

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.09.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.16518 of 2019

and

WMP.Nos.16158 and 16159 of 2019

Tmt. B. Shajitha

..Petitioner

vs

1. The Principal Secretary & Commissioner,
Department of Treasuries & Accounts,
Government of Tamil Nadu,
Amma Complex, 3rd Floor,
Veterinary Hospital Campus,
No.571, Anna Salai, Nandanam,
Chennai- 600 035.

2. The Regional Joint Director,
Treasuries and Accounts Department,
Vellore Region, Vellore-1

3. The Treasury Officer,
District Treasury Office,
Thiruvannamalai District.

4. The Director of Vigilance & Anti Corruption
293, M.K.N. Road, Alandur,
Chennai - 600 016.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ in the nature of a Writ of Certiorarified Mandamus or any other appropriate writ, direction or order calling for the records of the 3rd respondent and quash the suspension order of the 3rd respondent in Ref.No.3822/2018/A1 dated 30.04.2018 and direct the 3rd respondent to reinstate the petitioner in the service and consequently direct the respondents 1 to 3 to restore all the promotions, emoluments and other attendant benefits with retrospective effect and pass orders.

For Petitioner : Mr. Sudarsanam S.L.

For Respondents : Mr. R. S. Selvam, Government Advocate

O R D E R

The petitioners filed this Writ Petition seeking direction to the 3rd respondent and quash the suspension order of the 3rd respondent in Ref.No.3822/2018/A1 dated 30.04.2018 and direct the 3rd respondent to reinstate the petitioner in the service and consequently direct the respondents 1 to 3 to restore all the promotions, emoluments and other attendant benefits with retrospective effect

2. The case of the petitioner is that she was selected through Group II Examination conducted by T.N.P.S.C. And posted as Accountant in the Cheyyar Sub-Treasury office. Then she was promoted as Superintendent, District Treasury, Thiruvallur and then posted as Sub-Treasury Officer at Cheyyar Sub-Treasury. While she was in service, one Mr. A. Padmaraj had made a false complaint against the petitioner. Based on the false complaint, the Superintendent of Police, Thiruvannamalai District, Department of Vigilance & Anti corruption allegedly made vague enquiry and investigated allegedly and filed FIR in Crime No.3/2018. Based on the FIR, 3rd respondent on 30.04.2018 suspended the petitioner temporarily. Thereafter on 01.03.2019, the petitioner sent a letter for revocation of the order of suspension but till date it was not considered.

3. Heard both sides.

4. The impugned order, dated 30.04.2018 is one of deemed suspension pending contemplation of the charges. The petitioner was working as Sub-Treasury Officer, in the respondent Department.

5. The suspension is made under Rule 17(e)(1)(ii) of Tamil Nadu Civil Services (Discipline and Appeal) Rules. The reason found in the order is that the petitioner was allegedly demanding and accepting illegal gratification of Rs.2,000/-

6. 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 her promotional opportunities.

7. 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.

8. 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."

9. 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...."

10. 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. Without going into the merits of the case, however I am inclined to issue direction to the first respondent to consider the representation dated 01.03.2019 within a period of twelve (12) weeks from the date of receipt of copy of this order. No costs. Connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

mrn

To

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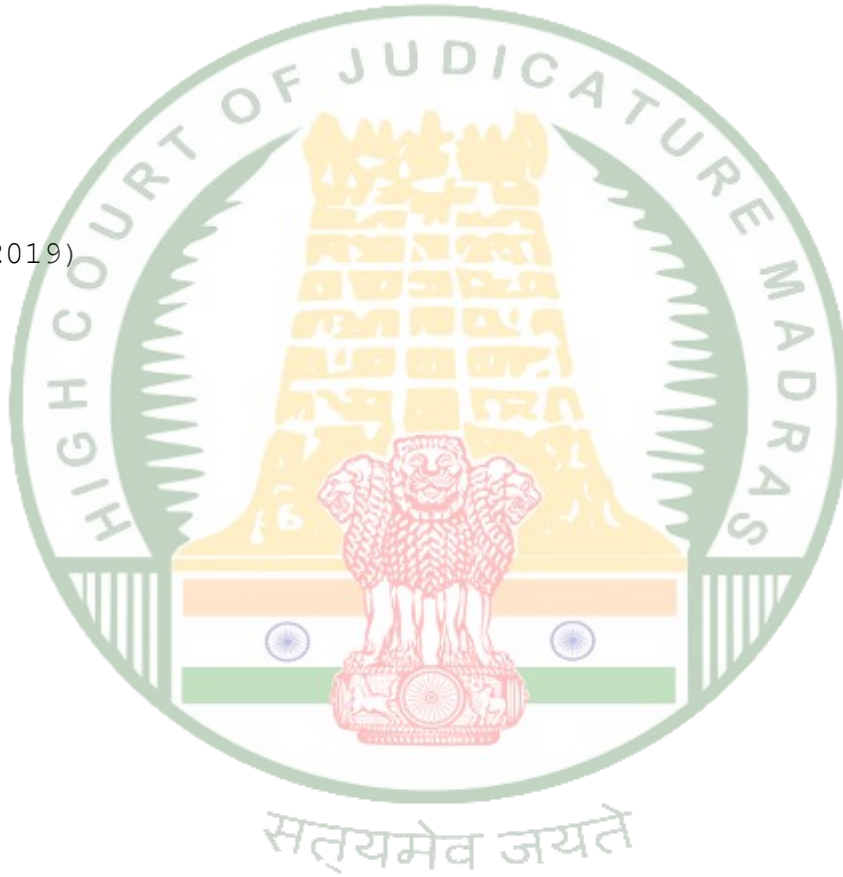
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293, M.K.N. Road, Alandur,
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+1 CC to Mr.S.L. Sudarsanam, Advocate sr 81010.
+1 CC to The Govt. Pleader sr 81675.

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BR (CO)
SP (28/11/2019)



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