

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2019

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.17819 of 2019  
and W.M.P.No.17219 of 2019

V.Renuka

...Petitioner

vs.

The District Collector,  
Tiruvannamalai District,  
Tiruvannamalai.

...Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, seeking for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondents in connection with the impugned order passed by the respondent in A1/33135/2018 dated 13.10.2018 and to quash the same and to reinstate the petitioner into service with all attendant benefits.

For Petitioner : M/s.S.Kanmani Annamalai

For Respondent : Mr.R.S.Selvam  
Government Advocate

ORDER

The Writ Petition has been filed by the petitioner to quash the impugned order passed by the respondent in A1/33135/2018 dated 13.10.2018 and to reinstate the petitioner into service with all benefits.

2.The case of the petitioner is that the petitioner entered into service as a Typist in the year 1995 through TNPSC and promoted as Assistant in the year 2001 and as Deputy Tahsildar in the year 2013 and further promoted as Tahsildar in the year 2016. While she was serving as Tahsildar Chengam Taluk her name falsely implicated in a criminal case registered by the Vigilance and Anti-Corruption Department, Tiruvannamalai in Cr.No.09 of 2018 under Section 7 of the Prevention of Corruption Act and immediately thereafter, the petitioner was arrested and remanded to judicial on 10.10.2018. Since the petitioner was in jail more than 48 hours, the respondent by invoking Rule 17(e)

(2) of the Tamilnadu Civil Services (D&A) Rules, placed the petitioner under suspension. Hence, the petitioner filed a Writ Petition before this Court.

3.The learned counsel appearing for the petitioner that though the petitioner was implicated in a criminal case and order of suspension was passed in the year 2018, but, till date, the order was not revoked. Hence, he prayed for appropriate orders.

4.The learned Government Advocate appearing for the respondent would submit that the petitioner was involved in a criminal case under Section 7 of the Prevention of Corruption Act, 1988 and arrested and remanded to judicial custody on 11.10.2018. On receipt of report from the Deputy Superintendent of Police, Vigilance and Anti Corruption, Tiruvannamalai Detachment, the respondent issued an order of deemed suspension of the petitioner w.e.f 10.10.2018 in his proceedings No.A1/33135/2018, dated 13.10.2018, until further orders. The information regarding the release of the petitioner on bail has not been informed to the respondent so far. The contention of the petitioner that her name was falsely implicated in the criminal case is to be decided in the Court.

5.The learned Government Advocate appearing for the respondent would further submit that the petitioner has been suspended for her involvement in a criminal case stated above and she is under suspension. The criminal case against the petitioner is under investigation and necessary charge sheet will be filed in the Court by the Directorate of Vigilance and Anti - Corruption. The time limit for suspension of government servant beyond 3 months is not applicable in respect of criminal case. It is pertinent to state that the suspension will continue till disposal of the criminal case. Regarding disciplinary proceedings against the petitioners, the draft charge memo has been sent to the Directorate of Vigilance & Anti - Corruption, Chennai for approval. On receipt of the same it will be served on the petitioner and follow up action will be taken as per the rule without delay.

6.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.

7.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."

8.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...."

9.Considering the facts and circumstances, I am not inclined to interfere with the impugned order passed by the respondent.

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. No costs. Consequently, connected miscellaneous petition is closed.

11.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.

s/d-  
Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

pam  
To

The District Collector,  
Tiruvannamalai District,  
Tiruvannamalai.

+1 CC to Mr.S. Sivakumar, Advocate sr 84703.  
+1 CC to Govt. Pleader sr 85109.

सत्यमेव जयते

W.P.No.17819 of 2019

SP(05/11/2019)

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