

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. No.20898 of 2019

D.Veeramani

... Petitioner

Versus

1.The District Collector,
Dharmapuri District,
Dharmapuri.

2.The Personal Assistant (Development),
to the District Collector,
Dharmapuri.

3.The Assistant Director of Panchayats (Audit),
Dharmapuri.

4.The Block Development Officer (Village Panchayat),
Palacode Union, Palacode,
Dharmapuri District.

... Respondents

Writ 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 second respondent relating to the order of suspension in his proceedings Pro.Na.Ka.No.2372/2017/N2, dated 16.02.2017, quash the same and issue consequential directions to the respondents to reinstate the petitioner in service with all consequential benefits.

For Petitioner : Mr.B.Thamaraiselvan

For Respondents: Mr.R.S.Selvam, (for R1 to R3)
Government Advocate.

: Mr.S.Sureshkumar (for R4)

ORDER

This Writ petition has been filed, seeking to call for the records of the second respondent relating to the order of suspension in his proceedings Pro.Na.Ka.No.2372/2017/N2, dated

16.02.2017, quash the same and issue consequential directions to the respondents to reinstate the petitioner in service with all consequential benefits.

2.It is the case of the petitioner that he was initially appointed as Panchayat Assistant in the year 1996 and while he was working as such, the second respondent suspended the petitioner vide order dated 16.02.2017, wherein, it is stated that the petitioner was said to have misappropriated a sum of Rs.27,78,680/-. Thereafter, on 09.05.2017, a charge memo was issued to the petitioner, in which, it appears that the petitioner has submitted his explanation on 05.06.2017. The main grievance of the petitioner is that despite of his explanation, the first respondent has not proceed any further. Since no inquiry has been contemplated and the petitioner has been kept under prolonged suspension. Therefore, challenging the suspension order, the petitioner has come forward with the present writ petition.

3.Heard both sides.

4.The impugned order, dated 16.12.2017 is one of suspension pending contemplation of the charges. The petitioner is working as Panchayat Secretary in Nallur Panchayat and also having additional in charge of A.Mallapuram Panchayat in the fourth respondent's Department.

5.The suspension is made under Rule 14(c) of Tamil Nadu Village Panchayat Secretaries (conditions on service) Rules, 2013. The reason found in the order is that the petitioner misappropriated the department funds of Rs.27,78,680/-

6.The grievance of the petitioner is that even though the order of suspension has been passed as early as in the year 2017, there has been no review. The order of suspension in the present case, has been passed preventing the petitioner from getting superannuated.

7.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 authorities, the Court cannot go behind the order of suspension.

8.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."

9.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...."

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, the connected miscellaneous petition is closed.

11. However, it is represented by the learned counsel for the petitioner that the petitioner has made representations dated 25.06.2018, 10.08.2017 and 10.05.2019 seeking to revoke the order of suspension and the same have been pending, without going into merits, it is incumbent upon the respondents to consider and pass appropriate orders on the same in accordance with law.

Sd/-
Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The District Collector,
Dharmapuri District,
Dharmapuri.

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to the District Collector,
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3.The Assistant Director of Panchayats (Audit),
Dharmapuri.

4.The Block Development Officer (Village Panchayat),
Palacode Union, Palacode,
Dharmapuri District.

+lcc to Mr.B.Thamaraiselvan, Advocate sr.97399
+lcc to Government Pleader SR.NO. 98069

W.P.No.20898 of 2019
and
WMP.No.20101 of 2019

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nr 08/01/2020



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