

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2017

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WRIT PETITION No. 9670 of 2017
and W.M.P.No. 10643 of 2017

A.Gopal

... Petitioner

Vs.

The Commissioner (In charge)
Edapadi Municipality, Salem District. Respondent

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus by calling for the records relating to the respondent herein in R.C.No.774/2017/C1 dated 07.04.2017 and quash the same and consequently direct the respondents to regularize the suspension period as duty for all purposes with due regards to petitioner seniority.

For Petitioner : Mr.R.S.Anandan
For Respondent : Ms.K.Bhuvaneswari
Government Advocate

O R D E R

The order of suspension issued is under challenge in this writ petition. The writ petitioner is working as Revenue Inspector in Edapadi Municipality, Salem District.

2. The learned counsel appearing for the writ petitioner contended that a show cause notice dated 06.04.2017 was issued to the writ petitioner by the respondent and responding to the same, he submitted an explanation on 7th April 2017 requesting the respondent seeking time to submit his explanation. Without granting any extension of time, the respondent issued an order of suspension on 7th April 2017, which is impugned in this writ petition.

3. The learned counsel appearing for the writ petitioner strenuously contended that the order of suspension is not issued by the Authority Competent and further, the respondent is not a

Disciplinary Authority. This apart, the Authority Competent to impose the penalty under the Tamilnadu Municipal General Service Rules, 1970 is not the respondent herein and therefore the respondent has no power to issue the order of suspension. To meet out the contentions raised by the learned counsel appearing for the writ petitioner in the affidavit filed in support of the writ petition, in paragraph No.5, the writ petitioner has extracted the rules relating to suspension, which is as follows:

"5.I state that as per Tamil Nadu Municipal General Service Rules, 1970, Rule 1, the post of Revenue Inspector comes under Class-V, Category -8. As per Rule 4(b), the appointing authority for all the category of Class-V is the Director of Municipal Administration. Further as Rule 9 of the Tamil Nadu Municipal Services (Discipline and Appeal) Rules, 1970 which reads as follows:

"(9) A member of a service may be placed under suspension from service by the disciplinary authority or such other authority to whom the power may be delegated or the Commissioner of Municipality, where:-

- i) An enquiry into grave charges against him is contemplated or is pending; or
- ii) A complaint against him of any criminal offence is under investigation or trial and if such suspension is necessary in the public interest.

Provided that as and when a member of the service is placed under suspension by the authority other than the disciplinary authority, such authority shall at once intimate the fact to the disciplinary authority."

4. Suspension can be issued by the respondent under the Rules cited supra. Therefore, the contention of the learned counsel appearing for the petitioner that the order of suspension was issued by an incompetent authority need not carry any merits for consideration and accordingly, the same is rejected.

5. The Commissioner of Municipality is the Competent Authority to issue an order of suspension in respect of the Revenue Inspector working under his jurisdiction. Further, suspension is not a penalty and on contemplation of charges, an employee shall be placed under suspension. Suspension is an initiation of disciplinary proceedings and the same can be challenged on the limited grounds of without jurisdiction, incompetency or malafides. Even in the case of an allegation of malafides it is necessary to implead the person against whom such an allegation is raised in the writ petition and in the absence

of any of these grounds a writ petition against an order of suspension cannot be entertained.

6. In the case on hand the order of suspension was issued on 7th April 2017 and it is for the Disciplinary Authority to issue a charge memo and proceed with the enquiry. Therefore the writ petition at this stage cannot be considered and accordingly stands dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

may

To

The Commissioner (In charge)
Edapadi Municipality, Salem District.

+1cc to Mr.R.S.Anandam, Advocate Sr. 46093

+1cc to Mrs.K.Bhuvaneswari, Advocate Sr. 46314

W.P.No.9670 of 2017

SR(CO)
VR(17/07/2017)

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