factors to be taken into consideration at the time of passing the order.*

19. There is lot of difference between a case where the Government servant is charged with allegations of corruption and misuse of official position and where an employee is charged of offences in relation to a private dispute.

28. Neither the need to continue the said order has been mentioned nor any reason has been recorded therein. A statutory authority must exercise its statutory function reasonably and bona fide and having regard to the powers delegated to him under the rules.

30. This aspect of the matter has also been considered recently by this Court in WP No.17358 of 1999 dated 28-3-2001 (*Kattika Koteswahara Rao v. State of A. P.*) Having regard to the facts and circumstances of this case and keeping in view the attitude of the respondents, we are of the opinion that the petitioner need not be kept under suspension any further. Although this Court, while exercising the jurisdiction under Article 226 of the Constitution of India, may not ordinarily interfere in such matters, but, having regard to the peculiar facts and circumstances of this case and keeping in view the conclusions arrived at, we are of the opinion that it is a fit case where this Court should interfere in the matter.

8. Learned counsel for the petitioner relied upon ratio laid down by the this Court in **G. Malleshram and others Vs. APGENCO, Hyderabad and others**<sup>2</sup> in para No.21, wherein it is held as follows:

*21. The decision in P.lingamurthy's case is really not a decision on the validity of the suspension order but is a decision over prolonged suspension of more than 31 months where this Court had interfered. Jagjeet Singh's Case also does not assist the petitioners, as the rule of deemed suspension itself was held arbitrary but the relevant regulation in the present case is not challenged. Dr. Dalbir Singh's case also deals with prolonged suspension passed over a decade ago and is not applicable.*

9. Learned counsel for the petitioner relied upon ratio laid down by the Hon'ble Supreme Court in **State of Tamil Nadu Vs. Promod Kumar and another**<sup>3</sup> in para Nos.24 and 26 wherein it is held as follows:

*24. The first Respondent was placed under deemed suspension under Rule 3(2) of the All India Services Rules for being in custody for a period of more than 48 hours. Periodic reviews were conducted for his continuance under suspension. The recommendations of the Review Committees did not favour his reinstatement due to which he is still under suspension. Mr.P. Chidambaram, learned Senior Counsel appearing for the first Respondent fairly submitted that we can proceed on the basis*

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<sup>2</sup> (2012) SCC Online AP 502

<sup>3</sup> (2018) SCC 677

*that the criminal trial is pending. There cannot be any dispute regarding the power or jurisdiction of the State Government for continuing the first Respondent under suspension pending criminal trial. There is no doubt that the allegations made against the first Respondent are serious in nature. However, the point is whether the continued suspension of the first Respondent for a prolonged period is justified.*

*26. In the minutes of the Review Committee meeting held on 27.06.2016, it was mentioned that the first Respondent is capable of exerting pressure and influencing witnesses and there is every likelihood of the first Respondent misusing office if he is reinstated as Inspector General of Police. Only on the basis of the minutes of the Review Committee meeting, the Principal Secretary, Home (SC) Department ordered extension of the period of suspension for a period of 180 days beyond 09.07.2016 vide order dated 06.07.2016.*

9. Learned counsel for the petitioner relied upon ratio laid down by this Court in **Dasari Venkateswara Rao Vs. State of Andhra Pradesh**<sup>4</sup> in para Nos.10 and 11 wherein it is held as follows:

*10. In the case of Ajay Kumar Choudary Vs. Union of India, the Hon'ble Supreme Court noted that an extended suspension can cause trauma. There is a Division Bench judgment of this Court*

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<sup>4</sup> (2021) SCC Online AP 2336



*in W.P.No.8185 of 2020, but to the knowledge of this Court, the same is now under challenge before the Hon'ble Supreme Court. The same is not being looked into for now. In State of Tamilnadu Vs. Pramod Kumar IPS, the Hon'ble Supreme Court of India relying upon Ajay Kumar Choudary's case has held that on the basis of the available material, keeping the petitioner under protracted suspension is not called for. The Supreme Court also held that he should be reinstated into service.*

*11. In conclusion, this Court is of the opinion that the order of suspension cannot be sustained now because:*

*(1) there is no whisper nowhere in the entire set of documents filed or in the counter affidavits filed that the petitioner can still influence a witness or tamper with the record,*

*(2) It is not the case of the respondents that further material has to be gathered, witnesses are being examined or that the records are being traced etc.*

*(3) The reason for suspending the petitioner almost a year after his transfer from the post is not explained the petitioner almost a year after his transfer from the post is not explained and there is no visible "application of mind" which is needed and a mechanical suspension order cannot be countenanced in law.*

*(4) more that a year has elapsed without a review being conducted also and lastly,*

*(5) prolonged suspension itself can amount to a punishment in a way.*

10. Learned counsel for the petitioner relied upon ratio laid down by the Hon'ble Supreme Court in **Ajay Kumar Choudhary Vs. Union of India and Another**<sup>5</sup> in para Nos.11, 12 and 21 wherein it is held as follows:

*11. 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.*

*12. Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his Department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged,*

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<sup>5</sup> (2015) SCC 291

*it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement. Indubitably the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of common law jurisprudence, antedating even the Magna Carta of 1215, which assures that - "We will sell to no man, we will not deny or defer to any man either justice or right." In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial.*

*21. 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.*

11. Learned counsel for the petitioner further submits that the prolonged period of suspension is nothing but by way of punishment. So any suspension cannot be a punishment against the delinquent.

12. Learned counsel for the Respondents submits that the petitioner was put under suspension as per Sub Rule (2) of Rule 10 of CCS (CCA) Rules, 1965, under which once an employee was arrested and put in jail more than 48 hours, the suspension is automatic. He further submits that in view of the pending criminal case till acquittal of the petitioner, he should be continued under suspension and after his acquittal only he can be

reinstated. He further submits that as per the rules the suspension of the petitioner has been reviewing from time to time as per the circular dated 07.01.2004 issued by the Department of Personnel and Training, a recent review had been taken place in April, 2022 in which the criminal case is pending for hearing before the court below.

13. Learned counsel for the Respondents further submits that the petitioner has been paying the maximum amount of 50% of the pay but as contended by the learned counsel for the petitioner that after continuation of suspension of more than six months is entitled for 75% of the salary and after six months petitioner entitled 100 % of the salary towards suspension is not correct and there is no provision to that effect that the respondent is under statutory obligation for payment of 100% for suspension after completion of one year period.

14. Learned counsel for the Respondents further submits that since as per the information of the Station House Officer (SHO), Nagarampalem Police Station, Guntur the matter is pending for hearing on 23.04.2022. So, the Criminal Case is about to completion. If he is acquitted, he is entitled for the claim as stated above till then he is not entitled for reinstatement and for 100% subsistence allowance as claimed by the petitioner. Therefore, the present claim of the petitioner is liable to be rejected.

15. Heard the submission made by the learned senior counsel Sri Posani Venkateswarlu representing learned counsel for the Petitioner, Sri P. Vivek, learned counsel on behalf of Assistant Solicitor of General of India and on perusal of the material placed on record, it is an admitted fact that

the petitioner was put under suspension on 14.08.2017 pending criminal case registered on 31.07.2017. It is also an admitted fact that the alleged criminal case is nothing to do with the employment of the petitioner and it is arisen out of matrimonial relations of the petitioner. It is also not in dispute that the respondents are not initiated any departmental proceedings against the petitioner except the pending criminal proceedings.

16. It is also an admitted fact that the suspension of the petitioner is prolonged since more than six years due to a private criminal case and keeping petitioner idle without any work and paying subsistence allowance even at the rate of 50% is against the public policy and also public interest, since there is no person to be appointed to discharge duties of the petitioner, since the petitioner is under suspension, therefore no services can be rendered in his place to the public and services can be delayed in the absence of the concerned person in public employment.

17. The contention of the learned counsel for the petitioner since the crime is the out of the employment and more particularly relates to matrimonial in nature, as such the petitioner cannot be continued under suspension for prolonged period, since it is not a heinous offence, should be considered and to be acceptable.

18. The other contention of the learned counsel for the petitioner that the prolonged continuation of suspension by paying subsistence allowance to the petitioner and without extracting the services of the petitioner due to mere pending criminal case is against the public interest, for the reason that once the employee put under suspension, the work attached to the post

should be discharged by another person by way of in additional charge but cannot be employed instead of petitioner, as such the services to the public either to be delayed or to be positioned. As such the prolonged continuation of suspension is also against public interest and also detrimental to the public exchequer, in view of the ratio laid down by the Hon'ble Apex Court.

19. The contention of the learned counsel for the Respondents is that the suspension is being prolonged only due to the pending of criminal case and his suspension being reviewed from time to time and he can be reinstated only after acquittal from the pending criminal case is not sound enough and liable to be rejected and also against the public interest as well as public policy, in view of keeping the employee under suspension and paying salary without extracting any work from him. It is also against the analogy laid down by the Hon'ble Apex Court as stated above.

20. For the reasons stated above, the action of the respondents in continuing the petitioner under suspension for a long period without there being any limitation and by paying salary keeping him sitting idle mere due to pending of criminal case, which was taken place out of the employment and out of matrimonial relations is certainly against the public policy and public interest, in view of the ratio rendered by the Hon'ble Apex Court as well as this Court as stated supra. The impugned action of the respondents in continuing the petitioner under suspension by reviewing the same on the guise of pending criminal case is liable to be set aside and petitioner is entitled for reinstatement. If he convicted, certainly he can be removed from the employment from the date of conviction itself. Till then, services can be

extracted from the petitioner since he has been paying salary by way of subsistence allowance.

21. In view of my foregoing discussion Writ Petition is Allowed with the following directions:

- i. The action of Respondent Nos.2 and 3 in placing the petitioner under suspension is declared as illegal and arbitrary;
- ii. Suspension Proceedings TB/Vig/Sairam/LDC/2017/51, dated 14.08.2017 are hereby set-aside;
- iii. Respondent Nos.2 and 3 are directed to reinstate the petitioner into services forthwith;
- iv. Respondent Nos.2 and 3 are directed to pay 100% subsistence allowances including arrears in accordance with law.

As a sequel thereto, interlocutory applications pending, if any in the writ petition, shall also stand closed.

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**JUSTICE VENKATESWARLU NIMMAGADDA**

12<sup>th</sup> May, 2023

KNR



**HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA**

**WRIT PETITION.No.18448 of 2022**

**12<sup>th</sup> May, 2023**

KNR