IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.11.2019
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.24802 of 2019
and
W.M.P.Nos.24433 and 24434 of 2019

T.Gajendran ... Petitioner

Vs.

1.The Secretary
Tourism, Culture and Religious Endowment Department
Secretariat, Fort. St. George
Chennai-600 009.

2.The Commissioner
Hindu Religious and Charitable Endowment Department
Nungambakkam High road
Chennai-600 034. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the file of the 1st respondent in G.O.(2D)No.11, dated 07.12.2017 and quash the same as illegal, incompetent and unconstitutional.

For Petitioner : Mrs.Srimathi V.
For Respondents : Mr.M.Maharajan
Special Government Pleader (HR&CE)

O R D E R

Writ Petition is filed for issuance of Writ of Certiorari calling for the records on the file of the 1st respondent in G.O.(2D)No.11, dated 07.12.2017 and quash the same as illegal, incompetent and unconstitutional.

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 the petitioner was appointed as a Joint Commissioner in HR and CE Department on 10.08.2015 at Mayiladuthurai. Subsequently, antic idols of Arulmigu Pasupatheeswaran Temple at Thanjavur District were missing, for which, the petitioner was placed under suspension on 07.12.2017. Challenging the said suspension order, the present writ petition is filed.

4.The learned counsel for the petitioner submitted that though the order of suspension has been passed on 07.12.2017, there has been no review. The prolonged suspension cannot be allowed to continue for a long time. She 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, she 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, 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. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

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Tourism, Culture and Religious Endowment Department
Secretariat, Fort. St. George
Chennai-600 009.

2.The Commissioner
Hindu Religious and Charitable Endowment Department
Nungambakkam High road
Chennai-600 034.

+1 cc to Mrs.V.Srimathi Advocate sr91057
+1 cc to Special Government pleader (HR & CE) sr92156

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