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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :29.04.2016

CORAM :

THE HONOURABLE Mr.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE Mr.JUSTICE S.S.SUNDAR

Writ Appeal(MD)No.721 of 2016
CMP(MD)No.4585 of 2016

P.Shanthi ... Appellant/Petitioner

vs.

- 1.The Deputy Director of Fisheries (Regional),
Madurai.
- 2.The Assistant Director of Fisheries,
Madurai.
- 3.The Commissioner of Fisheries, Chennai.
- 4.The Secretary to Government of Tamil Nadu,
Fisheries Department,
Chennai-600 009. ... Respondents/Respondents

Writ Appeal under Clause 15 of the Letters Patent, against the order made in W.P.(MD)No.5192 of 2016, dated 15.03.2016.

Prayer in WP(MD). 5192/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari to call for the records of the 1st respondent passed in Na.Ka.No.928/A/2015 dated 02.03.2016 and quash the same.

For Appellant : Mr. D.Sadiq Raja

For Respondents : Mr.C.Selvaraj,
Spl.Govt.Pleader.

JUDGMENT

(Judgement of this Court was delivered by **S.MANIKUMAR, J.**)

Challenge in this appeal is to the order dated 15.03.2016, passed in W.P.(MD)No.5192 of 2016, by which the writ court has directed the first respondent to complete the disciplinary



proceedings initiated against the appellant, within a period of eight weeks from the date of the order.

2. The appellant was working as a Superintendent in the office of the Assistant Director of Fisheries, Madurai, the 2nd appellant herein. She was suspended from service by the Deputy Director of Fisheries (Regional), Madurai, the first respondent, vide proceedings R.C.No.929/A/2015, dated 02.03.2016, pending contemplation of an enquiry into grave charges. Challenging the same, the appellant has filed W.P.(MD)No.5192 of 2016, contending, inter alia, that no opportunity was given to her before passing the order of suspension and the first respondent has passed the order of suspension without application of mind.

3. The writ Court, after hearing the learned counsel for the appellant/writ petitioner and the learned Government Advocate appeared for the respondents, has passed the following orders:

"3.The petitioner was working in the second respondent office as Superintendent and she was suspended on 02.03.2016 as per the proceedings of the first respondent in R.C.No.928/A/2015, dated 02.03.2016. The said suspension order according to the petitioner, in without enquiry or giving any memo in that regard. The petitioner also complains that the report received from the second respondent, dated 01.03.2016 in letter No.186/B/2016 was also not served on her. It is also stated that on 09.03.2016, the petitioner was served with the charge-memo in R.C.No.928/A/2015, dated 07.03.2016, with the enclosures.

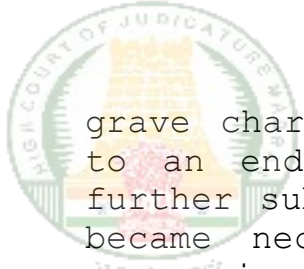
4.The learned Government Advocate appearing for the respondents informs this Court that Enquiry Officer has not yet been appointed in this matter.

5.Perusal of the records would show that after suspension, charge-memo has been issued and the petitioner has also filed her explanation. At this stage, the petitioner has come to this Court to quash the suspension order, which is not permissible.

6.In view of the above, without expressing any opinion on the merits of the matter, the first respondent is directed to appointment an Enquiry Officer within a period of two weeks from the date of receipt of a copy of this order and complete the enquiry, within a period of eight weeks thereafter."

Aggrieved by the order of the writ court, the appellant has come forward with the present writ appeal.

<https://hcservices.courts.gov.in/hcservices/> 4. Mr. S. Siddiq Raja, learned counsel appearing for the appellant/writ petitioner, contended, inter alia, that when suspension has been ordered pending contemplation of enquiry into



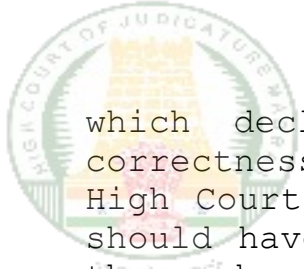
grave charges, the suspension order, dated 01.03.2016, will come to an end on the issuance of charge memo on 07.03.2016. He further submitted that though the suspension order states that it became necessary to place the appellant/writ petitioner under suspension, in public interest, the order of the suspension does not set out the reasons which necessitated suspension of the appellant.

5. Placing reliance on a decision in **K.Venugopal v. Joint Director of School Education** reported in 2009 (5) MLJ 1009, Mr.D.Sadiq Raja, learned counsel for the appellant contended that there is nothing in the impugned order of suspension, setting out the reasons for arriving at the satisfaction of the competent authority to place the appellant under suspension in public interest. He also referred to a decision made in **P.Rajender v. Union of India** reported in 2001 (5) ALD 290.

6. In **K.Venugopal's** case, the contention of the learned counsel for the petitioner therein was that the order of suspension, passed under Rule 17(e)(1)(i)(ii) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, was not in public interest, as in the impugned order therein, it was not stated that suspension was in public interest. Supporting the above submission, reference has been made to a decision in **R.Maheswari v. District Elementary Educational Officer** reported in 2008 (5) MLJ 635. After extracting Paragraph 6 of the judgment in **R.Maheswari's** case and finding that the impugned order of suspension therein, did not make a mention about the satisfaction of the public interest, warranting suspension, setting aside the same.

7. The abovesaid judgment is not applicable to the case on hand, for the reason that the order of suspension, dated 02.03.2006, passed by the Deputy Director of Fisheries, Madurai, indicates that an enquiry into grave charges against the appellant, was contemplated and the said authority has found it necessary, to place the appellant under suspension in public interest. Subsequently, serious charges have been framed against the appellant, vide proceedings, dated 07.03.2016, which includes, usage of unparliamentary words, with filthy language, abuse of caste and misappropriation. Though the learned counsel for the appellant has made submissions, on the merits of the charge, this Court is not inclined to delve into the same.

8. In **P.Rajender's** case, the petitioner therein was placed under suspension, pending disposal of a criminal case. As there was no response, he approached the Tribunal, which directed his representation to be considered. Representation was disposed of and that the respondent therein declined to review the order of suspension. Again, the petitioner therein approached the Tribunal,

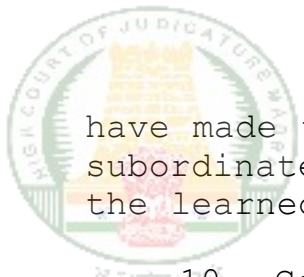


which declined to interfere with the order. Challenging the correctness of the order, the petitioner therein approached the High Court and assailing the same, contended that the authorities should have assigned sufficient and cogent reasons, in support of the order, declining to revoke suspension, but as the impugned order therein was a non-speaking one, held that the same cannot be sustained. Reliance was also placed on a decision in **O.P.Gupta v. Union of India** reported in **1987 AIR 2257:1988 SCR (1) 27** and **State of Orissa v. Bimal Kumar Mohanty** reported in **1994 AIR 2296:1994 SCC (4) 126**. Finding force in the contention of the petitioner therein that he should not be kept under suspension for long time and that the order, declining to review suspension, did not contain any reason, nor the need to continue the suspension, the Andhra Pradesh High Court has interfered with the impugned order. Facts of the reported case are not at all applicable to the present case.

9. Insofar as the submission of the learned counsel for the appellant that the suspension order would come to an end as soon as charge memo has been issued, we are of the view of that the said contention cannot be accepted. Placing an employee under suspension pending contemplation of an enquiry into grave charges is to keep him away from the office and not to have any access to the material records and not to tamper with any evidence, till the enquiry is over. Suspension is not pending issuance of charge memo, but it is pending enquiry into grave charges. Therefore, suspension pending enquiry into grave charges means, it is till enquiry into grave charges is over and final orders are passed. As per Rule 17(e) (5) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, it is for the authority competent either to consider revocation of suspension or continuance of the same. The said Rule reads as under:

“(5)Where a Government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceedings or otherwise) and any other disciplinary proceedings are commenced or any other criminal complaint is under investigation or trial against him during the continuance of that suspension, and where the suspension of the Government servant is necessary in public interest as required under clause (a), the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings including departmental proceedings taken on the basis of facts which led to the conviction in a Criminal Court.”

Further Rule (6) of TNCS (D&A) Rules states that an order of suspension made or deemed to have been made under this rule may at any time be revoked by the authority which made or is deemed to



have made the order or by any authority to which that authority is subordinate. In view of the above Rule position, the submission of the learned counsel for the appellant is liable to be rejected.

10. Coming to the next submission of the learned counsel for the appellant that the order of suspension does not contain the reasons. Immediately, after suspension and within a week, the competent authority has issued a charge memo on 07.03.2016. Charges framed against the appellant/writ petitioner reveals the reasons, which necessitated suspension of the appellant. According to the learned counsel, the appellant has also submitted her explanation to the charge memo.

11. After analysing various facts and materials, it is the subjective satisfaction of the competent authority to place an employee under suspension, pending contemplation of enquiry into grave charges. At this state, it is not necessary for the said authority to set out the reasons for such a conclusion. In the next stage, the reasons are set out in the charge memo and that the government servant is required to submit his/her explanation to the charge memo. We are of the view that the order of suspension does not suffer any infirmity, for the reason that it does not reflect the satisfaction of the authority, who has done the same, in public interest.

12. As stated earlier, the appellant has already submitted her explanation. Enquiry has to commence with the appointment of an enquiry officer. Taking into consideration the above facts and circumstances, the writ court declined to set aside the suspension order and rightly ordered for the completion of disciplinary proceedings within a time frame. We find no reason to interfere with the same.

13. The writ appeal fails and the same is dismissed. No order as to costs. Connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

gb/skm

To:

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Madurai.

<https://hcservices.ecourts.gov.in/hcservices/>

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3.The Commissioner of Fisheries, Chennai.

4.The Secretary to Government of Tamil Nadu,
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