

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.27845 of 2019

R.Anvardeen

... Petitioner

Vs.

1.The Tamil Nadu Wakf Board
Rep. by
The Chairman
No.1, Jaffer Syrang Street
Vallal Seethakadi Nagar
Chennai 600 001.

2.The Chief Executive Officer
Tamil Nadu Wakf Board
No.1, Jaffer Syrang Street
Vallal Seethakadi Nagar
Chennai 600 001.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the 2nd respondent to consider the representation of the petitioner dated 23.08.2019 within a stipulated period of time.

For Petitioner : Mr.G.Pugazhenthir

For Respondents : Mr.Mohammed Areef for R2

सत्यमेव जयते
O R D E R

Heard both sides.

2.The impugned order, dated 20.02.2019 is one of suspension pending contemplation of the charges. The petitioner is working as Inspector of Waqf, Villupuram in the respondent Department.

3.The suspension is made under Rule 17(e) of Tamil Nadu Civil Service (Classification, Control & Appeal) Rules and under Sub-Rule (a) of Regulation 16 of the Tamil Nadu Waqf Board Service Regulation 1971. The reason found in the order is that the petitioner, Waqf Inspector / Cuddalore who was also holding additional charge of Waqf Inspector/ Villupuram has given letter

dated 12.05.2018 to effect that the property belonging to Aabesha Thaikka Waqf, Villupuram is not a Waqf property thereby paved for illegal sale of Waqf property and further there are various allegations leveled against him which requires serious detailed inquiry. Preliminary enquiry also revealed sufficient evidence to believe that the petitioner has involved in many illegal acts which amounts to gross dereliction of duty and breach of trust.

4. The grievance of the petitioner is that even though the order of suspension has been passed as early as 20.02.2019 there has been no review. The order of suspension in the present case, has been passed preventing the petitioner from getting superannuated.

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 respondent 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. 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

//True Copy//

Sub Assistant Registrar

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To

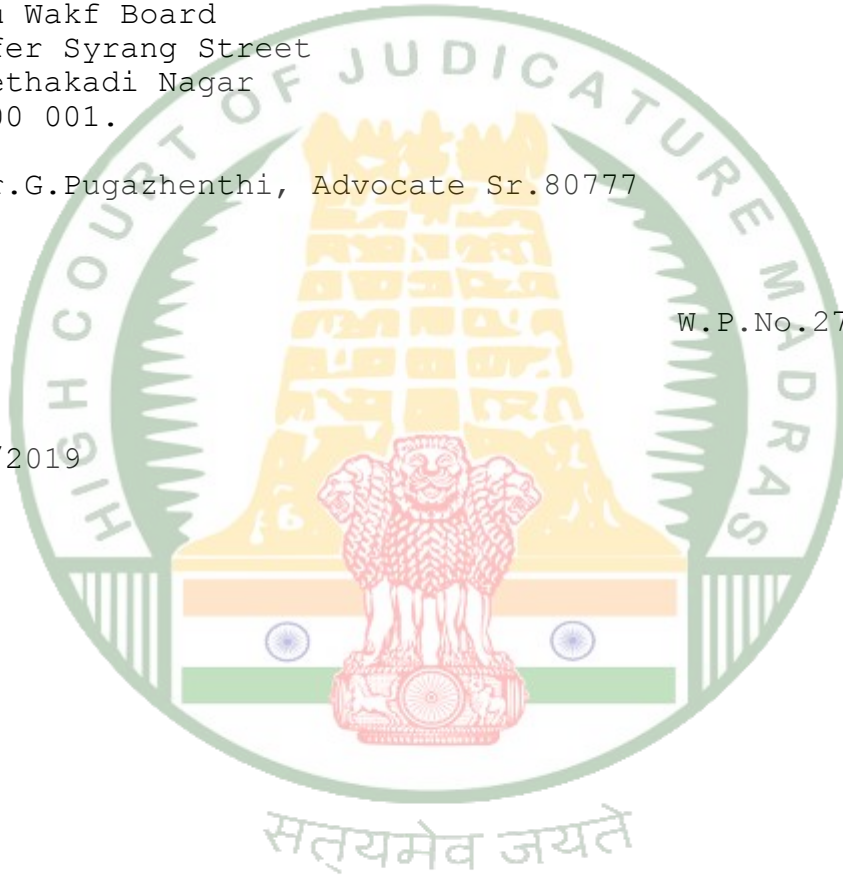
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+lcc to Mr.G.Pugazhenth, Advocate Sr.80777

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