

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2019

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.25643 of 2019
and W.M.P.No.25142 of 2019

P.Kalaivani

...Petitioner

vs.

- 1.The State of Tamil Nadu,
Rep. by the Principal Secretary to Government,
Department of Municipal Administration and Water Supply,
Fort. St. George,
Chennai - 600 009.
 - 2.The Commissioner of Municipal Administration,
Chepauk,
Chennai - 600 005.
 - 3.The Commissioner,
Salem City Municipal Corporation,
Salem.
- ...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, seeking for the issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the first respondent relating to the impugned order dated 30.11.2018 bearing Ref.G.O.(2D) No.95 and quash the same and consequently direct the respondents to reinstate the petitioner into service.

For Petitioner : Mr.T.Saikrishnan

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

ORDER

The Writ Petition has been filed by the petitioner to quash the impugned order dated 30.11.2018 bearing Ref.G.O.(2D) No.95, on the file of the first respondent.

2.The case of the petitioner is that the petitioner was working as Executive Engineer (Planning) in the Salem City Municipal Corporation and subsequently posted to the second respondent Corporation. While being so, on 26.11.2018 one

Mohammed Usman working as a Clerk in the same department was just trapped for accepting a sum of Rs.5,000/- as bribe by way of trap proceedings from one M.Arasu and based on his statement, the petitioner has also implicated as A2 immediately thereafter the petitioner was remanded to custody on 26.11.2018 and thereafter, was released on bail only on 13.12.2018 in CrI.M.P.No.725 of 2018, for which the first respondent has placed the petitioner under suspension by invoking power under Rule 17(e)(2) Tamil Nadu Civil Service (Discipline and Appeal) Rules, against which, the Writ Petition has been filed before this Court.

3.The learned counsel appearing for the petitioner would submit that though the petitioner was suspended on 30.11.2018 even thereafter, in respect of criminal case no charge sheet has been filed and disciplinary proceedings are not initiated. Prolonged suspension is not permissible as per the judgment of Ajay Kumar Choudhary's case.

4.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.

5.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."

6.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...."

7.Considering the facts and circumstances, I am not inclined to interfere with the impugned order passed by the first respondent.

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 and pass orders on the same in accordance with law.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

pam

To

- 1.The Principal Secretary to Government,
Department of Municipal Administration and Water Supply,
Government of Tamil Nadu,
Fort. St. George,
Chennai - 600 009.
- 2.The Commissioner of Municipal Administration,
Chepauk,
Chennai - 600 005.
- 3.The Commissioner,
Salem City Municipal Corporation,
Salem.

+1cc to M/s.T.SaiKrishnan, Advocate SR.85248
+1cc to the Government Pleader SR.85116

W.P.No.25643 of 2019
and W.M.P.No.25142 of 2019

GP(CO)
CB(29/11/2019)

सत्यमेव जयते
WEB COPY