

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.16784 of 2019

And

W.M.P.Nos.16389 and 28245 of 2019

G.Vijaya

... Petitioner

Vs.

1.Director of Technical Education,
Sardar Patel Road,
Guindy, Chennai - 600 025.

2.The Secretary,
Thegarajar Polytechnic College,
Sura mangalam, Salem - 5.

3.The Principal,
Thegarajar Polytechnic College,
Sooramangalam, Salem - 5.

4.The Senior Manager, HR
Sona College of Technology
Salem - 636 005.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for records pertaining to Letter dt.30.05.2019 issued by the fourth respondent, quash the same and direct the respondents to continue to permit the petitioner to discharge her duties in the respondents 2 and 3 institution.

For Petitioner : Mr.R.Subramanian

For Respondents: Mr.R.S.Selvam

Government Advocate

O R D E R

The petitioner has filed this writ petition seeking issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the letter dated 30.05.2019 issued by the fourth

respondent, to quash the same and to direct the respondents to continue to permit the petitioner to discharge her duties in the respondents 2 and 3 institution.

2. Heard the learned counsel for the petitioner and the learned Government Advocate.

3. The case of the petitioner is that she was appointed by the second respondent as Clerk in the College Hostel on 05.02.1998 and has put in 15 years of unblemished service. Whiles, during November, 2012, when she went to the College for reporting duty, the Superintendent informed her that she should not come to work as per the oral instructions of the College Management. In this regard, the petitioner made a representation to the first respondent on 08.12.2012 and since there was no action, she filed W.P.No.747 of 2013 before this Court. This Court vide order dated 11.07.2017, allowed the writ petition and directed the respondents 2 and 3 to permit the petitioner to discharge her duties. Thereafter, the petitioner reported duty and was discharging her duties. Whiles, the fourth respondent vide proceedings dated 30.05.2019 placed the petitioner under suspension. Hence, this petition.

4. The learned counsel appearing for the petitioner would submit that the fourth respondent/ Sona College of Technology placed the petitioner under suspension on the ground of breach of failure to observe safety instructions, which is vulnerable for hostel students. He would further submit that in order to wreck vengeance, the suspension order has been passed which is un-sustainable.

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) has 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.

9. However, it is open to the petitioner to seek a review of the order of suspension 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.

10. The writ petition is accordingly dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Director of Technical Education,
Sardar Patel Road,
Guindy, Chennai - 600 025.

+1cc to Mr. R. Subramanian, Advocate sr.84288
+1cc to Government Pleader SR.NO. 84572
+1cc to Mr. R. Nalliyappan, Advocate sr.84050

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spd(co)
nr 13/11/2019