

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.25184 of 2019
and
W.M.P.No.24757 of 2019

M.Prakash

... Petitioner

Vs.

1. The District Collector,
Coimbatore District,
Coimbatore.

2. The Special Officer /
Block Development Officer,
Kurudampalayam Village Panchayat,
Periyanaickenpalayam Block,
Coimbatore District.

... Respondents

Prayer:Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relates to the impugned suspension order of the 2nd respondent vide proceedings in ROC.No.316/2019/B1 dated 08.03.2019 and quash the same as illegal and unconstitutional and consequently direct the respondent to reinstate the petitioner in service.

For Petitioners: Mr.A.V.Raja

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

O R D E R

This writ petition is filed seeking to issue a Writ of Certiorarified Mandamus, calling for the records relates to the impugned suspension order of the 2nd respondent vide proceedings in ROC.No.316/2019/B1 dated 08.03.2019 and quash the same as illegal and unconstitutional and consequently direct the respondent to reinstate the petitioner in service.

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

3. The impugned order, dated 08.03.2019 is one of suspension pending contemplation of the charges. The petitioner was appointed as Panchayat Assistant in the Office of the respondents in the year 2008 and thereafter he was transferred to the Office of the 2nd respondent on as Village Secretary and working utmost satisfaction of the superior without any blemish.

4. The suspension is made under Rule 17(1)(I) of the Tamil Nadu Village Panchayat Secretary, (Conditions of Service) Rules, 2013 from 08.03.2019 F.N. The reason found in the order is the petitioner has undergone imprisonment for a period exceeding forty eight hours.

5. The grievance of the petitioner is that even though the order of suspension has been passed as early as in March 2019, there has been no review. The order of suspension in the present case, has been passed preventing the petitioner from getting superannuated. The petitioner made a representation dated 03.07.2019 to the respondents seeking to review the order of the suspension and requested to modify the order of the suspension and to allot any other suitable post, however, till date, his representation was not considered.

6. 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.

7. 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 petition is 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 of the petitioner and pass orders on the same in accordance with law, as expeditiously as possible.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

ssn

To

1. The District Collector,
Coimbatore District,
Coimbatore.
2. The Special Officer /
Block Development Officer,
Kurudampalayam Village Panchayat,
Periyanaickenpalayam Block,
Coimbatore District.

+1 CC to Govt. Pleader sr 78489.

W.P.No.25184 of 2019
and
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SVI (CO)
SP(07/11/2019)

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