

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 09.09.2019
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.25374 of 2019
and
W.M.P.Nos.24918 and 24920 of 2019

A.ManuneethiChozhan

... Petitioner

Vs.

1. The Director,
Office of the Director of Fisheries,
Department of Fisheries,
Chennai-35.
 - 2.The Assistant Director,
Office of the Assistant Director of Fisheries,
Cuddalore.
- ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the Respondents by calling for the records pertaining to the impugned order passed by the 1st Respondent in his proceedings in RC.No.29550/L3/2018 by his Order dated 10.11.2018 and quash the same.

For Petitioner : Mr.D.Ravichander

For Respondents: Mr. R.S.Selvam, Government Advocate

O R D E R

Heard both sides.

2. The impugned order, dated 10.11.2018 is one of suspension pending contemplation of the charges. The petitioner is working as Inspector of Fisheries in the respondent Department.

3. The suspension is made under sub-Rule(e) of Rule 17 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The reason found in the order is the petitioner was detained in custody on 09.11.2018 and remanded for 15 days under judicial custody.

4. The grievance of the petitioner is that even though the order of suspension has been passed as early as in the year 2018, there has been no review. The order of suspension in the present case, has been passed preventing the petitioner from getting superannuated.

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. Consequently, connected miscellaneous petitions are closed.

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.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

ssn

To

1. The Director,
Office of the Director of Fisheries,
Department of Fisheries, Chennai-35.

2. The Assistant Director,
Office of the Assistant Director of Fisheries,
Cuddalore.

+1cc to Mr.D.Ravichander, Advocate, S.R.No. 77942

+1cc to the Government Pleader, S.R.No. 78486

W.P.No.25374 of 2019
and

W.M.P.Nos.24918 and 24920 of 2019

SS(CO)

GN(06/11/2019)