

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2020

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.NO.9341 OF 2020 AND
W.M.P.NOS.11425 & 11426 OF 2020

J. Ashok Kumar

...Petitioner

-Vs-

1. The Commissioner of Labour,
DMS,
Teynampet, Chennai 600 006.
2. The Joint Commissioner of Labour-2,
DMS,
Teynampet, Chennai 600 006.
3. The Controller of Legal Metrology,
DMS,
Teynampet, Chennai 600 006.
4. The Assistant Commissioner of Labour,
Enforcement,
No.6/26, Lalbagadhur Sastri Street,
Periyakuppam,
Tiruvallur - 1.
5. Thiru. Noyal Prakash,
Stamp Inspector,
No.6/26, Lalbagadhur Sastri Street,
Periyakuppam,
Tiruvallur-1.

...Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for all relevant records relating to the impugned order of suspension in Letter No.A1/2577/2020 dated 13.04.2020, issued by the second respondent herein, to quash the same as arbitrary, improper, unjust, unconstitutional, thereby direct the 1st, 2nd and 3rd respondents to remove the newly appointed 5th respondent in the place of the petitioner and consequently to allow the petitioner to work as Stamping Inspector, Tiruvallur.

For Petitioner : Mr.P.K.Rajesh Praveenkumar
For Respondents : Mr.J.Ramesh, AGP

O R D E R

This writ petition has been filed to issue a Writ of Certiorarified Mandamus, to call for all relevant records relating to the impugned order of suspension in Letter No.A1/2577/2020 dated 13.04.2020, issued by the second respondent herein, to quash the same as arbitrary, improper, unjust, unconstitutional, thereby direct the 1st, 2nd and 3rd respondents to remove the newly appointed 5th respondent in the place of the petitioner and consequently to allow the petitioner to work as Stamping Inspector, Tiruvallur.

2. The petitioner herein has come forward with this writ petition challenging the order of suspension dated 13.04.2020. Although this Court initially found that there were no legally acceptable grounds raised in the affidavit in assailing the order of suspension, however, notice was issued only on the legal plea of the petitioner that the order of suspension was passed by the incompetent authority and also the petitioner claiming himself as a Whistle Blower, whether he is protected under the Whistle Blowers Protection Act, 2011, from being proceeded against in disciplinary matter.

3. In fact, it was not stated in the grounds raised in the affidavit as to who was the competent authority to pass the suspension order and in that context, the learned counsel for the petitioner was directed to clarify as to who was the competent authority to pass an order of suspension in respect of the petitioner herein.

4. In response to the direction, the learned counsel for the petitioner has filed an additional typedset of documents containing Tamil Nadu Service Manual (Volume III) and also Tamil Nadu Civil Service (Disciplinary and Appeal) Rules. The learned counsel also referred to Section 40 of the Tamil Nadu Labour and Subordinate Services. The learned counsel would submit that as per the said rule, for Stamping Inspector, the appointing authority mentioned in Clause IV is the Commissioner of Labour, who is the first respondent herein. The learned counsel would also refer to 14(a)(1) of the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules, which reads as under:

"14.(a)(1). The authority which may impose suspension referred to in rule 17(e) or penalties of-

- (i) censure,
- (ii) fine,
- (iii) withholding of increments, and

(iv) (a) recovery from pay of the whole or part of any pecuniary loss caused to the State Government or the Central Government or to a local body by negligence or breach of orders, or

(b) recovery from pay to the extent necessary of the monetary value equivalent to the amount of increments ordered to be withheld, where such an order cannot be given effect to, on a member of a Subordinate Service shall be his immediate superior officer of the State Services or, where the appointing authority for such members is an officer of the Subordinate Services, such officer or any higher authority;"

Along with, he would also refer to Appendix 3, with reference to the above said rules. According to the Appendix 3, the learned counsel submitted that for Stamping Inspector, the competent authority for suspension is only the Commissioner of Labour and in this case, the second respondent, the Joint Commissioner of Labour-2 has passed the order of suspension and therefore, on this ground alone, the impugned order is liable to be interfered with.

5. This Court finds the submissions of the learned counsel has faulty for the simple reason that on the closer reading to the provision 14(a) of the rules extracted above and the Appendix 3, the learned counsel failed to notice the nuanced distinction between the suspension imposed by way of penalty and suspension issued by way of pending disciplinary action under Section 17(e) of the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules. This is the case where the petitioner is placed under suspension pending contemplation of charges under Section 17(e) of the rules and in terms of 14(a) of the rules, the immediate superior authority is the authority who can pass orders on suspension among other minor penalties. Therefore, the suspension pending enquiry is not be confused with the suspension imposed by way of penalty after conclusion of the disciplinary action. Both orders of suspension stand on a different footing in the service regulation and in that view of the matter, challenge to the present suspension order on the ground of jurisdiction has to necessarily fail.

6. The other issue regarding the protection under Whistle Blowers Act, 2011, this Court does not find any blanket cover of protection, providing absolute immunity to the petitioner from being proceeded against even in cases where he was found to have committed acts of misconduct. Moreover, on merits of challenge, the petitioner has elaborately narrated about the procedure to be adopted in terms of the Legal Metrology act, with regard to the allegation of misconduct made against him, which in the

opinion of this Court is completely irrelevant for consideration of the validity and correctness of the suspension order.

7. This Court also finds that the affidavit is full of extraneous facts which are not germane to the adjudication of challenge of suspension order passed against the petitioner. In the entire affidavit amidst plethora of facts narrated, this Court did not find any worthy ground raised for interfering with the order of suspension at this stage. Challenge to the suspension order is not maintainable, if the same is entirely premised on factual averments, which may help the petitioner to put up his defence to the allegations against him.

8. Hence, the writ petition is dismissed as without being substance and merits. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gsk

To

- 1.The Commissioner of Labour,
DMS,Teynampet, Chennai 600 006.
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DMS,Teynampet, Chennai 600 006.
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RLD(CO)
NRA(08/12/2020)