

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.09.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No. 679 of 2019

G.Loganathan
Village Librarian
Village Library
Ananthalai,
Vellore District
(Under Suspension)

..Petitioner

Vs

The District Library Officer,
Infantry Road,
Vellore 632 001.
.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ order or direction in the nature of writ of Mandamus, directing the respondent herein to consider the Petitioner's claim for revocation of suspension issued by the Respondent herein in his Proceedings No.327/A/2018 (2) dated 12.12.2018 and pass appropriate orders regarding Petitioner's revocation of suspension within a limited time frame.

For Petitioner : Mr.M.Ravi

For Respondent : Mr.A.Rajaperumal
Additional Government Pleader.

O R D E R

Heard both sides.

2. The impugned order, dated 12.12.2018, is one of suspension pending contemplation of the charges. The petitioner is working as a Village Librarian Local Library Authority, Vellore in the respondent Department.

3. The suspension is made Sub-rule (e) of Rule 17 of the

Tamil Nadu Civil Service (Discipline and Appeal) Rules. The reason found in the order is that the petitioner has illegally changed the marks of Mathematics and English subjects in the original +2 Mark Sheet and prepared fake +2 Certificates.

4. The grievance of the petitioner is that even though the order of suspension has been passed as early as in the year 2018, there has been no review. The order of suspension in the present case, has been passed preventing the petitioner from getting superannuated.

5. This Court is unable to go into the merits of the allegations made by the petitioner. So long as the power of suspension is available with the respondent and it has been exercised by the competent authority, the Court cannot go behind the order of suspension.

6. The Supreme Court in its decision reported in 1990 (3) SCC 60 (Director General and Inspector General of Police, Andhra Pradesh, Hyderabad and others Vs. K.Ratnagiri) has held in paragraph 7 as follows:

" 7....The Rule 13(1) empowers the authority to keep the respondent under suspension pending investigation or enquiry into the criminal charges where such suspension is necessary in the public interest. When the first information report is issued, the investigation commences and indeed it has commenced when the respondent was kept under suspension. The order of suspension cannot, therefore, be said to be beyond the scope of Rule 13(1) merely because it has used the word 'prosecution' instead of investigation into the charges against the respondent. A wrong wording in the order does not take away the power if it is otherwise available. The Tribunal seems to have ignored this well accepted principle."

Further, it was observed in paragraph 3 as follows:

"3....The government may review the case and make further or other order but the order of suspension will continue to operate till it is rescinded by an appropriate authority."

7. Once again, the Supreme Court vide its decision reported in 1994 (2) SCC 617 (State of Haryana Vs. Hari Ram Yadav and others) held in paragraph 10 as follows:

"10....The law is well settled that in cases where the exercise of statutory power is subject to the fulfilment of a condition then the recital about the said condition having been fulfilled in the order raises a presumption about the fulfilment of the said condition, and the burden is on the person who challenges the validity of the order to show that the said condition was not fulfilled. In a case, where the order does not contain a recital about the condition being fulfilled, the burden to prove that the condition was fulfilled would be on the authority passing the order if the validity of the order is challenged on the ground that the condition is not fulfilled...."

Further, in paragraph 11 of the judgment, it was observed as follows:

"11....There is no averment in the said petition challenging the validity of the impugned order of suspension on the ground that the Governor of Haryana was not satisfied that it was either necessary or desirable to place Respondent 1 under suspension. In the absence of any such averment it must be held that the impugned order was passed after fulfilling the requirement of Rule 3(1) of the Rules in view of the presumption as to the regularity of official acts which would be applicable and the absence of a recital in the order about the Governor being satisfied that it was either necessary or desirable to place respondent 1 under suspension is of no consequence...."

7. In view of the above Legal position, this Court cannot issue positive direction in favour of the petitioner to revoke the suspension order. However considering the fact, that the suspension order was passed as early as in the year 2018, this Court directs the respondents to complete the enquiry within three months from the date of receipt of a copy of this order in accordance with law.

8. With the above observation, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

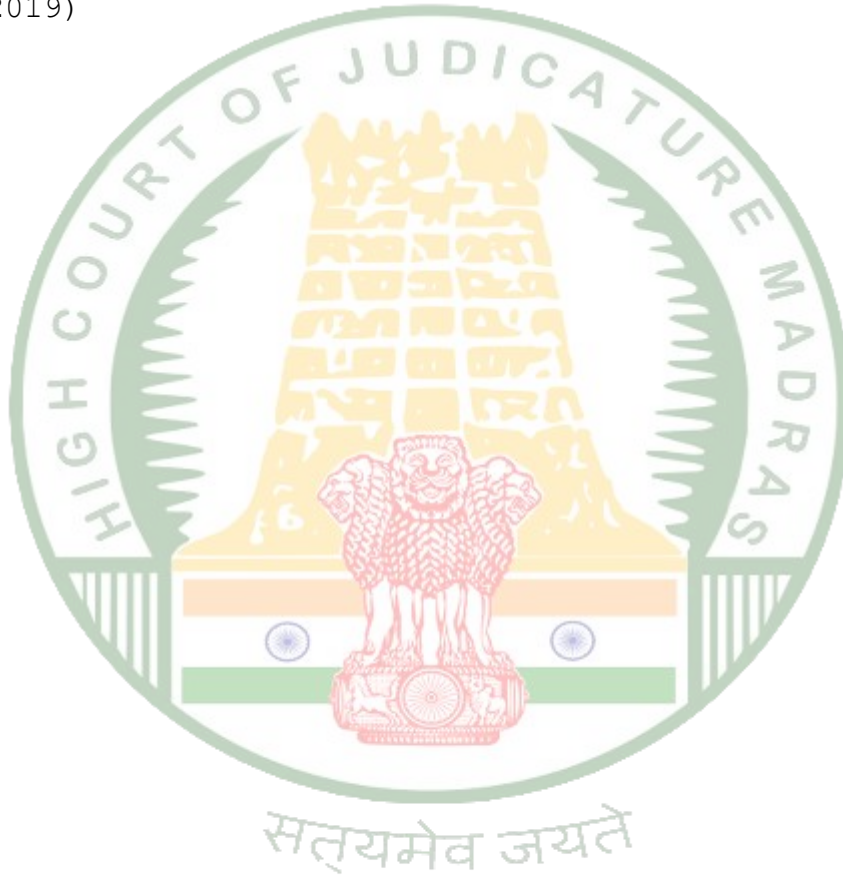
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To

The District Library Officer,
Infantry Road,
Vellore 632 001.

W.P.No. 679 of 2019

SPD (CO)
CB (05/12/2019)



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