

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.11.2019

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.21633 of 2019
and W.M.P.No.20857 of 2019

A.Manickam

..Petitioner

Vs

The Principal Secretary/Transport Commissioner
Chepauk, Chennai-600005

..Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the impugned order of suspension issued by the respondent in his Proc. R.No.48005/VAI/2017 dated 05.12.2017 against the petitioner and quash the same and consequently direct the respondent to reinstate the petitioner in service.

For Petitioner : M/s A.Ganesan

For Respondents : Mr.A.N. Thambidurai, Spl.GP

O R D E R

Writ Petition is filed challenging the proceedings of the respondent in R.No.48005/VAI/2017 dated 05.12.2017 and consequently, directing the respondents to reinstate the petitioner in service.

2.Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents. By consent, the writ petition is taken up for final disposal.

3.The case of the petitioner is that the petitioner was appointed as Motor Vehilces Inspector Grade-II in Transport Deparment on 04.04.2001 and subsequently transferred to the office of Regional Transport Officer, Redhills as Motor Vehicles Inspector Grade-I. On 23.06.2017 one M.P. Murugan approached the petitioner with regard to inspection of vehicle owned by someone and approve for endorsement in the registration certificate of the vehicle for having fitted with LPG Kit in the

vehicle in the absence of valid certificate of pollution under control for the said vehicle issued by the competent authority. When the petitioner insisted for the same, the said M.P.Murugan had filed a false complaint before the Inspector, Vigilance and Anti Corruption Department alleging that the petitioner is demanding Rs.3000/- as bribe. Though the trap proceedings organised against the petitioner was failed, the petitioner was arrested and remanded to judicial custody on 01.12.2017. Consequently, the petitioner was suspended from service by the respondent by impugned proceedings. The petitioner has approached this Court and by an order dated 02.01.2018, the petitioner was released on bail. The petitioner has submitted a representation dated 19.03.2018 requesting to review and revoke his suspension and reinstatement in service, but there is no response from the respondent. Hence, the petitioner filed the present writ petition.

4. The learned counsel for the petitioner submitted that though the order of suspension has been passed on 05.12.2017, there has been no review. Hence, the prolonged suspension cannot be allowed to continue for a long time.

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 respondents 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. 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. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

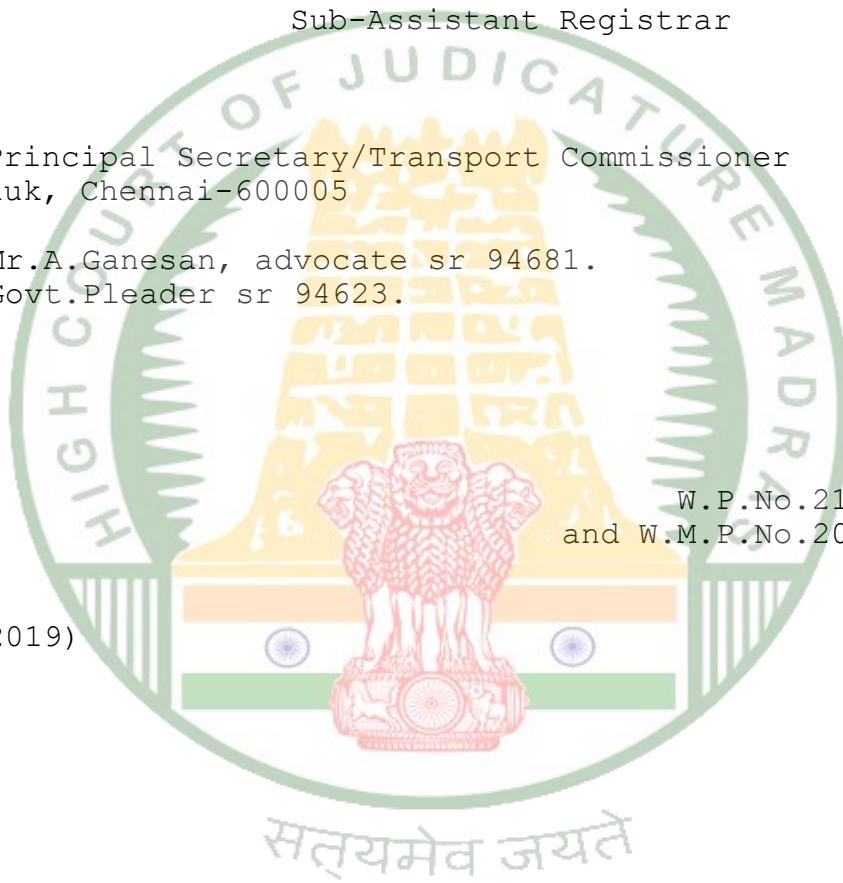
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To

The Principal Secretary/Transport Commissioner
Chepauk, Chennai-600005

+1 CC to Mr.A.Ganesan, advocate sr 94681.
+1 CC to Govt.Pleader sr 94623.

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VBA(CO)
SP(04/12/2019)



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