

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :22.03.2019
CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.8249 of 2019
and
W.M.P.Nos.8804 & 8806 of 2019

A.Pugazhendhi

..Petitioner

vs

1.The Chief Educational Officer,
Kancheepuram Educational District,
Vaigundapuram Street,
Dr.P.S.Srinivasan Municipal Hr.Sec.School Campus
Kanchipuram - 631 501

2.The State of TamilNadu
Rep.by its Secretary,
Education Department
Fort St.George
Chennai - 600 009

3.The Head Master,
Govt.High School
Indhalur Village,
Kancheepuram District - 603 301.

..Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of
Certiorarified Mandamus, to Call for the entire records of
the 1st respondent in his proceedings R.C.No.1091 / A3 /
2019 dated 18/02/2019 and quash the same and consequently
direct the 1st respondent to reinstate the petitioner
herein with all consequential benefits at the earliest date
that may be fixed by this Honorable Court.

For Petitioner : M/s.P.Bagyalakshmi

For Respondents : Mr.A.Rajaperumal
Additional Government Pleader

O R D E R

The order of suspension dated 18.02.2019, placing the
writ petitioner under suspension is under challenge in the
present writ petition.

2.The impugned order states that that it is brought to the notice of the competent authority that Thiru.A.Pugazhendhi, B.T.Assistant(Science), Govt.High School, Indhalur, Kancheepuram District was arrested under the IPC Sections 120(B), 148, 447, 465, 466, 471 IPC and 109 IPC and 3(i) TNPPDL Act 1992 r/w 34 and remanded in Jail at Chengalpattu as if has been brought to the notice of the undersigned from First Information Report of the Inspector of Police, Kelambakkam.

3.It is further stated that the writ petitioner was involved in preparing the forged documents against law and he violated rule 20 of the Tamil Nadu Government Servants Conduct Rules 1973.

4.The learned counsel for the writ petitioner states that the writ petitioner is innocent of allegations and the FIR itself is a bogus one. It is further contended that on the particular date, the writ petitioner was serving in the School and therefore, the entire case against the writ petitioner is foisted and on this ground, the order of suspension is to be scrapped.

5.It is further contended that the writ petitioner has not involved in creation of forged documents and he is no way connected with the allegations. All such arguments advanced on merits deserve no merit consideration at this juncture.

6.Complex facts and circumstances or the disputed facts can never be adjudicated in the writ proceedings under Article 226 of the Constitution of India. All such disputed facts are to be adjudicated by the delinquent officials by producing documents and by adducing evidences before the competent authority. Contrarily, the Hon'ble High Court in a writ proceedings, wherein the order of suspension is under challenge, cannot adjudicate the issues on merits. It is for the authorities competent to go into the merits of the case with reference to the original documents as well as the criminal proceedings and take a decision by following the procedures.

7.Suspension is not a punishment. Suspension is an interim arrangement, keeping a public servant away from the public office or from performing his official duties, enabling the investigating authority to conduct the investigations in a free and fair manner. In the event of allowing such public servants, performing their duties during the period of investigation, there is a possibility of tampering of documents and evidences. This being the

very purpose and object of the provision of suspension, this Court is of an opinion that the scope of challenging the order of suspension is certainly limited and the judicial review against the order of suspension has to be exercised cautiously and with restraint.

8. An order of suspension can be quashed on certain limited grounds. If the order of suspension is issued by an incompetent authority, having no jurisdiction or allegations of mala fides are raised against the competent authority, who issued the order of suspension or the same is in violation of the statutory rules in force. Even, in case of raising an allegation of mala fides, the authority against whom, such an allegation is raised, is to be impleaded as a party respondent in his personal capacity in the writ proceedings. In the absence of any one of these legal grounds, no writ proceedings can be entertained against the order of suspension.

9. The order of suspension being not a punishment, this Court is of the considered opinion that the writ petitioner has to face the enquiry and establish his innocence or otherwise by producing documents and by adducing evidences.

10. This does not mean that an employee can be placed under suspension for an unspecified period. Prolonged suspension is also bad in law. The disciplinary authority, on initiation of proceedings, must ensure that the departmental disciplinary proceedings are concluded within a reasonable period of time and without causing any undue delay. The authorities competent must be vigilant and conscious in proceeding with the departmental disciplinary proceedings and conclude the same and pass final orders as expeditiously as possible.

11. It is to be clarified that some pendency of a criminal case is not a bar for the continuance of the departmental disciplinary proceedings. If the materials, files and documents are available with the competent authority, the disciplinary authority is empowered to proceed with the departmental disciplinary proceedings, conclude the same by affording an opportunity to the delinquent officials and pass final orders in the departmental disciplinary proceedings.

12. To convict a public servant under the criminal law require high standard of proof to be established before the competent Criminal Court of Law. However, no such strict proof is required for the purpose of imposing punishment of a public servant under the Discipline and Appeal Rules.

Even preponderance of probabilities are enough to punish an employee under the Discipline and Appeal Rules, so also, under the Tamil Nadu Government Servants Conduct Rules.

13.This being the distinction between the criminal proceedings and the departmental disciplinary proceedings, this Court is of an undoubted opinion that there is no bar absolutely to continue the departmental disciplinary proceedings. Even, during the pendency of the criminal proceedings and therefore, the authorities have to take a decision whether to continue the departmental disciplinary proceedings or keep the proceedings in abeyance till the disposal of the criminal case instituted against a public servant. In the event of taking a decision that the departmental disciplinary proceedings are to be kept in abeyance, then the authorities competent must review the order of suspension periodically based on the progress made in the criminal proceedings. In other words, if there is an exorbitant delay for the disposal of the criminal case, then the competent authority should review the suspension periodically and if necessary, revoke the same and post the writ petitioner in any other place in any one of the non-sensitive post.

14.This being the principles to be followed, this Court is of an opinion that the writ petitioner has not established any acceptable legal ground as the order of suspension is issued in proceedings dated 18.02.2019 and the investigations are in progress and all such merits and grounds raised in the writ petition are to be established before the competent authority by the writ petitioner.

15.Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

सत्यमेव जयते Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

kak
To

1.The Chief Educational Officer,
Kancheepuram Educational District,
Vaigundapuram Street,
Dr.P.S.Srinivasan Municipal Hr.Sec.School Campus
Kanchipuram - 631 501

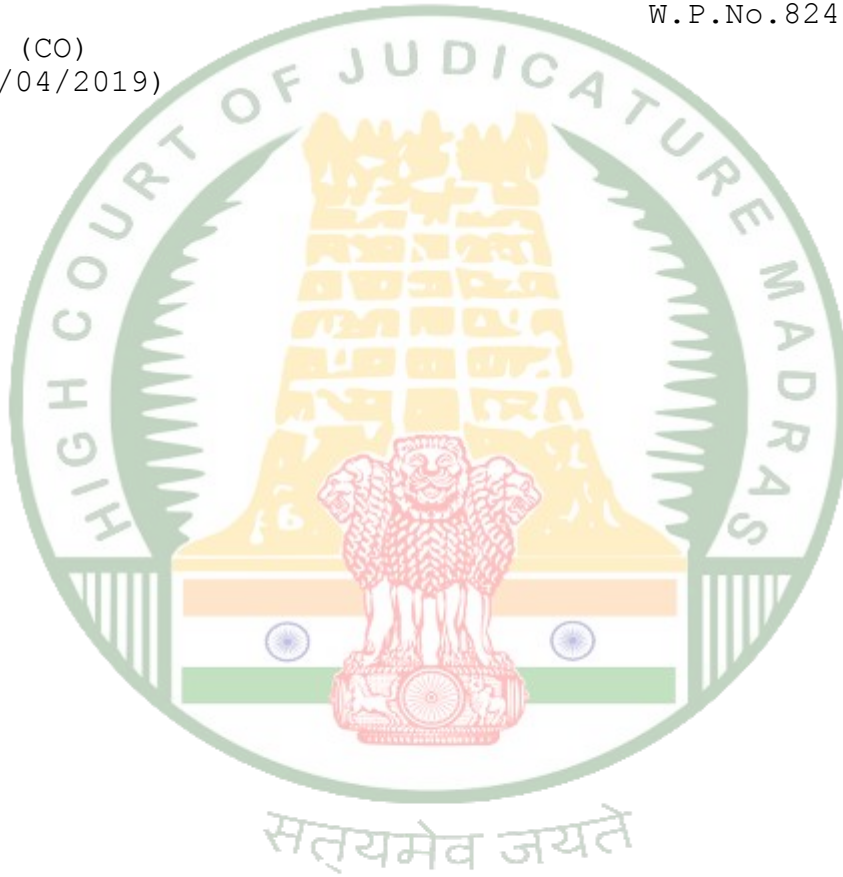
2.The Secretary,
Education Department
Fort St.George
Chennai - 600 009

3.The Head Master,
Govt.High School
Indhalur Village,
Kancheepuram District - 603 301.

+1 cc to Government Pleader SR.NO. 28580

W.P.No.8249 of 2019

vsn -II (CO)
A.SK(25/04/2019)



WEB COPY