

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 02.08.2019	Delivered on: 08.08.2019
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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

WP.No. 17690 of 2019

M.Kavitha

..Petitioner

versus

1. Government of Tamil Nadu,
rep. by its Additional Chief Secretary to Government (FAC),
Tourism, Culture and Religious Endowments (RE.2.2)
Department, Fort St.George,
Chennai-600 009.
2. The Commissioner,
Hindu Religious and Charitable Endowments Department,
119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai-600 034.
3. Mr.A.G.Ponn Manickavel,
Spl.Officer and Head of Special Investigation Team,
Idol Wing-CID, Special Camp Office,
District Armed Reserve Campus,
Subramaniapuram, Tiruchirapalli.
4. The Inspector of Police,
Investigation Officer (C.C.No.727/17 on the file of
Sivakanchi Police Station - Non-transfer of Idol Wing)
Subramaniapuram, Tiruchirapalli.

(RR3 & 4 are sum motu impleaded vider order
dated 30.07.2019 made in WP.No.17690 of 2019)

.. Respondents

PRAYER:

Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, to direct the 1st respondent to consider the representation of the petitioner dated 20.11.2018 to review the order of suspension imposed on the petitioner by the 1st respondent by G.O.(2D) No.19, Tourism

Culture and Religious Endowments (RE.2.2) Department, dated 9.10.2018 by revoking the same and allowing the petitioner to join duty as Additional Commissioner (Thiruppani), Hindu Religious and Charitable Endowments Department within the time frame stipulated by this Court.

For Petitioner : Ms.Vaigai for
Mr.Balan Haridas

For Respondents : Mr.P.H.Arvind Pandian, AAG
assisted by Mr.M.Maharaja,
Spl.G.P. for R1&R2
Mr.V.Selvaraj, for R3 & R4

ORDER

This Writ Petition has been filed by the petitioner, praying for issuance of Writ of Mandamus, to direct the 1st respondent to consider the representation of the petitioner dated 20.11.2018 to review the order of suspension imposed on the petitioner by 1st respondent vide G.O.(2D) No.19, Tourism Culture and Religious Endowments (RE.2.2) Department, dated 9.10.2018 by revoking the same and allowing the petitioner to join duty as Additional Commissioner (Thiruppani), Hindu Religious and Charitable Endowments Department, within a time frame stipulated by this Court.

2. The brief facts which gave rise to the filing of the Writ Petition, are stated hereunder:

The petitioner joined service of the Government as Assistant Commissioner in Hindu Religious and Charitable Endowments Department on 4.3.1996. Later, on the basis of merit, she was promoted to the post of Deputy Commissioner in 2002 and thereafter as Joint Commissioner in 2007. Lastly, she was promoted as Additional Commissioner in 2013. According to the petitioner, she had put in 22 years of unblemished service. In fact, the petitioner came under continuous appreciation for her good work by successive Commissioners of HR & CE. While so, an FIR was registered on the complaint lodged by one Thiru Annamali who was running a picture selling shop in the premises of Sri Ekambareswarar Temple. The complaint is regarding alleged making of two Panchaloha idols of Sri Ekambaranathar. The FIR alleges breach of trust, falsification of account and fabrication of false documents. On the basis of the FIR, the petitioner was arrested on 31.7.2018 and remanded to judicial custody. However, she was released on bail by virtue of order in CrI.O.P.No.19396 of 2018 dated 07.08.2018. In the said circumstances, the petitioner was placed under suspension vide order dated 09.10.2018. The order of suspension stated that she

is deemed to have been placed under suspension with effect from 31.07.2018, being the date of detention. The suspension order was passed under Rule 17 Clause 2 Sub Rule (e) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules. According to the petitioner, she was falsely implicated in the criminal case at the behest of certain vested interests and because of her false implication in the criminal case which led to her arrest, the petitioner was deemed to have been placed under suspension under the provisions of the disciplinary rules. According to the petitioner, she continued to be under suspension while no progress has been made in the criminal case.

3. In response to the notice issued in the Writ Petition, Mr.Maharaja, learned Special Government Pleader entered appearance and a counter affidavit is filed on behalf of the respondents 1 and 2, stating that the petitioner's application for revocation of suspension dated 20.11.2018 is under consideration by the Government.

4. Mr.P.H.Arvind Pandian, learned Addl.Advocate General appearing for the respondents 1 and 2 would submit that the Government is literally handicapped from reviewing its own order in view of non-availability of records pertaining to the criminal case launched against the petitioner and others. According to him, the files relating to the petitioner's involvement in the criminal case were with one Special Officer appointed by this Court, namely, Mr.A.G.Ponn Manickavel, Spl.Officer and Head of Special Investigation Team, Idol Wing-CID, Special Camp Office, District Armed Reserve Campus, Subramaniapuram, Tiruchirapalli and other person, namely, Inspector of Police, Sivakanchi Police Station and therefore, they need to be made as parties in order to summon relevant records and only thereafter, the Government would be in a position to apply its mind in the matter of revocation of the suspension order. Considering the submission made by the learned Addl.Advocate General, this Court felt that the presence of the said officials was necessary and proper in order to peruse the file relating to the extent of involvement of the petitioner in criminal case and therefore, by order, dated 20.07.2019, this Court suo motu ordered impleadment of the said officials and accordingly, they were impleaded as respondents 3 and 4 in the Writ Petition.

5. When the matter is taken up for hearing today, the learned Senior Counsel, Ms.Vagai would submit that no charge sheet has been filed as on date in the criminal case and the trial of the criminal case may take considerable time and the petitioner cannot be kept under suspension continuously for indefinite period. As per the Government Orders and instructions, the Government has to review of the suspension

orders passed against its servants periodically. In this case, the petitioner was deemed to have been placed under suspension after her arrest on 31.07.2018 and therefore, almost one year has lapsed from the date of suspension and in which event, it is imperative on the part of the Government to review its decision.

6. Ms.R.Vaigai, learned Senior Counsel appearing for the petitioner besides would submit that the respondents 3 and 4, in her opinion, are not necessary parties to this litigation since their presence would further complicate the simple direction sought for in this Writ Petition, directing the Government to review its suspension order. If at all there is any lack of communication between two officials of the Government, it is up to the Government to sort out the issue and the Government ought not to have requested this Court to implead respondents 3 and 4.

7. Mr.V.Selvaraj, learned counsel appearing for respondents 3 and 4 would strongly object to the impleadment of his clients as respondents the present proceedings as they are no way connected with the issue raised by the petitioner herein. Therefore, he would submit that he needs to be heard elaborately before any decision is taken in this matter, as this Court suo motu impleaded respondents 3 and 4.

8. The learned Addl.Advocate General would submit that the Government is facing peculiar circumstances that they are not having relevant records to even conduct basic review of the suspension order passed against the petitioner and the learned Addl.Advocate General would also object to the private counsel's appearance for 3rd respondent in the present proceedings.

9. This Court does not wish to be dragged into the controversy between the Government and respondents 3 and 4 as that is beyond the pale of what this Court is called upon to decide in respect of the plea of the petitioner herein. Any difference of opinion between 1st and 3rd respondents, must entirely be sorted out between themselves and this Court cannot be made as party to such dispute. Therefore, this Court is of the considered view that the presence of respondents 3 and 4 is not necessary for the direction to be given as under, in terms of the submissions made by the learned counsel for the petitioner. In the said circumstances, before passing a final order in this writ petition, respondents 3 and 4 shall stand removed as array of parties in the Writ Petition and deleted from the present proceedings and accordingly, the order passed by this Court on 31.07.2019 is hereby recalled.

10. Coming to the Writ Petition on hand, the prayer as such is only to direct the Government to review the order of suspension passed against the petitioner since such periodical

review is mandatory and necessary.

11. In view of the limited prayer sought in this Writ Petition, this Court is not inclined to go into the merits and de-merits of the suspension order issued against the petitioner. In the circumstances, the first respondent is directed to review the order of suspension passed vide G.O.(2D) No.19, Tourism Culture and Religious Endowments (RE.2.2) Department, dated 9.10.2018 by considering the representation of the petitioner dated 20.11.2018 and pass appropriate orders in accordance with law and on merits, within a period of four weeks from the date of receipt of a copy of this order.

12. Although the learned Addl. Advocate General has expressed certain constraints in considering the review, in view of the extraordinary and peculiar circumstances of the case, this Court does not wish to address such concerns and whatever materials are available with the Government in regard to the impugned order of suspension, the Government shall apply its mind and review the suspension order on the basis of available material and also on the basis of legal principles laid down by the Hon'ble Supreme Court of India in the case of "Ajay Kumar Choudhary versus Union of India and others" reported in (2015) 7 SCC 291, which was followed by this Court in number of cases, wherein, it has been held that suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration, and if it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature.

13. The Writ Petition stands disposed of accordingly. No costs.

Sd/-

सत्यमेव जयते
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

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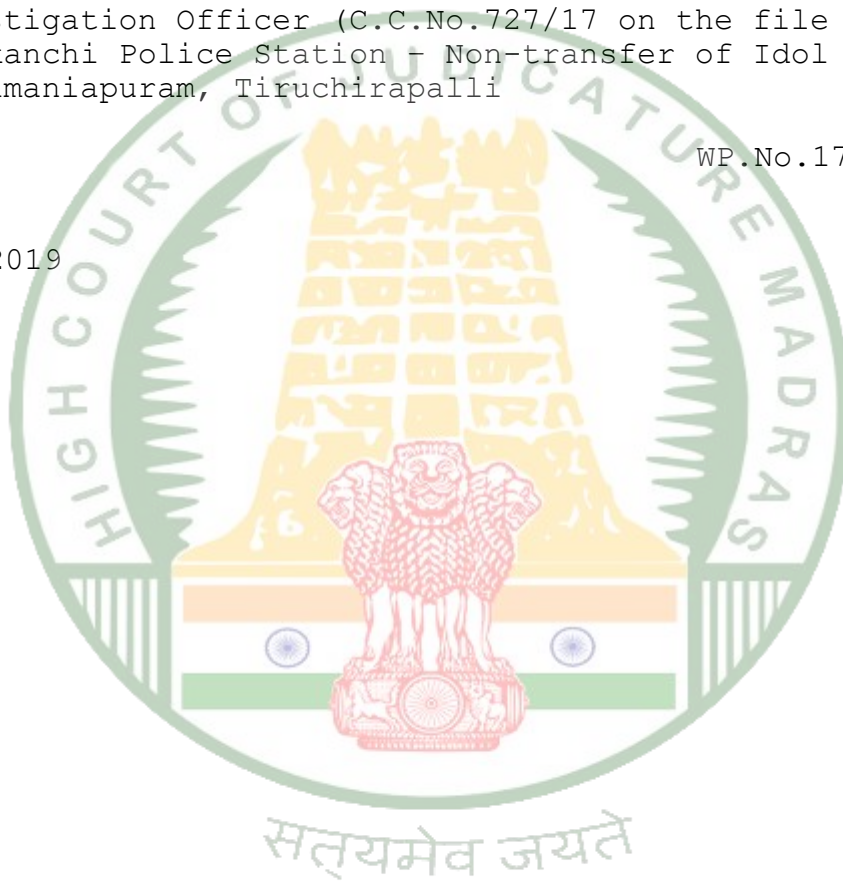
To

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