

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.09.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.25188 of 2019

and

WMP.No.24761 of 2019

N. Saravanakumar

..Petitioner

vs.

1. The Principal Secretary to the Government,
Home Department, Secretariat,
Fort St, George,
Chennai.

2. The Director General of Police,
No.1, Dr. Radhakrishnan Salai,
Mylapore, Chennai- 4.

3. The Superintendent of Police,
Madurai District,
Madurai.

4. The Deputy Commissioner of Police,
Head Quarters,
Tiruppur City,
Tiruppur.

.. Respondents

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records pertaining to the impugned order in Rc.No.F1/26746/2018, CPO No.665/2018 passed by the 4th respondent dated 27.12.2018 and quash the same as illegal and pass orders.

For Petitioner : Mr.A.Rajaram

For Respondents : Mr.R.S.Selvam,

Government Advocate

ORDER

The case of the petitioner is that the petitioner was appointed as Grade II Police Constable on 01.02.2011 and was posted as Grade II Police Constable in Armed Reserve, Tiruppur City, Tiruppur and lastly he discharged his duty as Driver in Armed Reserve Force Transportation department in Tiruppur. During the petitioner's entire course of service, one Mr.

Senthil was appointed as an alternate driver. At that time, the petitioner's wife conceived and she was admitted to Government hospital, Tiruppur and she gave birth to a male child on 03.12.2018. While the petitioner's wife was in hospital, the petitioner used to get permission from his higher authorities to take care of his wife. On 05.12.2018, the said Mr.Senthil discharged his duty as driver from 8 A.M to 6 A.M. On 06.12.2018. Thereafter the petitioner continued the duty on 06.12.2018 from 6 A.M to 8 P.M. at Tiruppur Kumaran Road near Tiruppur Railway Station and thereafter he was replaced by the said Mr.Senthil. While being so, the Sub Inspector of Police, Melur Police Station, Madurai called the petitioner to appear for enquiry before him with regard to Crime No. 782 of 2018. The petitioner obtained leave from the higher authorities on 16.12.2018 and 17.12.2018 and appeared before him.

2. The learned counsel for the petitioner would submit that the petitioner was falsely implicated in the criminal case registered as crime No.782 of 2018 under section 395, 397 IPC read with 25(1)(b) of Indian Arms Act. He was placed under suspension with effect from 20.12.2018 by the 4th respondent by order in RC.No.F1/26746/2018, dated 27.12.2018. He was not provided with any subsistence allowance. He surrendered before the Additional Sessions Court No.IV, Madurai on 20.12.2018. As the charge-sheet was not filed even after three months, he was granted bail on 6.2.2019. The petitioner submitted a representation dated 7.5.2019 to revoke the suspension, but so far the said representation is not considered. Hence, the petitioner was constrained to file the present Writ Petition.

3. Heard both sides.

4. The impugned order, dated 27.12.2018 is one of suspension pending contemplation of the charges. The petitioner was working as Grade II Police-constable in Armed Reserve, Tiruppur.

5. The suspension is made under Rule 3(e)(i)&(ii) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules 1955. The reason found in the order is that the petitioner was allegedly involving in dacoity case in Melur, Madurai District in Crime No.782 of 2018 under section 395, 397 IPC read with 25(1) (b) of Indian Arms Act.

6. The grievance of the petitioner is that even though the order of suspension has been passed as early as on 27.12.2018, no charge-sheet has been filed so far. The order of suspension in the present case, has been passed without verification of the facts appropriately.

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 respondent and it has been exercised by the competent authority, 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...."

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, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary to the Government,
Home Department,
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Chennai.

2. The Director General of Police,
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Madurai.

4. The Deputy Commissioner of Police,
Head Quarters,
Tiruppur City,
Tiruppur.

+1 cc to M/s.A.Rajaram, Advocate Sr.No. 76713

+1 cc to The Government Pleader Sr.No. 77371

AKM/20.12.19/4P-7C /

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