

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on 04.09.2019	Orders Pronounced on 09.09.2019
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CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.16402 of 2019

and

W.M.P.No.16071 of 2019

S.G.Nedunchezhiyan

... Petitioner

..vs..

1. The Director
Survey and Settlement
Chepauk, Chennai - 600005.

2. The Assistant Director
Survey and Land Records
Thiruvannamalai District.

... Respondents

Writ Petition has been filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the first respondent relating to the suspension order vide his Proceeding RC.A1/2358/2019 dated 04.06.2019 passed by the first respondent and to quash the same and to issue consequential directions to reinstate the petitioner into service as Town Sub-Inspector of Survey, Taluk Office, Thiruvannamalai in the same station.

For Petitioner : Mr.N.G.R.Prasad
for
Mr.J.Muthukumaran

For Respondents : Mrs.A.Sri Jayanthi
Additional Government Pleader

ORDER

Writ Petition is filed challenging the suspension order passed by the first respondent vide his Proceeding RC.A1/2358/2019 dated 04.06.2019 and seeking to quash the same and to issue consequential directions to reinstate the petitioner into service as Town Sub-Inspector of Survey, Taluk Office, Thiruvannamalai in the same station.

2. The case of the petitioner is that when the petitioner was working as Town Sub-Inspector of Survey, he was placed under

suspension under Rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and he entered the service as Surveyor-cum-Draftsman in the year 1984 and when the second respondent assumed office of Assistant Director of Survey and Land Records, Thiruvannamalai District, he frequently transferred the persons, who are working under him. Accordingly, the petitioner was transferred from Gingee to Chegam, which is too far away from the petitioner's residence and his wife is working as Graduate Teacher in the Gingee Panchayat Union Middle School and he has two sons and considering the difficulty to reach other destination, he filed a Writ Petition before the Court. Since, this Court granted interim order of status quo and since the interim order was not complied with, the petitioner filed Contempt Petition. In order to wreck vengeance, the respondents created a false record as if the petitioner is in dereliction of duty and the reason for which, the petitioner was placed under suspension. Against which, the petitioner has filed this Writ Petition.

3. Mr.N.G.R.Prasad, learned counsel appearing for the petitioner would submit that the petitioner is very sincere in his duty and he was frequently transferred by the second respondent. The first transfer was on 11.09.2015 and this Court granted status quo and thereafter, the petitioner was permitted to serve as Sub-Inspector of Survey and Land Records in Vandavasi and within two years, again the petitioner was transferred to Thiruvannamalai on 18.04.2017. Thereafter, at the instance of the Tahsildar, Thiruvannamalai, one Rajendran was posted as Town Sub-Inspector of Survey and he was transferred as Town Settlement Sub-Inspector of Survey and also in the additional charge of Sub-Inspector of Survey on 11.08.2017 and the petitioner has joined duty on the same day. Within two months, he was again transferred and posted to the office of Special Tahsildar (ADW), Chengam, by order dated 17.10.2017 and one Rajendran was posted in the petitioner's place at the instance of the Tahsildar, RDO and District Collector, Thiruvannamalai and thereafter, the petitioner filed Writ Petition in W.P.No.27554 of 2017 challenging the order dated 17.10.2017. This Court granted status-quo on 30.10.2017. Since that order was not complied with, the petitioner filed Contempt Petition before this Court in Cont.P.No.2031 of 2017 and thereafter, that order was complied with and further one Lakshmanan, who is the resident of the locality sent a detailed complaint against the Assistant Directors of Survey and Land Records, Thiruvannamalai, with regard to the malpractice. The said Assistant Director, who failed in vacating the interim order granted by this Court, in order to wreck vengeance, has passed the present suspension order.

4. The learned counsel appearing for the petitioner further vehemently contended that the petitioner was placed under suspension vide order dated 04.06.2019, against which, the petitioner preferred appeal before the first respondent on 10.06.2019. However, till date the suspension order was not reviewed or revoked. Hence, prolonged suspension cannot be permitted and therefore, it is necessary to interfere with the order of suspension. Accordingly, he prays for allowing the Writ Petition.

5. The respondents filed a little counter, wherein, they have not disputed the earlier transfer order passed by the second respondent and stated the earlier transfer orders passed by the second respondent have nothing to do with the present suspension order passed by the second respondent. In fact, while the petitioner was working as Sub-Inspector of Survey and Land Records, Thiruvannamalai, the Revenue Divisional Officer, Thiruvannamalai, took up inspection on 01.06.2017 and during the inspection, he noticed the irregularities committed by the petitioner in his official duties. The petitioner, after receiving petitions from the Town Settlement Office with regard to extent, name change, sub-division has to inspect the field and submit his report to the Special Tahsildar, Town Settlement, to pass orders for rectification. The Revenue Divisional Officer, in his inspection report addressed to the District Collector, had pointed out that the petitioner has violated Rule 20(1)(2)(3) of Tamil Nadu Government Servants Conduct Rules, 1973 and hence, instructed to take suitable action against the petitioner. After going through the report of the Revenue Divisional Officer, the District Collector ordered the second respondent to place the petitioner under suspension. Accordingly, the second respondent issued the impugned suspension order. The sum and substance of irregularities committed by the petitioner are as follows:-

"1. In the petition Register, the seniority of the petitions have been skipped with an ulterior motive. The petitioner is responsible for such acts, since he had received all the petitions after due acknowledgment, but did not conduct due enquiry of the petitions.

2. When the Petition Register was inspected, the count of orders issued and closed files, did not tally. For this act, the petitioner is responsible, since he is the custodian for all the closed petitions in the taluk office.

3. The monthly pending list has not been maintained properly. The petitioner is responsible for this, since the serial numbers of the closed files in the Petition Register, has

not been circled in Red Ink by the petitioner.

4. The Office Petition Register was not maintained properly by the petitioner.

5. Several complaints were received against the petitioner in social medias and in newspapers and it has been proved that the petitioner takes action only on petitions, for which he receives bribe amount."

6. Based on the irregularities pointed out by the Revenue Divisional Officer, who recommended for taking suitable action against the petitioner and the inspection report submitted by the second respondent to the District Collector, Thiruvannamalai, for his orders regarding the action to be taken against the petitioner, the District Collector ordered the second respondent to place the petitioner under suspension. Based on the records and the instruction of the Revenue Divisional Officer as well as District Collector, the second respondent placed the petitioner under suspension pending grave charges. Hence, the order of suspension need not be interfered with.

7. Considering the facts and circumstances of the case and on perusal of the records, there is no dispute that in the earlier occasion, the petitioner was transferred in the years 2015 and 2017 and the petitioner successfully agitated the same before this Court and this Court granted interim order of status quo and this Court order was complied with. However, the present issue before this Court is suspension order was passed by the second respondent with malafide intention. On perusal of the counter, it reveals that Revenue Divisional Officer had inspected the office of the petitioner on 01.06.2019 and the investigation reveals that the petitioner committed irregularities. Though all the irregularities have to be considered by the competent authorities while conducting enquiry, by issuing charge memo before conducting enquiry, in order to facilitate the enquiry, it is necessary to place the petitioner under suspension for public interest and Rule 17(e) (1)(i) & (ii) reads as follows:-

"17 (e) (1) A member of a service may be placed under suspension from service, where-

(i) an enquiry into grave charges against him is contemplated, or is pending; or

(ii) a complaint against him of any criminal offence is under investigation or trial and if such suspension is necessary in the public interest."

8. However, rendering any opinion in respect of the petitioner case, it may be influence of the competent authority. Hence, this Court restrain itself from passing any order in the alleged irregularities committed by the petitioner. As the petitioner allegedly involved in some irregularities and the investigation is pending, the respondent thought it fit to suspend the petitioner on public interest. To place the person under suspension or not in a given case pending investigation has to be decided by the competent authority in public interest. Whereas the discretion given to the competent authority as contained in Rule 17(e)(1)(i) of Tamil Nadu Civil Services (Discipline and Appeal) Rules and or otherwise to place the person under suspension cannot gone into in the writ proceedings. The learned counsel Mr.N.G.R.Prasad appearing for the petitioner relied only the earlier transfer orders, which led to the second respondent to pass suspension order that although started in the year 2017 and the present case is based on the report of the Revenue Divisional Officer and the order of the District Collector to place the petitioner under suspension. In such circumstances, I do not find any arbitrariness in the present case and therefore, the petitioner's contention that the impugned order of suspension is without any basis. Hence, I am not inclined to interfere with the order of suspension.

9. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

Mra/kmm

To

1. The Director
Survey and Settlement
Chepauk, Chennai - 600005.
2. The Assistant Director
Survey and Land Records
Thiruvannamalai District.

W.P.No.16402 of 2019

and

W.M.P.No.16071 of 2019

mg(co)

aa18/10/2019