

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.47643 of 2018

ORDER:

This Writ Petition is filed seeking a Writ of Mandamus declaring the action of 2nd respondent in issuing suspension-cum-show cause notice dated 30.10.2018, without any authority of law, contrary to the provisions of Disciplinary Rules for Fixed Tenure Employees of Society for Rural Development Services (2012) (for short 'FTE Rules'), as illegal and arbitrary.

Heard Mr.Swaroop Oorilla, learned counsel for petitioner and the learned Standing Counsel for respondents.

It has been contended by the petitioner that she was appointed as Additional Programme Officer in the year 2011 on contract basis and the tenure of contract appointment was extended from time to time. The petitioner submits that the respondents have placed the petitioner under suspension and issued suspension-cum-show cause notice dated 30.10.2018 calling for an explanation from the petitioner on certain allegations of irregular withdrawal of EGS funds. The petitioner has submitted a detailed explanation on 08.11.2018 to the suspension-cum-show-cause notice and thereafter, the respondents have conducted a detailed enquiry and concluded the enquiry. But, however, the respondents have not reinstated the petitioner into service even after conclusion of enquiry against the petitioner.

Learned counsel appearing for petitioner has drawn the attention of this Court to Rule 6 (i) of FTE Rules, which reads as follows :-

6.1 Suspension of contract in certain circumstances

(i) Suspension of contract of FTE of the Society shall be deemed to have been effected by an order of the Authority competent to place him in the above manner.

a) with effect from the date of his detention, if he/she is detained in custody, whether on criminal charge or otherwise for a period exceeding forty-eight hours.

b) With effect from the date of his/her conviction, if in the event of a conviction for an offence, he/she is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith completely terminated from contract service or removed consequent to such conviction.

Explanation:

The period of forty-eight hours referred to in sub-condition of this condition shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

(c) The order of suspension of contract ceases to be operative as soon as the criminal proceedings, on the basis of which the FTE of the Society was arrested and released on bail, are terminated.

(d) Where a penalty of termination of contract services upon an FTE of the Society whose contract is suspended, is set aside in an appeal or on revision under these terms and conditions and the case is remitted for further inquiry or action the order of suspension contract shall be deemed to have been continued in force on and from the date of original order of removal, and shall remain in force until further orders.”

By relying on the above Rule, the learned counsel for petitioner contended that none of the conditions set out in the above noted Rule have been complied with in the instant case and the petitioner was not detained for more than 48 hours and invoking

the said Rule, the 2nd respondent has placed the petitioner under suspension, which is without jurisdiction and without any authority under law.

Learned counsel for petitioner has also drawn further attention to Rule 6.2 (vi) of FTE Rules, which reads as under :-

“All disciplinary proceedings initiated for any irregularity shall be concluded within 30 days from the date of detection of such omissions/ and commissions.”

Admittedly, in the instant case, the disciplinary action has been initiated against the petitioner by placing her under suspension and by issuing suspension-cum-show cause notice dated 30.10.2018 and it is more than 2½ months, the respondents have not passed any final orders, which is contrary to the disciplinary Rules. Therefore, the counsel for petitioner contended that appropriate orders be passed in the writ petition by setting aside the suspension-cum-show cause notice dated 30.10.2018.

Learned Standing Counsel appearing for respondents has contended that the petitioner had indulged in serious irregularities and the 2nd respondent has rightly placed the petitioner under suspension pending enquiry and the enquiry has been concluded and final orders would be passed in accordance with law within a reasonable time. He further submits that since the charges levelled against the petitioner are grave in nature involving misappropriation of public funds, the respondents have concluded the enquiry and final orders would be passed in accordance with law and no illegality has been committed by the respondents by placing the petitioner under suspension.

This court, having considered the rival submissions, is of the considered view that an employee can be placed under suspension on any of the following grounds i.e, in public interest and to ensure that the employee does not tinker and tamper the record and also to ensure that the employee against whom disciplinary action is initiated does not influence a court witness.

Admittedly, in the instant case, the enquiry has been completed and that the disciplinary authority has to pass final order basing upon the enquiry report. Therefore, at this point of time, placing the petitioner under suspension is unwarranted. Further, the purpose of placing the petitioner under suspension would not serve anybody's purpose. Therefore, the respondents are directed to reinstate the petitioner into service forthwith and the respondents are at liberty to pass final orders pursuant to the enquiry report, which was already concluded.

With the above observations, the writ petition is accordingly disposed of. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

22-01-2019
Prv

