

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17.09.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.NO.27443 OF 2019
AND W.M.P.NO.26910 OF 2019

G.Karthik

..Petitioner

vs

1. The District Collector
Tiruvarur District
Tiruvarur.

2. The Revenue Divisional Officer
Mannargudi, Tiruvarur District.

3. The Tahsildar
Thiruthuraipoondi Taluk
Tiruvarur District.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the proceedings of the 2nd respondent in R.C.No.3745/2016/A1, dated 03.01.2017, quash the same as illegal, incompetent and ultravires and consequently, direct the respondents to reinstate the petitioner to the post of Village Administrative Officer in view of the representation dated 15.06.2019.

For Petitioner : Mr.Swamisubramanian

For Respondents : Ms.M.Lalitha
Government Advocate

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O R D E R

Writ Petition is filed challenging the proceedings of the 2nd respondent in R.C.No.3745/2016/A1, dated 03.01.2017 and consequently, directing the respondents to reinstate the petitioner to the post of Village Administrative Officer in view of the representation dated 15.06.2019.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents. By consent, the writ petition is taken up for final disposal.

3. The case of the petitioner is that the petitioner was appointed as a Village Administrative Officer in Pannaiyur Village, Thiruthuraipoondi Taluk, Tiruvarur District. The 3rd respondent lodged a false complaint against the petitioner in R.C.No.2485/2016/A5, dated 16.12.2016 before the Inspector of Police, Thiruthuraipoondi, for forging the Tahsildar's signature and preparation of false pay certificate to Panaiyur Village Assistant one Shanmugam and Rayanallur Village Assistant one Tamilarasan. On the basis of the same, Thiruthuraipoondi Police registered the case on 30.12.2006 in Crime No.637 of 2016 for the alleged offences under Sections 465, 468 and 471 IPC and the petitioner was arrested and remanded to judicial custody on 30.12.2016. The petitioner was continued to be under custody for a period of 48:00 Hours. The 2nd respondent initiated the proceedings and passed order on 03.01.2017. The petitioner has been placed under deemed suspension from service as per Rule 17e of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and the petitioner has been suspended from Village Administrative Officer with effect from the date of his detention i.e., after noon of 30.12.2016. Against which, the petitioner filed the present writ petition.

4. The learned counsel for the petitioner submitted that though the order of suspension has been passed as early as in the year 2016, there has been no review. Hence, the prolonged suspension cannot be allowed to continue for a long time.

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 is misconceived and deserves to be dismissed. Accordingly, the writ petition shall stand 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 Petition is closed.

Sd/-
Assistant Registrar (CJ Conf.)

//True Copy//

Sub Assistant Registrar

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To

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Tiruvavur District
Tiruvavur.
2. The Revenue Divisional Officer
Mannargudi, Tiruvavur District.
3. The Tahsildar
Thiruthuraipoondi Taluk
Tiruvavur District.

+1cc to Mr.Swamisubramanian, Advocate, S.R.No.80539
+1cc to the Government Pleader, S.R.No.80217

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SSD(CO)
CS/31/10/2019

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