

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on 05.09.2019	Orders Pronounced on 09.09.2019
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CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.32131 of 2018
and
W.M.P.No.37390 of 2018

G.Ashok kumar ... Petitioner
...vs...

1. The District Adi Dravidar and Tribal Welfare Officer
Erode District, Erode.
2. The Special Tahsildar
Adi Dravidar Welfare
Erode. ... Respondents

Writ Petition has been filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the first respondent dated 05.01.2018 vide proceedings ROC.No.344/2018/T1 and to quash the same and consequently, direct the respondent to reinstate the petitioner in service.

For Petitioner : Mr.S.Vijayakumar

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

ORDER

Writ Petition is filed challenging the suspension order passed by the first respondent dated 05.01.2018 vide proceedings ROC.No.344/2018/T1 and praying to quash the same and consequently, directing the respondent to reinstate the petitioner in service.

2. The case of the petitioner is that he joined as Cook in Government Adi Dravidar Welfare Students Hostel, Koundapadi, through employment exchange in the year 2014 and his services

were regularized and probation was declared by the first respondent and the petitioner was subjected to transfer frequently from time to time, not due to administrative reasons, but for extraneous consideration. Vide proceedings dated 23.10.2017, the petitioner was posted in the office of the first respondent and was asked to work till 11.12.2017. The first respondent, vide his order dated 05.01.2018, suspended the petitioner from service under Rule 17(e) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, alleging that certain alleged irregularities were found during the surprise inspection held on 05.12.2017 at Government Adi Dravidar Welfare Students Hostel, Erode, by the first respondent. Against which, the petitioner has filed this Writ Petition.

3. Mr.S.Vijayakumar, learned counsel appearing for the petitioner would submit that the petitioner is very sincere in his duty and he was frequently transferred. He would further submit that the impugned order of suspension is arbitrary and without any substance. When the petitioner was relieved from the Government Adi Dravidar Welfare Students Hostel, Modakurichi and deputed to the office of the first respondent vide order dated 23.10.2017, there was no occasion for him to be present in the Government Adi Dravidar Welfare Students Hostel, on 05.12.2017 as seen from the allegations made in the impugned order of suspension. Apart from that, the first respondent has not even issued a memo/show cause notice seeking petitioner's explanation for the alleged irregularities. In fact, the petitioner was very much working in the office of the Special Tahsildar, Adi Dravidar Welfare, Erode on 05.12.2017 and that he has also signed the attendance register, and he was relieved from the said office only after the order of transfer was issued by the second respondent on 11.12.2017 and in the said order he was once again asked to join as cook at Government Adi Dravidar Welfare Students Hostel, Modakurichi. The impugned order of suspension is bad in law and it does not contain valid reasons as contemplated under the provisions of Tamil Nadu Government Servants Conduct Rules, 1973. Hence, it is necessary to interfere with the order of suspension.

4. In support of his contention, the learned counsel appearing for the petitioner relied upon the decision of this Court made in the case of The State of Tamil Nadu Rep. by Secretary to Government (Home) Vs. Promod Kumar IPS & ANR. in Civil Appeal No. 8427 & 8428 of 2018, and the relevant paragraph is extracted hereunder:

" This Court in Ajay Kumar Choudhary Vs. Union of India, (2015) 7 SCC 291 has frowned upon the practice of protracted suspension and held that suspension must necessarily be for a short duration. On the basis of the material on

record, we are convinced that no useful purpose would be served by continuing the first Respondent under suspension any longer and that his reinstatement would not be a threat to a fair trial. We reiterate the observation of the High Court that the Appellate State has the liberty to appoint the first Respondent in a non sensitive post."

Accordingly, he prays for allowing the Writ Petition.

5. The respondents have not filed any counter.

6. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents and perused the materials available on record.

7. Rule 17(e)(1)(i) & (ii) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules reads as follows:-

"17 (e) (1) A member of a service may be placed under suspension from service, where-

- (i) an enquiry into grave charges against him is contemplated, or is pending; or
- (ii) a complaint against him of any criminal offence is under investigation or trial and if such suspension is necessary in the public interest."

8. Considering the facts and circumstances of the case and on perusal of the records, though all the irregularities have to be considered by the competent authorities while conducting enquiry, by issuing charge memo before conducting enquiry, in order to facilitate the enquiry, it is necessary to place the petitioner under suspension for public interest. However, rendering any opinion in respect of the petitioner, it may be influence of the competent authority. Hence, this Court refrain itself from passing any order in the alleged irregularities committed by the petitioner. As the petitioner allegedly involved in some irregularities and the investigation is pending, the respondents thought it fit to suspend the petitioner on public interest. To place the person under suspension or not in a given case pending investigation has to be decided by the competent authority in public interest. Whereas the discretion given to the competent authority as contained in Rule 17(e)(1)(i) of Tamil Nadu Civil Services (Discipline and Appeal) Rules and or otherwise to place the person under suspension cannot gone into in the writ proceedings.

9. The present case is based on the surprise inspection by the first respondent on 05.12.2017. In such circumstances, I

do not find any arbitrariness in the present case and therefore, the petitioner's contention that the impugned order of suspension is without any basis. Hence, I am not inclined to interfere with the order of suspension.

10. Similar type of issue came up before this Court and this Court held as follows:-

10. In the second writ petition, a vacate stay application was also filed with supporting counter affidavit, dated 25.01.2010 justifying the order of suspension and stating that the petitioner could not be reinstated.

11. 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."

12. 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...."

13. Further, this court had gone extensively into the scope of judicial review over such suspension orders in R.Ravichandran Vs. The Additional Commissioner of Police, Traffic, Chennai and another in W.P.No.12590 of 2009, dated 05.10.2010. That case also related to suspension on similar allegations. Hence it is useful to reproduce the following passages found in paragraphs 80 to 83 which are as follows:

"80.No Government servant, particularly a person charged with a misconduct of corruption, has right to insist that he should be retained in service and allowed to discharge his duties and enjoy the privileges of the post held by him, during the pendency of the enquiry into grave charges or trial, involving moral turpitude and it is the absolute discretion of the appointing/disciplinary authority or the Government to suspend such government servant from discharging the duties attached to the post and to forbid him from exercising the

privileges, except to the extent of payment of salary, regulated in the Statute or rules, applicable to the case of such Government servant.

81. For the purpose of suspension, it is sufficient that the competent authority has arrived at a prima facie conclusion that the Government servant has committed a serious misconduct, which entails major penalties, like dismissal, removal or compulsory retirement, etc., from service. Illustrative cases, where action has to be taken immediately, are persons, involving in serious acts of misdemeanor, such as, (a) offence or conduct involving moral turpitude, (b) corruption, embezzlement or misappropriation of Government money, (c) possession of disproportionate assets, (d) misuse of official powers for personal gain, (e) serious negligence or dereliction of duty, (f) desertion of duty and (g) refusal or deliberate failure to carry out written orders of superior officers; (h) apprehension of tampering with witnesses or documents or likelihood of causing prejudice to an inquiry, investigation or trial; (j) likelihood of subversion of discipline in office; (k) involvement of scandals, and (l) likelihood of ultimate conviction out of departmental proceedings, and in all these illustrative cases, it is the matter of necessity and public interest, involved and therefore, it which must be left to the absolute discretion of the competent authority, with whom, the power is vested to suspend and that such discretion exercised in public interest should not be interfered with lightly.

82. When the criminality of the government servant is adjudicated before the Court of competent jurisdiction and when the Police, Vigilance and Anti- Corruption Department has launched prosecution or proposed to launch for imposing appropriate punishment under the penal laws, the appointing/disciplinary authority/ government, should be allowed to exercise their discretion to place the government servant under suspension, which is a step in aid, to complete the investigation/trial. Courts have

consistently held that even if the materials are not adequate for prosecution or even after acquittal, when the appointing/disciplinary authority/government is empowered to place the government servant under suspension, the power can be exercised on proper consideration of relevant materials, in public interest.

83. Once the objective consideration of the allegations, the material on record, warrants suspension, till the completion of enquiry or trial, in public interest, it is not for this Court to examine the nature of the allegations, the evidence and to record any finding thereon, which would hamper the progress of the departmental enquiry or investigation or trial against the government servant."

11. In view of the settled position, I am not inclined to allow this Writ Petition. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

Mra/kmm
To

1. The District Adi Dravidar and Tribal Welfare Officer
Erode District, Erode.
2. The Special Tahsildar
Adi Dravidar Welfare
Erode.

+1cc to Mr.S.Vijayakumar, Advocate, S.R.No. 77908
+1cc to the Government Pleader, S.R.No. 78481

W.P.No.32131 of 2018
and

W.M.P.No.37390 of 2018

RSI (CO)
GN(18/10/2019)