

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.22979 of 2019

and

W.M.P.Nos.22631 and 22632 of 2019

M.Deepanraj

... Petitioner

Vs.

1.The District Collector
Thiruvallur District.

2.The Thasildar
Gummidipoondi
Thiruvallur District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 1st respondent vide his office proceedings Rc.No.13379/2016/A3, dated 23.06.2016 and quash the same and consequently direct the 1st respondent to forthwith reinstate the petitioner with all back wages, increments and promotion and attendant benefits by considering representation dated 10.04.2019 within the time fixed by this Court.

For Petitioner : Mr.I.C.Vasudevan

For Respondents : Mr.A.N.Thambidurai
Special Government Pleader

O R D E R

Writ Petition is filed for issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 1st respondent vide his office proceedings Rc.No.13379/2016/A3, dated 23.06.2016 and quash the same and consequently direct the 1st respondent to forthwith reinstate the petitioner with all back wages, increments and promotion and attendant benefits by considering representation dated 10.04.2019 within the time fixed by this Court.

2. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents.

3. The case of the petitioner is that while he was working as Office Assistant under the 1st respondent on 22.06.2016, a trap was conducted by the Vigilance and Anti-Corruption Department, petitioner was arrested and a case in Crime No.1/AC/2016/CC-II under Section 7, 12, 13(2) read with 13(1)(d) of Prevention of Corruption Act was registered. The petitioner was remanded to judicial custody on 23.06.2016 and on the same day, he was placed under suspension vide impugned order of the 1st respondent. Thereafter, the 1st respondent has issued a charge memo on 07.08.2018. The petitioner has made a representation dated 10.04.2019 to the 1st respondent to revoke the order of suspension and reinstate him in service. However, the petitioner's representation was not considered by the 1st respondent even after a lapse of three years. Challenging the impugned order dated 23.06.2016, the present writ petition is filed by the petitioner.

4. The learned counsel for the petitioner submitted that though the order of suspension has been passed on 23.06.2016, there has been no review. The prolonged suspension cannot be allowed to continue for a long time. He has drawn attention of this Court to the judgment of the Hon'ble Apex Court reported in (2015) 7 SCC 291 (Ajay Kumar Choudhary v. Union of India), in which, it is held that suspension must necessarily be for a short duration. The above said judgment was followed by this Court in the case of State of Tamil Nadu vs. Promod Kumar IPS. Therefore, he prays for allowing this writ petition.

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 deserves to be dismissed and accordingly, the writ petition stands dismissed. However, this Court hereby directs the respondents to consider the representation of the petitioner dated 10.04.2019 and pass appropriate orders on the same in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The District Collector
Thiruvallur District.

2.The Thasildar
Gummidipoondi
Thiruvallur District.

+1cc to Mr.I.C.Vasudevan, Advocate SR.91169
+1cc to the Government Pleader SR.91785

W.P.No.22979 of 2019
and
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JP(CO)
CB(09/12/2019)