

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.19121 of 2019

and

W.M.P.Nos.18486 and 18488 of 2019

M.Ammavasai

... Petitioner

Vs.

1.The Secretary to Government,
Department of Backward Classes and
Minorities Welfare Department,
Secretariat, Chennai- 600 009.

2.The District Collector,
Collectorate Buildings,
Tiruvannamalai-606604.

3.The Deputy Collector,
The District Backward Class and
Minority Welfare Officer,
Tiruvannamalai.

4.The Commissioner,
Directorate of Minorities Welfare,
Chepauk, Chennai-600 005.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records of the third respondent in proceeding in Rc.N3/13544/2019 dated 21.06.2019 and quash the same and consequently direct the third respondent to reinstate in service as tutor cum warden.

For Petitioner : Ms.K.Annamma

For Respondents : Mr.R.S.Selvam

Government Advocate

ORDER

This writ petition has been filed to call for the records of the third respondent in proceeding in Rc.N3/13544/2019 dated 21.06.2019 and quash the same and consequently direct the third respondent to reinstate in service as tutor cum warden.

2.The petitioner's case is that the petitioner joined service as a Tutor cum warden by proceedings of the District Backward Class and minority welfare officer Tiruvannamalai at Government School Boys Hostel, Thandarampattu. While so, a complaint was made on 29.09.2016 against the petitioner that the petitioner has not been properly distributed food to the students thereby caused great mental agony. Then, the District Collector, by a proceedings dated 22.01.2017 conducted an enquiry and given a clear finding that the petitioner is innocent. Thereafter, the petitioner made a complaint on 19.03.2019 to the District Collector with regard to the illegality and irregularity happened in the office of the third respondent, particularly against the District Backward Class Welfare Officer Lavanya and warden Arun kumar, Dhanraj, Kumar, Dharmalingam and Balaji.

3.The learned counsel for the petitioner submitted that to wreak vengeance, the above said persons made a complaint against the petitioner and the petitioner was directed to attend enquiry on 18.06.2019. The petitioner went to the office of the respondent to attend the enquiry on 18.06.2019. The petitioner had been waiting till 12 p.m., in the respondent office and since the respondent has not come to the office till 12 p.m., the petitioner had given a letter dated 18.06.2019 to the office of the superintendent. Thereafter, the petitioner made another complaint before the second respondent and requested him to initiate actions against the above said persons. The second respondent called the petitioner for enquiry on 20.06.2019. Since the petitioner has some personal works, he could not attend the interview. Therefore, the impugned proceedings in RC.N3/13544/2019 dated 21.06.2019 suspending the petitioner from service has been passed by the third respondent.

4.The learned Government Advocate appearing for the respondents submitted that when the petitioner was working in the Government School Boys Hostel, Thandarampattu, a complaint regarding malpractice came to be filed against the petitioner and the petitioner was called to attend the enquiry on 18.06.2019. The District Backward Classes and Minorities Welfare Officer, to conduct enquiry, reached her office after attending admissions works in 49 B.C.,/M.B.C., Colleges, but the petitioner was not attended the interview and has sent a false statement. Even after the enquiry was fixed on 20.06.2019 as per the petitioner's request, the petitioner did not attend the enquiry and the date of enquiry was informed to the petitioner through phone, speed post, whatsapp and through social media. Therefore, the suspension order dated 21.06.2019 in RC.N3/13544/2019 was issued.

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) 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. No costs.

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. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
Department of Backward Classes and
Minorities Welfare Department,
Secretariat, Chennai- 600 009.

2.The District Collector,
Collectorate Buildings,
Tiruvannamalai-606604.

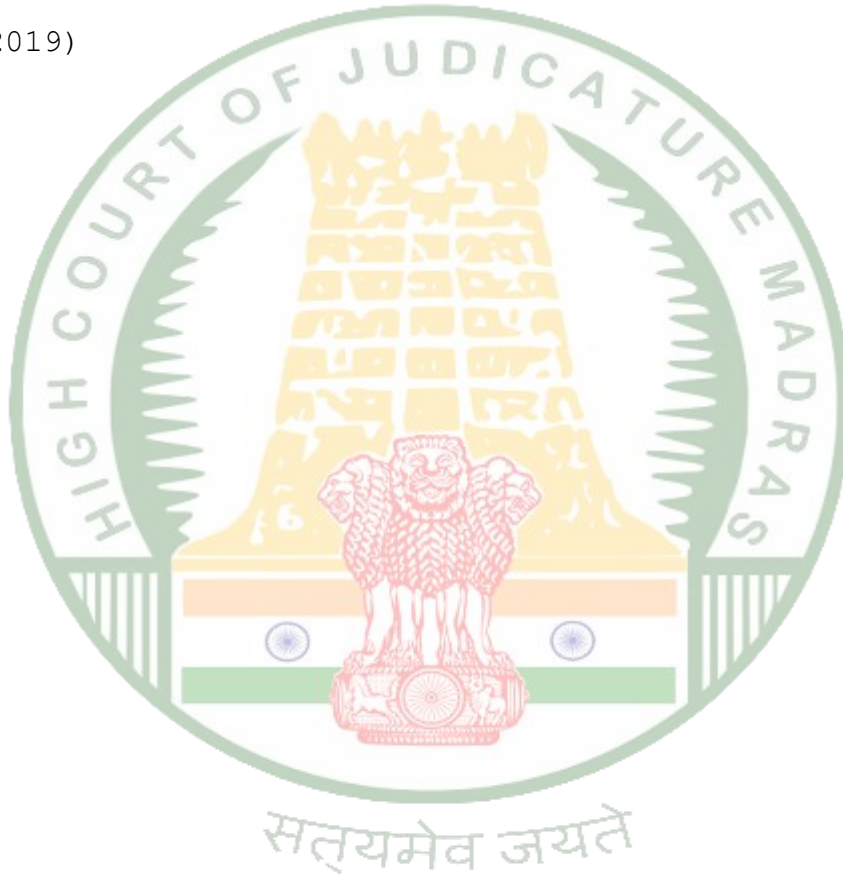
3.The Deputy Collector,
The District Backward Class and
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4.The Commissioner,
Directorate of Minorities Welfare,
Chepauk, Chennai-600 005.

+lcc to M/s.Annamma, Advocate SR.80891 dt.20/9/19
+lcc to the Government Pleader SR.81609 dt.23/9/19

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PM(CO)
CB(13/11/2019)



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