

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.13142 of 2019

ORDER:

With the consent of both the parties, the Writ Petition is being disposed of at the admission stage.

This Writ Petition is filed seeking the following relief:

“.....to issue Writ of Mandamus by declaring the impugned order of suspension passed by the respondent vide proceedings Rc.No.B/70/2017, dated 18.06.2019, and as wholly as illegal, arbitrary, unconstitutional, violative of statutory rules and also violative of Articles 14, 16 and 21 of the Constitution of India, and consequently set aside the same and direct the respondent to reinstate the petitioner in duty with all consequential benefits including arrears of salary and other service benefits in the interest of justice....”

Heard Sri Pratap Narayan Sanghi, learned counsel for the petitioner, and the learned Special Government Pleader attached to the Office of the Advocate General.

It has been contended by the petitioner's counsel that the petitioner is working as Assistant Executive Officer with the respondents and he has been discharging his duties to the satisfaction of his superiors and everyone concerned. While so, disciplinary proceedings were initiated against the petitioner alleging that he was negligent in discharging his duties. The respondents issued a charge memo on 27.08.2017, to which the petitioner submitted an explanation denying the said charges. Being not satisfied with said explanation, the disciplinary authority initiated disciplinary

proceedings, conducted regular enquiry and the enquiry was also concluded. Thereafter, the disciplinary authority furnished the report of the Enquiry Officer to the petitioner asking him to submit his objections, if any, to the same. The petitioner has received the same and while he was yet to submit his objections, the respondents placed the petitioner under suspension vide order, dated 18.06.2019. Challenging the same, the present Writ Petition is filed.

Learned Counsel for the petitioner submitted that placing the petitioner under suspension is an arbitrary exercise of power and is unwarranted as the reason for placing the petitioner under suspension is on the very same set of facts which are set out in the charge memo, dated 27.08.2017. Now, the enquiry was completed and the Enquiry Officer also submitted his report, as such, the question of petitioner influencing the witnesses or tinkering and tampering the record does not arise. Therefore, the impugned suspension order is the result of *mala fide* exercise of power and the same is liable to be set aside. The Counsel for the petitioner also submitted that appropriate orders be passed in the Writ Petition by setting aside the Suspension Order, dated 18.06.2019.

Special Government Pleader appearing for the respondents would submit that the respondents have furnished Enquiry Officer's report inviting objections to the

said report but the petitioner has refused to receive the said notice and left with no other alternative, the respondents have suspended the petitioner from service vide impugned proceedings, dated 18.06.2019. The Special Government Pleader further submits that if the petitioner submits his objections to the Enquiry Officer's report, then appropriate orders would be passed by the respondents in accordance with law.

Having regard to the rival submissions made by the parties, this Court is of the considered view that the impugned suspension order, dated 18.06.2019, is unwarranted as the disciplinary proceedings are at the final stage as the respondents have already concluded the enquiry proceedings and only final orders are to be passed. Hence, it is not necessary to place the petitioner under suspension. Therefore, the impugned order, dated 18.06.2019, placing the petitioner under suspension is liable to be set aside and is accordingly set aside. However, liberty is given to the respondents to pass appropriate final orders in the disciplinary proceedings initiated pursuant to the charge memo, dated 27.08.2017, in accordance with law.

With these observations, the Writ Petition is allowed. It is needless to say that the petitioner shall submit his objections to the Enquiry Officer's report within a period of two weeks from today. Upon such objections being received,

it is always open for the disciplinary authority to pass appropriate orders, in accordance with law.

As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

05.07.2019
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