IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 24.09.2019
CORAM
THE HON'BLE MR.JUSTICE M.DHANDAPANI
W.P.No.15227 of 2019
and
WMP Nos.15196 and 15197 of 2019

P.Subramanian ... Petitioner

Vs.

The Chief Internal Audit Officer
Audit Branch,
N.P.K.R.R Maaligai, 1st Floor
No.144, Anna Salai
Chennai-600 002. ... 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 relating to the impugned order passed by the respondent in his Memo No.046481/1607/F.1/F.12/2018, dated 28.09.2018 and quash the same and consequently directing the respondent to reinstate the petitioner into service along with backwages attendant benefits and other monetary benefits to the petitioner.

For Petitioner : Mr.C.Prakasam

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

O R D E R

Heard both sides.

2.The impugned order, dated 28.09.2018 is one of suspension pending contemplation of the charges. The petitioner is working as Auditor in the respondent Department.

3.The suspension is made under Sub-Regulation (b) 9 of Regulation of Tamil Nadu Electricity Board D & A Regulations.

The reason found in the order is that the petitioner was arrested and remanded to Judicial Custody.

4.The grievance of the petitioner is that even though the order of suspension has been passed as early as in the year 28.09.2018 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...."

8. In the light of the above, the writ petition filed by the petitioner is misconceived and deserves to be dismissed. Accordingly, the writ petition shall stand dismissed. No costs.

9. However, it is open to the petitioner to seek a review of the order of suspension and early disposal of enquiry proceedings by making a representation before the competent authorities and if such a representation is made, it is needless to state that the authorities will consider the said representation and pass orders on the same in accordance with law. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

The Chief Internal Audit Officer
Audit Branch,
N.P.K.R.R Maaligai, 1st Floor
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