



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.07.2015

Coram

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.(MD).No.11654 of 2015
and
M.P.(MD)No.1 of 2015

P.Mariselvam

:Petitioner

vs.

The Personal Assistant (DEV) to the Collector,
Sivagangai,
Sivagangai District.

: Respondent

Prayer: Petition is filed under Article 226 of the Constitution of India for the issue of a Writ of Certiorarified Mandamus calling for the records on the file of the respondent in his proceedings in No.ROC.R2/22728/2014, dated 11.12.2014 and to quash the same as illegal and consequently to direct the respondent to reinstate the Petitioner in service.

For Petitioner :M/s.J.Jeyakumaran
For Respondent :Mr.R.Velmurugan
Govt.Advocate

O R D E R

The Writ Petition has been filed praying for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the respondent in his proceedings in No.ROC.R2/22728/2014, dated 11.12.2014 and to quash the same, as illegal and consequently, to direct the respondent to reinstate the Petitioner in service.

2. The case of the petitioner is that he has been placed under suspension on the ground that he was involved in misappropriation of Government money in collusion with one Arokiasamy formerly Assistant of Assistant Director (Panchayat) Office, Sivagangai and that he has been placed under suspension, in terms of Rule 17 of Tamil Nadu Village Panchayat Secretaries of (conditions of Service) Rules, 2013, which is extracted hereunder:-

"17. Suspension,- (1) The appointing authority may place a person holding the post under suspension, if it is necessary in public interest, where,-

(i) an inquiry into grave charges against him/her



(ii) a complaint against him/her of any criminal offence is under investigation or trial.

(2). A person holding the post who is detained in custody whether on a criminal charge or otherwise, for a period longer than 48 hours shall be deemed to have been suspended under this rule.

(3) Review on extension of suspension of the persons holding the post shall be done by the Personal Assistant (Development) to Collector for every quarter.

(4) During the period of suspension, a person holding the post is eligible for subsistence allowance of 50% of the last pay and allowances drawn".

3. According to the petitioner, he was not at all involved in any of the charges and that there is no FIR registered against him. Even the FIR that has been registered against three named persons, the petitioner's name does not figure and hence, continuation of suspension affects not only him but, also his family and he has been put to shame in presence of neighbours and others.

4. A glance of the suspension order reveals the involvement of the petitioner with regard to misappropriation of Government money. Whether the petitioner is involved or not has to be decided in a full fledged enquiry and it may not be a ground for stalling the suspension order. The petitioner submits that no criminal case has been registered against him. Under the Criminal Procedure Code, at the time of trial, if the judicial Magistrate finds that the petitioner is involved, he is empowered to add him as party and to add charges, in terms of Sections 319 and 216 of Cr.P.C., The Judicial Magistrate empowers to alter or add any charge at any time before the Judgment is pronounced and at the same time, he is also empowers to proceed against other persons appearing to be guilty of the offence in terms of Section 319 of Cr.P.C..

5. For the sake of convenience, the provision of Sections.216 and 319 of Cr.P.C., is extracted below:-

216. Court may alter charge. (1) Any Court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.



(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.

319. Power to proceed against other persons appearing to be guilty of offence.

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1), then-

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses reheard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.



6. The Hon'ble Apex Court in a decision in Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. and another, reported in (1999-3-L.W.351) has held that pendency of the criminal case is not a bar to proceed with against a person departmentally. In this case, even according to the petitioner, there is no criminal case against him and that he has already moved an application for anticipatory bail. When as on date, no criminal case is pending against him, there is no hard and fast Rule for the Department not to place the petitioner under suspension and proceed with the enquiry. Further, in terms of Rule 17(3), mentioned supra, review on extension of suspension of a person holding the post can be done by the Personal Assistant (Development) to Collector for every quarter. The Supreme Court has also held in a decision in Stanzen Toyotetsu India Private Limited vs. Girish v. and others, reported in (2014) 3 SCC 636) that suspension has got to be periodically reviewed.

7. In this case, placing the person under suspension is an administrative act and thus no legal flaw to interfere with the same. Subsistence allowance payable to be paid in terms of the provisions. Taking note of the submissions, the respondents shall consider whether placing the petitioner's suspension is going to help them in any manner and his restoration into service is not going to any way prejudice the interest of the organization, the request of the petitioner for reinstatement may be considered. If the Department wants to proceed with against the petitioner, the enquiry should be commenced on day-to-day basis and concluded as early as possible, as the sword of Damocles cannot be hanging over the head of a person forever.

8. In case, any criminal case is filed against the petitioner, the same will not preclude the Department from continuing the Departmental action, if any already commenced or to commence. The Hon'ble Apex Court in State of Orisa vs. Bimal Kumar Mohanty (AIR 1994 SC 2296), Jayrajibhai Jayantibhai Patel vs Anilbhai Nathubhai Patel & Ors (2006 (8) SCC 700) and Ajay Kumar Choudhary vs. Union of India through its Secretary and another, reported in 2015 (3) CTC 119, has held that suspension is a device to keep the employee from mischief range and to complete the disciplinary proceedings and continued suspension, if illegal, can be questioned in the manner known to law.

9. With the above direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Record)

/True copy/

Sub Assistant Registrar



To மேலாட்சி

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The Personal Assistant (DEV) to the Collector,
Sivagangai,
Sivagangai District.

+1cc to Mr.J.Jayakumaran,Advocate Sr NO.38026

W.P. (MD) .No.11654 of 2015
09.07.2015

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