



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.12.2017

CORAM:

**THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MRS.JUSTICE R.THARANI**

W.A(MD)No.1363 OF 2017

Mahalakshmi :Appellant/Petitioner
vs.
The District Collector,
Virudhunagar District,
Virudhunagar. : Respondent/Respondent

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent praying this Court to set aside the order passed by this Court in W.P(MD)No.15187, dated 11.08.2017.

Prayer in WP(MD). 15187/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorari calling for the records pertaining to the impugned order passed by the respondent in his proceedings Roc.No.R1/3345/2008-1 dated 17.5.2017 and quash the same.

For Appellant :Mrs.Mahalakshmi
for M/s.P.Santhoshkumar
For Respondent :Mr.VR.Shanmuganathan
Special Govt.Pleader

JUDGEMENT

[Judgement of the Court was made by **M.VENUGOPAL, J.**]

At the outset, it is to be pointed out that the Appellant/Writ Petitioner has focussed the present intra-court Writ Appeal as an 'aggrieved person', as against the order, dated 11.08.2017, in W.P (MD)No.15187 of 2017 passed by the Learned Single Judge.

2.The Learned Single Judge, while passing the impugned order, dated 11.8.2017 in W.P) (MD)No.15187 of 2017(filed by the Appellant as Petitioner) at paragraph 5, had observed the following:
<https://hcservices.courts.gov.in/hcservices>

'5.But, this Court is unable to find any merit in this petition. The reason is that the Petitioner, who is



arrayed as A4 in Special C.C.No.44 of 2014 on the file of the learned Chief Judicial Magistrate, Srivilliputhur for various offences suffered conviction and imposed with a fine of Rs.1,21,000/- and though the said sentence has been suspended, this Court is not inclined to entertain the Writ Petition.''

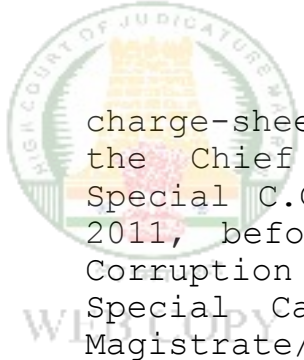
and finally dismissed the Writ Petition with costs.

3.Questioning the order of dismissal, dated 11.08.2017 in W.P (MD)No.15187 of 2017 passed by the Learned Single Judge, the Appellant/Writ Petitioner has filed the present Writ Appeal before this Court by taking a plea that the order of the Learned Single Judge is ab-initio void and ex-facie an illegal one. The Learned Counsel for the Appellant proceeds to point out that the Respondent had failed to consider none of the grounds or reasons mentioned under Section 17(e)5 of the Tamil Nadu Civil Services(Discipline and Appeal) Rules. The Learned Counsel for the Appellant takes a plea that the Learned Single Judge had failed to appreciate that the Appellant/Writ Petitioner has not swindled any money in connivance with any other persons, especially during her tenure as a Junior Assistant in the Office of the P.A(S.S.) to the District Collector. The Learned Counsel for the Appellant brings it to the notice of this Court that none of the prosecution witnesses had even whispered the Appellant's name except P.W.7, the Inspection Officer in that Ex.P26 is said to be the Voucher for payment of incentive to the Small Savings Agent. In short, in the Criminal Case, there is no iota of evidence was let into, to prove the impugned charge framed against the Appellant.

4.The Learned Counsel for the Appellant submits that the impugned proceedings of the Respondent had resulted in gross violation of Principles of Natural Justice. Also that, the Learned Single Judge had failed to consider that the revocation of the Petitioner's suspension, would not cause any prejudice either to the Government or to the dismissal of the pending Criminal Appeal.

5.Lastly, it is the stand of the Appellant that the Learned Single Judge had failed to appreciate that the Respondent had failed to consider the antecedent of the Appellant, who had completed 17 years of service with clean chit, except the present case, in which she was wrongly convicted .

6.Per contra, it is the submission of the Learned Special Government Pleader appearing for the Respondent that a regular case was registered and investigated against Thiru.M.Nagamuthu, formerly Personal Assistant to Collector(Small Savings), Virudhunagar District and his 11 Office Staffs(A2 to A12) including the appellant/Writ Petitioner(A4) and three private individuals(A13, A14 and A15) in respect of the allegation that A1 to A12 conspired with A13 and swindled the Small Savings Incentive Amount to the tune of Rs.14,43,000/- by forging the records and misappropriated the Government fund. It appears that after completion of investigation,



charge-sheet was filed against the A1 to A13 on 24.6.2006 before the Chief Judicial Magistrate/Special Judge, Srivilliputhur in Special C.C.No.4 of 2009, then changed to Special Case No.113 of 2011, before the Special Court for the Trial of Prevention of Corruption Cases, Madurai on 11.11.2011 and again changed to Special Case No.44 of 2014 before the Learned Chief Judicial Magistrate/Special Judge, Srivilliputhur on 26.11.2014.

7.After contest, A1,A3 to a12 were convicted and sentenced to undergo imprisonment with fine, on 16.5.2017. Accused No.2/K.Srinivasan, formerly Assistant was acquitted. A13,M.Raju had expired and as such the charges against him got abated.

8.The Appellant/Writ Petitioner being dissatisfied with the judgements delivered in C.C.No.44 of 2014, on the file of the learned Special Judge(Learned Chief Judicial Magistrate), Srivilliputhur had preferred a Crl.A(MD)No.163 of 2017 before this Court and the main Criminal Appeal is pending as on date. In this connection, the Learned Counsel for the Appellant proceeds to point out that this Court had suspended the sentence imposed on the Appellant/Writ Petitioner on 9.6.2017 in Crl.M.P(MD)No.4655 of 2017 in Crl.A(MD)No.163 of 2017. Thereafter, the Appellant had filed the present Writ Petition in W.P(MD)No.15187 of 2017 with a prayer to call for the records and to quash the impugned order passed by the Respondent on 17.5.2017 and to quash the same.

9.A mere glance of the Suspension Order, dated 17.5.2017 of the Respondent/The District Collector, Virudhunagar District exhibits that the Appellant/Writ Petitioner, formerly Assistant in the Office of the Personal Assistant to the Collector(Small Savings), Virudhunagar District, now working as Junior Assistant in Sathur Panchayat Union, Virudhunagar District during her suspension period was given the place as Sathur as Headquarters, from where she should not leave the Headquarters without obtaining prior permission of the authority concerned. It appears that the impugned order, dated 17.5.2017 of the Respondent points out that the Appellant will be paid Subsistence Allowance and Dearness Allowance, as admissible under Section 5(1) of the Fundamental Rules.

10.The Appellant was sentenced and convicted to undergo three years rigorous imprisonment and she was imposed with a fine of Rs.1,21,000/- for swindling the Small Savings Incentive amount to the extent of Rs.14,43,000/- by forging the records and by misappropriating the Government money. Thereafter, she was placed under suspension from service with immediate effect until furthers, are the facts which lead to the criminal conviction.

11.The Appellant had submitted an application on 17.6.2017 addressed to the District Collector, Virudhunagar District seeking to review her suspension under 17(e) 6 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, whereby and where-under, she had mentioned inter-alia that she had completed 17 years of



service, with clean chit, except this case, in which she was erroneously convicted etc.

12. It comes to be known that a proposal was sent to the Government of Tamil Nadu by the Respondent under the Rule 9(A) of the Tamil Nadu Civil Services(Discipline and Appeal)Rules for dismissing the Appellant under Rule 17(c) of the Tamil Nadu Civil Services(Discipline and Appeal)Rules. The said proposal, according to the Respondent, is still pending. Pending disposal of the proposal addressed by the Respondent to the Government of Tamil Nadu, according to the Respondent's, is empowered as per Rule 17 (e)5 of the Tamil Nadu Civil Services(Discipline and Appeal)Rules to suspend the Appellant. Indeed, in the instant case, the Respondent had exercised that procedure and issued the impugned suspension order, dated 17.5.2017, which according to the Learned Special Government Pleader appearing for the Respondent, is free from any legal flaw.

13. By way of Reply, the Learned Counsel for the Appellant adverts to the Full Bench Judgement of this Court between **S.Ravi and others .vs. The District Collector and others, dated 6.3.2015**, wherein, at Paragraphs 39 and 47, had observed as under:

'39. Vide the present Rules, namely, Tamil Nadu Civil Services(Discipline and Appeal)Rules, under Rule 17 (e) (6), 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, thereby empowering the Competent Authority to take a decision as to the revocation of suspension at any time. The said rule framed in exercise of the powers conferred by the Proviso to Article 309 of the Constitution shall be exercised in the manner as contemplated. A reading of the said rule would unambiguously indicate that there cannot be any distinction between an Ordinary case and a Criminal Case as to the involvement of the delinquent Employee.

47. Tracing the Rule from 1930, the first one Madras Civil Services(Classification, Control and Appeal)Rules; thereafter called as Tamil Nadu Civil Services (Classification, Control and Appeal)Rules, 1955, having been experienced by the Administrative set up, the Order of Suspension made or deemed to have been made under the 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. When the dominant position of the rules from 1930 does not distinguish the conflicting interest of the delinquent Employee of revocation at any time and not categorizing the clauses, the Executive Order, which has been brought into action on 30.1.1996, has not been incorporated in



the Rules till now. Therefore, the force of law as to the application of Rule is that notwithstanding the pendency of any case and the Government servant is placed under suspension, the Authority Competent is empowered to revoke the suspension at any point of time. Keeping the Government servant in a hanging position of prolonged suspension without revocation or review of such order, taking into account various factors, such as, investigation and the other mechanism involved in the process of conclusion of the enquiry for certain reasons not to conclude the enquiry, may not be right on the Executive Authority and therefore, we feel, the said issue needs to be considered either by amending the Rules or by bringing a proper legislation in regulating the Order of Suspension.''

14.It is to be pointed out that the suspension of conviction/sentence is not palatable in a case where an accused was convicted for serious offences. It is an axiomatic Principle in Law that a simple order of suspension will not operate as staying the conviction as per decision of Honourable Supreme Court in **Lal Sai Khunte .vs. Nirmal Sinha** reported in (2007) 9 SCC Page 330(335) .

15.It is to be borne in mind that the 'order of stay' in respect of conviction in a rare case, can be passed based on the facts and circumstances of the case, as per decision of the Honourable Supreme Court in **N.S.Sidhu .vs. The State of Punjab** reported in 2007 CRLJ 1427(1430,1431) SC.

16.When an Appellate Court suspends the execution of sentence and order bail to an accused, the effect of the order is that the sentence rest on conviction is deferred during the pendency of appeal. In reality, by suspension of sentence, the conviction subsists and is not erased. Any action taken against an employee on a misconduct which lead to his/her conviction by a Court of Law will not lose its value, just because the Appellate Court had suspended the execution of sentence. A Court of Law cannot stay the disciplinary proceedings against an accused.

17.In the instant case, the Appellant was convicted before the Trial Court in C.C.No.44 of 2014 on 17.5.2017 and as against the Judgement of the trial Court, an appeal in Crl.A(MD)No.163 of 2017 is pending. Even though the Petitioner had obtained an order of suspension of sentence in Crl.M.P(MD)No.4665 of 2017 in Crl.A(MD) No.163 of 2017 on 09.06.2017,yet this Court is of the considered view that the Appellant's request, as per her Application, dated 17.6.2017, does not deserve consideration and in this regard, the view of the Learned Single Judge in dismissing the Writ Petition to the effect that the Petitioner was convicted and sentenced to undergo three years rigorous imprisonment and also imposed with a fine of Rs.1,21,000/- and notwithstanding the fact that the sentence was suspended, the same does not require any interference in the



hands of this Court sitting in appellate jurisdiction.
Consequently, the Writ Appeal fails.

18. In fine, the Writ Appeal stands dismissed, for the reasons assigned in this Writ Appeal. No costs.

WEB COPY

Sd/-
Assistant Registrar (RECORD)
/True Copy/

Sub Assistant Registrar

To

The District Collector,
Virudhunagar District,
Virudhunagar.

+1cc to THE SPECIAL GOVERNMENT PLEADER in SR. No. 93201
VSN
JS/MR/SAR.4/29.12.2017/6P-3C

JUDGEMENT MADE IN
W.A (MD) NO. 1363 of 2017
13.12.2017