



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 25.11.2019**

**CORAM:**

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

**W.P. (MD) No.20947 of 2019**

**and**

**W.M.P. (MD) Nos.17520 and 17521 of 2019**

WEB COPY

A.Xavier Joseph

... Petitioner

-Vs-

The Commissioner,  
Sivagangai Municipality,  
Sivagangai District.

... Respondent

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order issued by the respondent in his proceedings in Na.Ka.No.1071/2019/C1, dated 18.07.2019, quash the same as illegal and consequently, directing the respondent to reinstate the petitioner in service with all attendant and monetary benefits.

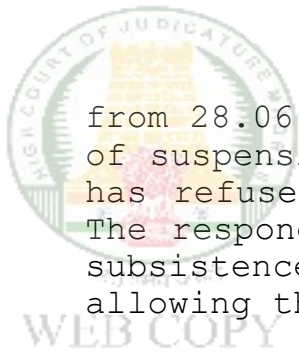
For Petitioner : Mr.D.Anbarasu  
For Respondent : Mr.J.Lawrance

**ORDER**

The order of suspension dated 18.07.2019 passed by the respondent, is sought to be quashed in the present Writ Petition and further direction is sought for to direct the respondent to reinstate the petitioner in service with all attendant and monetary benefits.

2.According to the petitioner, he was working as Driver in the respondent Municipality. While so, the petitioner was suspended from service on 12.09.2018 on the ground that he has absented from service without any intimation or permission. The petitioner has filed W.P.(MD)No.22186 of 2018, challenging the said order of suspension. This Court, by the order dated 01.11.2018, has stayed the order of suspension. Therefore, the petitioner was reinstated into service on 28.02.2019. Again, the petitioner was suspended from service, by the impugned order dated 18.07.2019. Challenging the order of suspension, the petitioner has come out with the present Writ Petition.

3.The learned counsel appearing for the petitioner contended that the petitioner was allotted other duties for getting fitness certificate for the vehicles entrusted and for getting other certificates in respect of the vehicles. Hence, the impugned order of suspension, only on the ground that he did not report for duty



from 28.06.2019 to 09.07.2019 is not acceptable. The impugned order of suspension is *mala fide*, in view of the fact that the petitioner has refused to take the vehicle, which had no fitness certificate. The respondent did not pay subsistence allowance and non-payment of subsistence allowance vitiates the entire proceedings and prayed for allowing the Writ Petition.

4.The respondent has filed counter affidavit. The respondent referred to various averments in the counter affidavit and the order of the Tamil Nadu Local Bodies Ombudsman at Chennai, vide Application No.162/N/17 and contended that for various misconduct, the petitioner has suspended from service and the order of suspension is valid and legal. The petitioner is entitled to get subsistence allowance under FR 53. If the petitioner makes an application for payment of subsistence allowance by furnishing fitness certificate as per FR 53(2), the claim of the petitioner will be considered and prayed for dismissal of the Writ Petition.

5.Heard the learned counsel appearing for the petitioner, the learned counsel appearing for the respondent and perused the materials available on record carefully.

6.The petitioner is challenging the order of suspension. From the impugned order of the suspension, it is seen that the petitioner was suspended for not reporting duty from 28.06.2019 to 09.07.2019 and also in view of misappropriation of funds. It is seen from the impugned order that serious allegations are levelled against the petitioner. In the Writ Petition, the petitioner has made various allegations against the respondent and the respondent has filed counter affidavit, alleging various misconduct against the petitioner. The petitioner is suspended from service for the alleged serious misconduct. This Court, at this stage, cannot decide the contentions of the petitioner as well as the respondent. The present Writ Petition, challenging the order of suspension, is without merits and liable to be dismissed.

7.For the above reasons, this Writ Petition is dismissed. However, it is open to the petitioner to submit necessary certificate as contemplated under FR 53(2) for payment of subsistence allowance. If the petitioner makes an application, the respondent is directed to consider the same without any delay. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)



To

The Commissioner,  
Sivagangai Municipality,  
Sivagangai District.

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+1 CC to M/s.J. LAWRENCE, Advocate ( SR-101175[F] 26/11/2019)

+1 CC to M/s.D. ANBARASU, Advocate ( SR-101265[F] dated 26/11/2019 )

W.P. (MD) No.20947 of 2019  
25.11.2019

Myr

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