

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.11.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.31336 of 2019

L.Mary Sagayarani

... Petitioner

Vs.

1.The Director of School Education,
School Educational Department,
DPI Campus, Chennai 6

2.The Chief Educational Officer,
Education Department,
Virupakrishipuram,
Dharmapuri 636 701

3.The Deputy Superintendent of Police
Vigilance and Anti Corruption,
Dharmapuri,
Dharmapuri District.
(Crime No.4/AC/2019)

.... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India to issue an order, direction, writ more particularly a Writ in the nature of Writ of Mandamus directing the 2nd respondent to revoke the order of suspension of the petitioner dated 16.07.2019 made in R.C.No.4478/B1/2019 dated 16.07.2019 as per the direction issued by the Principal Secretary to Government, Personnel and Administrative Reforms (N) Department dated 23.07.2015 in pursuant to the judgment of the Hon'ble Supreme court of India made in 2015 (7) SCC 291 (in the case of Ajaykumar Choudhary Vs. Union of India and another) within stipulated time.

For Petitioner : Mr.K.Balu

For Respondents : Mr.C.Munusamy, Spl.G.P. [Edn.]
for R1 and R2
: Mr.R.S.Selvam, GA for R3.

O R D E R

1. The petitioner has filed this writ petition seeking issuance of a Writ of Mandamus to direct the respondents the 2nd respondent to revoke the order of suspension of the petitioner dated 16.07.2019 made in R.C.No.4478/B1/2019 dated 16.07.2019 as per the direction issued by the Principal Secretary to Government, Personnel and Administrative Reforms (N) Department dated 23.07.2015 in pursuant to the judgment of the Hon'ble Supreme court of India made in 2015 (7) SCC 291 (in the case of Ajaykumar Choudhary Vs. Union of India and another) within stipulated time.
2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents.
3. The case of the petitioner is that the petitioner was appointed as Secondary Grade Teacher on 26.02.1986 and thereafter she was promoted as Block Educational Officer at Dharmapuri. While she was working as such, she was implicated in a criminal case in Cr.No.4/AC/2019 dated 13.07.2019 which was registered against her by the Deputy Superintendent of Police in Vigilance and Anti Corruption Dharmapuri/3rd respondent herein, based upon a complaint lodged by one Meena, who is a Teacher of Singampatty Panchayat Union Middle School. Pursuant to the involvement of the petitioner in the criminal case, the Chief Educational Officer (Dharmapuri) issued a suspension order vide proceedings dated 16.07.2019. Aggrieved by the same the petitioner has come forward with the present Writ Petition, seeking a direction to the second respondent to revoke her suspension by considering her representation made on 18.10.2019 to the respondents, however, till date the same has not been considered. Hence, this writ petition.
4. The learned counsel appearing for the petitioner would submit that the petitioner has rendered nearly 32 years unblemished service and she has been falsely implicated in the criminal case and she is innocent and not committed any offence and without giving any opportunity to the petitioner, 2nd respondent issued suspension order against the petitioner and also prolonging the same till date. Therefore, the learned counsel seeks direction to the second respondent to revoke the order of suspension issued against the petitioner.
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."

7.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."

8.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...."

9.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...."

10. 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.

11. However, it is open to the petitioner to seek a review of the order of suspension by making a fresh representation before the competent authorities and if any such 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

jrs

To

1. The Director of School Educational,
School Educational Department,
DPI Campus, Chennai 6

2. The Chief Educational Officer,
Education Department,
Virupakrishipuram,
Dharmapuri 636 701

3. The Deputy Superintendent of Police
Vigilance and Anti Corruption,
Dharmapuri, Dharmapuri District.

+1cc to Government Pleader, SR.No.94589.

W.P.No.31336 of 2019

MR (CO)
CSR(20/12/2019)