



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P. (MD) Nos.19105 & 19106 of 2014

and

M.P. (MD) Nos.1 & 1 of 2014

R.Inbasekaran

... Petitioner in both W.Ps.

-VS-

1. The learned Principal District Judge
Kanyakumari District, Nagercoil.

2. The learned Subordinate Judge
Padmanabapuram
Kanyakumari District

... Respondents in both W.Ps.

PRAYER (in W.P. (MD) No.19105 of 2014): Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari to call for the records on the file of the second respondent in connection with the impugned order of suspension passed by him in Order No.54/2014, dated 31.07.2014 and quash the same.

PRAYER (in W.P. (MD) No.19106 of 2014): Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari to call for the records on the file of the second respondent in connection with the impugned charge memo issued by him in Thurai Visaranai No.1/14, dated 17.07.2014 and quash the same.

For Petitioner : Mr.K.Gurunathan
(in both W.Ps.)

For Respondents : Mr.T.S.Mohamed Mohideen
(in both W.Ps.)

C O M M O N O R D E R

(Order of the Court by T.S.SIVAGNANAM, J.,)

Since the relief sought for in both the writ petitions are inter-linked with each other, they were clubbed, heard together and are being disposed of by this common order.

2. Heard Mr.K.Gurunathan, learned counsel appearing for the petitioner and Mr.T.S.Mohamed Mohideen, learned counsel appearing



for the respondents and carefully perused the materials placed on record.

3. The writ petitioner, who was working as a Process Server in the second respondent - Court, is before this Court challenging the charge memo, dated 17.07.2014 and the order of suspension, dated 31.07.2014, passed by the second respondent.

4. The petitioner was placed under suspension by the impugned order, dated 31.07.2014, on the ground that he did not turn to duty from 26.03.2014 till 30.07.2014, no prior permission or leave letter was submitted and a memo was issued on 27.03.2014 to submit his explanation for failing to report duty and it appears that on 26.03.2014 at 09.30 p.m., the petitioner is alleged to have appeared before the learned Subordinate Judge in a drunken condition. Thus, taking into consideration the grave nature of allegation made against the petitioner, he was placed under suspension. It is pertinent to note that even prior to the order of suspension, a charge memo was issued to the petitioner, on 17.07.2014, containing three articles of charge. However, the petitioner did not immediately respond to the same.

5. After considering the facts and circumstances of the case as well as the counter filed by the first respondent, we are of the considered view that the prolonged suspension is not tenable. Courts have repeatedly held that any employee cannot be placed under prolonged suspension and the appointing authority is required to review the order of suspension. Therefore, we feel that retaining the petitioner under suspension any further would not be in accordance with law. Therefore, we are inclined to interfere with the order of suspension, dated 31.07.2014, passed by the second respondent.

6. However, with regard to the challenge to the impugned charge memo is concerned, the grounds of challenge are all factual. Whether the petitioner is guilty of allegations made in the charge memo etc., are to be decided in the departmental enquiry and that cannot be a reason to quash the charge memo at the very threshold. Therefore, the challenge to the charge memo has to necessarily fail.

7. In the result,

i. The writ petition, in W.P.(MD) No.19105 of 2014, is allowed and the impugned order of suspension, dated 31.07.2014, passed by the second respondent is set aside.

ii. The writ petition, in W.P.(MD) No.19106 of 2014, is dismissed.

iii. Since the petitioner has already submitted his explanation to the charge memo, dated 17.07.2014, and the Enquiry Officer has also been



appointed, the Enquiry Officer is directed to proceed with the enquiry and conclude the proceedings, within a period of four weeks from the date of receipt of a copy of this order.

iv. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The learned Principal District Judge
Kanyakumari District, Nagercoil.
2. The learned Subordinate Judge,
Padmanabapuram,
Kanyakumari District.

+1cc to Mr.G.Thalamutharasu, Advocate Sr.No.53534

+1cc to Mr.G.Thalamutharasu, Advocate Sr.No.53533

+1cc to Mr.T.S.Mohamed Mohideen, Advocate Sr.No.53342

krk/skm

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and

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