

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :16.09.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.21582 of 2019

and

WMP.No.20788 of 2019

K.A.Perumal

.. Petitioner

vs

1. The Director of Handlooms and Textiles,
Kuralagam,
Chennai - 6000108.
2. The Managing Director,
Tamilnadu Zari Limited,
Kancheepuram, Kancheepuram District.
3. The Enquiry Officer cum Assistant Director,
Kancheepuram,
Kamakshiamman Silk Handloom Weaver,
Cooperative Society, (S.H.W.C.),
Kancheepuram District.

.. Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus or any other order or direction in the nature of the writ by calling for record and quashing the impugned order of the 2nd respondent vide Estab/2019-20 dated 13.07.2019 and consequently direct the respondents 1 and 2 to reinstate the petitioner forthwith in the post of Assistant Manger in the Tamilnadu Zari Limited in Kancheepuram and pass orders.

For Petitioner : Mr.K.Ravi Anantha Padmanaban

For Respondents : Mr.L.P.Shanmugasundaram, Spl.G.P.

O R D E R

With the consent of both the parties, the Writ Petition is taken up for final disposal today at the stage of admission itself.

2. The petitioner has filed this Writ Petition calling for records of the 2nd respondent vide Estab/2019-20 dated 13.07.2019 quash the same and consequently direct the respondents 1 and 2 to reinstate the petitioner forthwith in the post of Assistant Manager in the Tamilnadu Zari Limited in Kancheepuram.

3. The learned counsel for the petitioner would submit that the petitioner was suspended from service, seven years after initiating the disciplinary proceedings and further no reasons were assigned in the impugned order and no opportunity was given to the petitioner to put forth his case on the aspect of passing the suspension order seven years after initiating the disciplinary proceedings.

4. Heard both sides.

5. The impugned order, dated 13.07.2019 is one of deemed suspension pending contemplation of the charges. The petitioner was working as Assistant Manager (Gilding) in the respondent Department.

6. The reason found in the order of suspension is that in the case filed by D.V.A.C., Kancheepuram, the accusation was that there was alleged disproportionate of assests by the petitioner than the income.

7. The grievance of the petitioner is that even though the disciplinary proceedings were initiated by issuing a charge memo on 27.11.2012, the order of suspension in the present case, has been passed after a lapse of seven years and hence the order of suspension has to be quashed and he has to be reinstated in service.

8. 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.

9. 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."

10. 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...."

11. 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.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

mrn

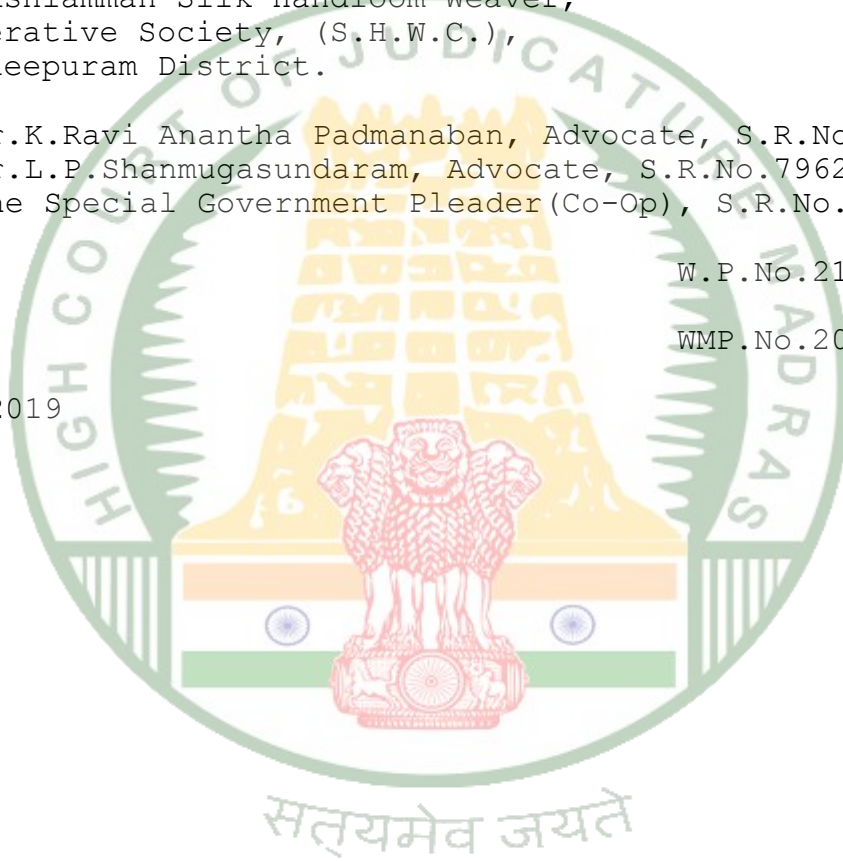
To

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Kancheepuram,
Kamakshiamman Silk Handloom Weaver,
Cooperative Society, (S.H.W.C.),
Kancheepuram District.

+1cc to Mr.K.Ravi Anantha Padmanaban, Advocate, S.R.No.80061
+1cc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No.79622
+1cc to the Special Government Pleader(Co-Op), S.R.No.79667

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MP (CO)
CS/26/12/2019



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