

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.09.2020

CORAM:

THE HON'BLE MR. JUSTICE V.PARTHIBAN

WP No.9134 of 2020
and
WMP No.11133 of 2020

Mrs.Mary Anitta

.. Petitioner

Vs

1. The Directorate of Agriculture,
Represented by its Director,
Chepauk, Chennai – 600 005.

2. The Additional Director of Agriculture,
(Personnel / Management),
Office of the Directorate of Agriculture,
Chepauk,
Chennai – 600 005.

.. Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records in proceedings in Proc.No.DCS.1/2/14476/2020 dated 06.02.2020 on the file of the 2nd respondent and quash the same as illegal, arbitrary and violative of principles of natural justice and direct the 2nd respondent to recall the impugned order and allow the petitioner to join in service with all benefits.

For Petitioner : Mr.N.Baskaran

For Respondents : Mr.R.A.S.Senthil Vel
Additional Government Pleader.

ORDER

This matter is taken up through Web hearing.

2. The writ petition has been filed seeking for the following prayer:

“for issuance of Writ of Certiorarified Mandamus, calling for the records in proceedings in Proc.No.DCS.1/2/14476/2020 dated 06.02.2020 on the file of the 2nd respondent and quash the same as illegal, arbitrary and violative of principles of natural justice and direct the 2nd respondent to recall the impugned order and allow the petitioner to join in service with all benefits.”

3. The petitioner joined as Assistant in the office of the Director of Agriculture on 02.12.2013. According to her, earlier to her joining Government service, she was a Director in a Private Company called “Sree Selvatharasi Chits Private Limited”. Before taking up employment in Government service, she has resigned the Directorship on 25.11.2013

itself. In 2020, on the basis of a criminal complaint arising from the Tamil Nadu Chit Funds Act, she was arrested and detained in custody. The criminal complaint was registered in Crime No.2 of 2020, on the file of the Inspector of Police, Economic Offence Wing, Guindy, accusing the petitioner as if she was still the Director of the company.

4. It transpired thereafter that due to her arrest and remand in judicial custody for about 15 days, from 03.02.2020 till 17.03.2020, the petitioner was placed under suspension with effect from 03.02.2020 by order dated 06.02.2020. The suspension order was passed under sub rule 2 of 17(e) of the Tamilnadu Civil Services (Discipline and Appeal) Rules. The said suspension order is the subject matter of challenge in the present writ petition.

5. The learned counsel for the petitioner would submit that though the petitioner had resigned her Directorship way back on 25.11.2013 itself before she took up government employment on 02.12.2013, wrongly the petitioner was implicated in the complaint, which was filed only in 2020 against the Chits Fund Company. Unfortunately, she was arrested and spent some 15 days in jail, for which impugned suspension

order is issued.

6. Although, the suspension order was issued on 06.02.2020, no review has been done so far, particularly, in view of the fact that the implication of the petitioner in the criminal case has nothing to do with the discharge of the duties of the petitioner in her official capacity.

7. After notice, Mr.R.A.S. Senthil Vel, learned Additional Government Pleader, has entered appearance on behalf of the respondents and a counter affidavit has also been filed.

8. In the counter affidavit, it is clearly stated that as per the procedure contemplated in the Service Rules in regard to the continuation of suspension, when criminal case is pending against a Government servant, the department can place the Government servant concerned, under suspension in lieu of taking departmental action against the servant. Therefore, the petitioner is now placed under suspension and continued as such, as the criminal case is pending against her and the status quo would be reviewed after the outcome of the criminal case

pending against her.

9. The learned Additional Government Pleader appearing for the respondents reiterated the above statement contained in the counter affidavit.

10. This Court considered the case of the petitioner as well as the contentions raised in the counter affidavit. No doubt that the petitioner rightly or wrongly is facing criminal case and the suspension order was ofcourse rightly issued against the petitioner, as the petitioner was detained in custody for more than 48 hours. Therefore, the deemed suspension would have come into force automatically by operation of the rule position. However, what has to be seen today is that the respondents have disclosed their mind that continuation of the suspension may not be reviewed at all in view of the criminal proceedings pending against her.

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11. The fact of the matter is that according to the petitioner, she had resigned her Directorship well before the date she joined Government service and the present criminal complaint made in 2020 including the petitioner as accused, may not be valid at all. However,

this Court cannot take that factor into consideration for the purpose of interfering with the order of transfer. This in fact can be a mitigating circumstances in favour of the petitioner, when the authority takes a decision to review the continuance of the impugned suspension of the petitioner.

12. When the basis of suspension was in regard to the involvement of the petitioner in a criminal case, which admittedly had nothing to do with the discharge of her duties, it is always open to the 2nd respondent to review the suspension, on the facts which led to the registration of the complaint against the petitioner, without waiting for the final outcome in the criminal proceedings, which may take even years, on many a time.

13. Therefore, this Court in the fitness of things would dispose of this writ petition without expressing any views, by directing the 2nd respondent to review the order of suspension passed against the petitioner vide proceedings in Proc.No.DCS.1/2/14476/2020 dated 06.02.2020, on the basis of the facts which led to the registration of the complaint against the petitioner and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order. Any

order passed as a result of the review, the copy of the same, shall be furnished to the petitioner forthwith.

14. The writ petition is disposed of, as indicated above. No Costs.

Consequently, the connected Writ Miscellaneous Petition is closed.

03.09.2020

Speaking/Non-speaking order
Index: Yes/No
Internet: Yes
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To

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V.PARTHIBAN, J.,

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