

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :07.03.2019

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.617 of 2019
and
W.M.P.No.659 of 2019

Mr.B.Dharmaraj

..Petitioner

vs

The District Collector
Office of the Collector, Dharmapuri,
Salem Main Road,
Dharmapuri - 636 705.

...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Respondent culminating in her impugned proceeding bearing Roc.6343/2016(A2) dated 26.10.2018 placing the petitioner under suspension, quash the same and consequently direct the respondent to extend all service benefits to the petitioner.

For Petitioner : M/s.Arun Anbumani

For Respondent : Mr.A.N.Thambidurai
Special Government Pleader

O R D E R

The order of suspension dated 26.10.2018 is under challenge in the present writ petition.

2.The writ petitioner was holding the Post of Special Tahsildar, Land Acquisition and on account of the allegation of corruption, the writ petitioner is placed under suspension.

3.The learned counsel for the writ petitioner vehemently contended that the writ petitioner is no way connected with the allegations stated in the impugned order of suspension. Though the learned counsel for the writ petitioner states that a criminal case was registered against the writ petitioner under the provisions of the Prevention of Corruption Act during the year 2016, no actions were initiated for about 2 years on the

criminal complaint.

4. When the writ petitioner was in verge of his promotion, the impugned order of suspension has been issued. The learned counsel for the writ petitioner submits that the writ petitioner is an upright official and he has never faced any adverse remarks throughout his career and based on the false allegations, the respondent placed the writ petitioner under suspension.

5. The writ petitioner was frequently subjected to transfers as he had never yielded to the illegal request of the persons. Thus, the order of suspension is liable to be scrapped.

6. The learned counsel for the writ petitioner further states that there is no application of mind on the part of the respondent, while passing the impugned order of suspension. There is no element of public interest involved with reference to the reasons stated in the impugned order. The authority competent has not satisfied with reference to the ingredients stated in Rule 17(e) of the Tamil Nadu Civil Services Discipline and Appeal Rules. Thus, the order of suspension is liable to be set aside.

7. The learned Special Government Pleader states that undoubtedly, a criminal case under the Prevention of Corruption Act has been registered against the writ petitioner and the same was not brought to the notice of the respondent immediately. The respondent has no occasion to know about the registration of criminal case against the writ petitioner under the Prevention of Corruption Act. Thus, the delay cannot be held against the respondent. Soon after the fact regarding the registration of a criminal case was informed to the respondent, appropriate actions were initiated and the writ petitioner is placed under suspension since the allegations against the writ petitioner are in relation to certain corrupt activities.

8. The learned counsel for the writ petitioner urged this Court to consider the nature of the complaint submitted by the complainant namely, Mr.K.Lakshmanan. On the reading of the complaint, there is no specific allegation against the writ petitioner and more so, the writ petitioner was not holding the particular post during the relevant point of time. Thus, the complaint itself has no basis for initiation of disciplinary proceedings against the writ petitioner.

9. Considering the arguments as advanced by the respective learned counsel appearing on behalf of the parties to the lis, this Court is of an opinion that suspension is not a punishment. Suspension is an interim arrangement to keep the public servant away from performing the official duties and responsibilities for the purpose of conducting free and fair investigation and enquiries. Suspension being an interim arrangement, cannot be quashed based on the merits of the allegations nor on the basis of certain documents or complaint. Even, on contemplation of charges, an employee can be placed under suspension. An information to the competent authorities is enough to place an employee under suspension. The Tamil Nadu Government Servants Conduct Rules stipulates the nature of the misconducts and even sometimes, moral turpitude would cause a reason for placing an employee under suspension.

10. For instance, if an employee attending the duty in a drinking mood, that may be a cause for placing an employee under suspension. Thus, reasons may be many. However, the authority competent must be satisfied that there are some allegations against the writ petitioner, warranting a detailed enquiry and under these circumstances, an order of suspension can be issued. Thus, an order of suspension is not a final order. It is only initiation of disciplinary proceedings against an employee. Thus, the writ against the order of suspension can be entertained only on certain limited grounds. The order of suspension can never be adjudicated in respect of the nature of the allegations or the complaint filed against the delinquent officials. All those allegations, counter allegations, documents are to be enquired into by the competent authorities and thereafter, a charge memo is to be issued and an enquiry is to be conducted by affording opportunity to the delinquent officials.

11. This being the procedure to be adopted for continuing the departmental disciplinary proceedings. The suspension issued at the initial stage can be attacked on limited grounds.

12. If an order of suspension is issued by an incompetent authority having no jurisdiction or an allegation of mala fides are raised or if the same has been issued in violation of the statutory rules in force, then alone a writ proceedings can be entertained. Even, in case of raising an allegation of mala fides, the authority against whom such an allegation is raised, to be impleaded as party respondent in his personal capacity in the writ proceedings. In the absence of any such legal ground, the Hon'ble High Court would not interfere with the order of

suspension in a routine manner. Judicial review against the order of suspension has to be exercised cautiously as the order of suspension is initiation of disciplinary proceedings and the merits and the demerits of the allegations can never be adjudicated. All such complex facts and circumstances are to be adjudicated only at the time of conducting an enquiry by affording the opportunity to the delinquent officials.

13.This being the principles to be followed, the efforts taken by the learned counsel for the writ petitioner to convince this Court by reading the copy of the complaint and other documents would not arise at all. All such grounds are to be considered only at the time of conducting a detailed enquiry and such an exercise cannot be undertaken by the Hon'ble High Court in a writ proceedings, wherein the order of suspension is under challenge.

14.Corruption is spreading like a Cancer in our great Nation. Courts cannot show any leniency or misplaced sympathy in respect of the corruption cases.

15.Common man are absolutely frustrated in respect of the corrupt activities in public offices and by the public servants. Day-in and Day-out, even for getting a legal document, the common man has to bribe certain public officials.

16.This being the reality prevailing in our Country, this Court is of an opinion that all the higher officials including the Courts, must take note of the prevailing situation and deal the cases appropriately. The cases of corruption cannot be dealt with in a routine manner. Some amount of caution is to be exercised.

17.It is pertinent to note that especially in Taluk offices, even to get a Legal Heir Certificate or Nativity Certificate or Patta Pass Book or for any document, people are giving bribe to the officials, which is mostly demanded. That is the painful situation, which is prevailing.

18.This being the factum, the Department of Vigilance and Anti-Corruption must be still more vigilant and conduct periodical surprise inspections in Taluk Offices also. Now-a-days, State Vigilance and Anti-Corruption Department is conducting frequent raids in Regional Transport Offices and Sub-Registrar Offices of the Registration Department. Equally, the

Taluk offices are also to be monitored and surprise inspections are to be conducted to nail all these culprits, who all are indulging in corrupt activities.

19.The State Government has to take necessary steps to issue Citizen Charter, in order to regulate the issuance of all necessary and mandatory certificates to the citizen, who all are submitting their respective applications. Some States in our Country has already implemented the Citizen Charter by fixing the limit for issuance of the Legal Heir Certificate, Death Certificate, Nativity Certificate and all other certificates or documents. Such an effort must be taken by the State Government, enabling the people to redress their grievances within a reasonable period of time. In the absence of any such Citizen Charter, it may not be possible to regulate these authorities to issue all the necessary certificates within a reasonable time.

20.As far as the corrupt activities are concerned, it is high time that all the higher officials must be not only be vigilant and there must be frequent surprise inspections and actions must be prompt and there cannot be any lacuna.

21.The learned counsel for the petitioner states that there are certain honest officials. Undoubtedly, honest officials are also working across the Country. This Court is very much aware that there are many number of honest officials. However, those officials are also remaining silent spectators in respect of the corrupt activities occurring inside official premises.

22.It is duty mandatory on the part of the honest officials also to inform such corrupt activities to the appropriate authority for initiation of action. Even, the Prevention of Corruption Act provides that abettor also to be booked. Even, this Court has held in some cases that the Department of Vigilance and Anti-Corruption are not registering the cases against the abettors.

23.Under these circumstances, the concept of including the abettors as Accused in the criminal cases, also must be developed by the authorities concerned. Thus, this Court is of an undoubted opinion that in respect of the corruption cases, the initiation of disciplinary proceedings, more so, an order of suspension cannot be quashed merely on the ground that there is a delay in issuing an order of suspension.

24.In the present case on hand, the respondent was not aware of the criminal case registered against the writ petitioner during the year 2016 and therefore, the said delay cannot be attributed against the administration and soon after the receipt of the information, the disciplinary proceedings were initiated against the writ petitioner and an order of suspension has been

passed.

25.However, the order of suspension is to be reviewed periodically by the competent authorities based on the developments in the investigation as well as in the departmental proceedings, and the authorities competent are at liberty to review the order of suspension as per the guidelines issued by the Government and accordingly, pass necessary orders, if any representation is made by the writ petitioner in this regard.

26.With these observations, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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To

The District Collector
Office of the Collector, Dharmapuri,
Salem Main Road,
Dharmapuri - 636 705.

+1 CC to Mr.Arun Anbumani, Advocate sr 21302.
+1 CC to Govt. Pleader sr 22610

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W.P.No.617 of 2019

PP(CO)
SP(03/04/2019)

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