

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2016

CORAM

THE HONOURABLE Mr.JUSTICE M.S.RAMESH

W.P.No.30489 of 2013

&

M.P.No.1 of 2013

A.Selvarasan
Son of Angamuthu
Assistant Director of Agriculture
Special officer (Incharge) of Salem
District Co-operative Society,
(under suspension)
Seelanaickenpatty, Salem. Petitioner

Vs

Government of Tamil Nadu
Represented by the Agricultural Production
Commissioner and Principal Secretary to Government
Fort St. George,
Chennai-600 009. Respondent

PRAYER : Writ Petition filed under Article 226 of the
Constitution of India for issue a writ of Certiorarified
Mandamus calling for the entire records which culminated in
issuing G.O. (D) No.160, Agriculture (AA7) Department dated
02.11.2011 on the file of the respondent, quash the same and
consequently directing the respondent to reinstate the
petitioner into service with all consequential service and
monetary benefits within a time to be stipulated by this
Court.

For Petitioner : Mr.S.Mani

For Respondents : Mr.Zakir Hussain,
Government Advocate

ORDER

Heard Mr.S.Mani, learned counsel appearing for the
petitioner and Mr.Zakir Hussain, learned Government Advocate
for the respondent.

2.It is seen that while granting interim stay, by
order dated 12.11.2013 passed in M.P.No.1 of 2013 in
W.P.No.30489 of 2013, this Court had passed the following
order:

"The petitioner is challenging the order of deemed suspension dated 02.11.2011 which was issued on the ground that he was arrested in connection with an alleged criminal offence of selling the land belonging to the Society at a very low rate in the auction conducted on 15.09.2009. The petitioner was arrested on 07.11.2011 and he was granted bail after 48 years. therefore, impugned order was passed suspending him by invoking clause (2) of sub-rule (e) of Rule 17 of Tamil Nadu Civil Services (Discipline & Appeal) Rules.

2. This Court perused the First Information Report filed in Crime No.42 of 2011 against 18 persons including the petitioner wherein the petitioner is shown as the sixth accused.

3. The First Information Report states that highly placed people got the property belonging to the Society in auction. In that event, it would not have been possible for an officer like the petitioner to withstand the pressure exerted by highly placed people and this Court has to view the entire transaction, practically and pragmatically, appreciating the circumstances under which the petitioner was placed when the auction was conducted in 2009. Prima facie, it is clear that there could not have been any motive on the part of the petitioner other than acting in a particular manner as he was directed to do.

4. That apart, by order dated 23.05.2012, in CrI.M.P.No.539 of 2012 in Crime No.42 of 2011 on the file of Salem City CCB, Pardon was granted to the petitioner by the Chief Judicial Magistrate, Salem, under Section 306(1) Cr.P.C. Paragraph Nos.10 to 12 of the said order read as follows:

"10. Now, on perusing the records, it is found that this case is coming within the purview of Sec.306(2)(b) of Cr.P.C. This accused is one of the material accused in the Commission of the alleged offence. Allegedly, a valuable piece of land was made to be sold for the low price and thereby caused pecuniary loss to the Exchequer. So, the real culprits have to be tried in the manner known to law. So, this Court is of the view that if the tender of pardon is granted to this accused, the truth will come out easily.

11. Considering all the above facts, this Court holds as the petitioner is entitled to obtain the relief as he prays for and this pint is answered accordingly.

12. Finally this petition is allowed and the tender of pardon is hereby granted to this accused namely Selvarasan, on condition of making full and true disclosure of the whole of the circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor in the commission thereof."

As per Ruling 9(b) of FR 54B, when a Government Servant is granted pardon by the competent Court, he must be regarded as having been prevented from discharging his duties and the period of his absence including the period of suspension shall be treated as duty for all purposes and he shall be paid full pay and allowances which he would have been entitled to, had he not been under suspension."

3.Today, when the writ petition is taken up for final hearing, with the consent of the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents, the petitioner's counsel relied upon the aforesaid interim order and submitted that all the aspects touching upon the various grounds raised therein have been covered in the order. The learned Government Advocate also concurs that as per Rule 9(b) of Fundamental Rules, the petitioner should be deemed to have prevented from discharging his duties. Therefore, the impugned order dated 21.02.2011, is opposed to the Fundamental Rules and hence the impugned order is liable to be quashed and is accordingly quashed.

4.In the result, the Writ Petition is allowed. The respondent shall pay full salary and allowances by treating the period of his absence including the period of suspension as 'on duty' for all purposes, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

The Commissioner and Principal Secretary to Government
Government of Tamil Nadu
Represented by the Agricultural Production
Fort St. George,
Chennai-600 009.

+lcc to Mr.S.Mani, Advocate, S.R.No.65264
+lcc to the Government Pleader, S.R.No.64922

W.P.No.30489 of 2013
&
M.P.No.1 of 2013

NRJK (CO)
CA(18/11/2016)



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