

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2019

CORAM

THE HONOURABLE Mr. JUSTICE M.DHANDAPANI

W.P.No.15147 of 2019

Kader Batcha

... Petitioner

vs

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department (Police-2),
Secretariat,
Chennai.

2.The Director General of Police,
Tamil Nadu,
Mylapore,
Chennai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India for issuance of a Writ of Certiorarified
Mandamus, to quash the order passed by the 1st respondent in G.O.
(2D).No.10, dated 18.01.2019 and further direct the 1st
respondent to revoke the suspension and allow the petitioner to
retire pending criminal investigation.

For Petitioner : Mr.L. Infant Dinesh

For Respondents : Mrs.A. Sri Jayanthi

Additional Government Pleader

ORDER

The relief sought for in this Writ Petition is to quash the
order passed by the 1st respondent in G.O.(2D).No.10, dated
18.01.2019 and to direct the 1st respondent to revoke the
suspension and further to allow the petitioner to retire pending
Criminal investigation.

2.The case of the petitioner is that the petitioner was
recruited as direct Sub Inspector of Police in the year 1987 and
promoted as Inspector of Police on 13.09.1998. On 29.05.2015,
he was promoted as Deputy Superintendent of Police. While he
was serving in District Crime Branch, Thiruvallur District, he
was placed under suspension on 29.06.2017 in connection with a
false case registered by Idol Wing CID in Crime No.1 of 2017 on

07.02.2017. After his suspension, no charge sheet was served to the petitioner beyond the statutory period of 90 days of custody. Thereafter, the petitioner made a request for revocation of the suspension order dated 29.06.2017 and filed W.P.No.10100 of 2018 before this Court to quash the order of the 1st respondent dated 29.06.2019 and to direct the respondents to reinstate the petitioner to the post of Deputy Superintendent of Police, by considering his representation dated 02.04.2018 and for consequential order. This Court, by its order dated 05.06.2018, directed the 1st respondent to consider the representation of the petitioner dated 02.04.2018 in the light of the law laid down in the case of Ajay Kumar Choudhary v. Union of India and another [(2015) 7 SCC 291] and thereafter, the present impugned order was passed. Challenging the said order, the present petition is filed.

3.The learned counsel for the petitioner submitted that the prolonged suspension cannot be permitted and till date no charge memo was issued and no enquiry was conducted. The grievance of the petitioner is that the order of suspension has been passed as early as in the year 2017 and subsequently, reviewed and extended. The order of suspension has been passed preventing the petitioner from getting superannuated. The decision of the Hon'ble Supreme Court in Ajay Kumar Choudhary v. Union of India and another [(2015) 7 SCC 291] is squarely applicable to the case on hand.

4.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.

5.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."

6.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.Further, this Court, in the case of S.Upakaram v. The District Collector dated 01.11.2010 in W.P.(MD)No.10882 of 2009, etc., batch, in Paragraph 5 of the Judgment, it was observed as follows:

"5.Further in cases where there was direction given by this Court and the Competent Authority or the higher Authority had reviewed the order of suspension and found that there was no case to revoke the suspension order and that the petitioners must continue to be in suspension pending trial or departmental action, no fault can be found with. It is not as if petitioners were not paid subsistence allowance. In some cases, in view of the prolonged suspension, on review there was also enhanced rates of subsistence allowance are being paid to them."

8.Considering the facts and circumstances of the case that the petitioner is involved in theft of idol case and the Investigation Officer has conducted investigation to identify the culprits and the stolen idols and while considering the petitioner's representation for revocation order, the respondent, elaborately discussed and decided to continue the suspension order in the public interest, this Court cannot interfere mechanically with the impugned order and if any adjudication passed on the merits of the case, it will affect the petitioner as well. Hence, this Court is not intended to render any opinion on merits of the case.

Accordingly, this Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Additional Chief Secretary to Government, Home, Prohibition and Excise Department (Police-2), Secretariat, Chennai.
- 2.The Director General of Police, Tamil Nadu, Mylapore, Chennai.

+1 cc to M/s.L.Infant Dinesh, Advocate Sr.No. 78918

+1 cc to The Government Pleader Sr.No. 79367

AKM/16.12.19/4P- 5C /

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