



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.01.2020

CORAM:

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD) No.23801 of 2019 and
WMP (MD) No.20406 of 2019

R. Ganesan

Petitioner

Vs

1. The Transport Commissioner
Chepauk
Chennai - 600 005

2. The Regional Transport Officer
Madurai North
Madurai

Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records of the first respondent in Proc R.No.32635/VA2/2019 dated 24.08.2019 and quash the same as devoid of merits and consequently direct the respondents to allow the petitioner to continue his employment in the second respondent office within the stipulated period by this Court.

For Petitioner : Mr. Ananth C.Rajesh

For Respondents : Mr. R.Sethuraman
Special Government Pleader

O R D E R

This Writ Petition has been filed to call for the records of the first respondent in Proc R.No.32635/VA2/2019 dated 24.08.2019 and quash the same as devoid of merits and consequently direct the respondents to allow the petitioner to continue his employment in the second respondent office within the stipulated period by this Court.

2. The impugned suspension order dated 24.08.2019 against the petitioner herein states that an enquiry into grave charges is contemplated against the petitioner and therefore the first respondent placed him under suspension by invoking his powers under Rule 17 (1) (e) of Tamil Nadu Civil Services (Discipline and Appeal)



Rules.

3. The learned counsel for the petitioner would submit that in view of the amendment to Rule 17 (1) (e) of the said Rule, wherein the expression "an enquiry to grave charges" has been substituted with the "disciplinary proceedings" through GO.Ms.No.29, Personnel and Administrative Reforms (N) Department dated 23.02.2012, the first respondent herein is not empowered to place the petitioner under suspension, in contemplation of an enquiry to grave charges. It is his further contention that the petitioner is not involved in any criminal offence.

4. The learned Special Government Pleader would submit that Rule 17(e)(i) of Tamil Nadu Civil Services (Discipline and Appeal) Rules prescribes two circumstances under which an employee can be placed under suspension, either when disciplinary proceedings is contemplated against him or when a criminal case is registered against the petitioner. By placing reliance on the averment made in the affidavit filed by the petitioner in support of the writ petition, the learned Special Government Pleader submitted that the criminal complaint against the petitioner was enquired on 22.08.2019 itself and the criminal case has also been registered in Crime No.104 of 2019 on 29.08.2019 by City Crime Branch, Madurai. Hence, in view of Rule 17 (e) (1) (ii) of Tamil Nadu Civil Services (Discipline and Appeal) Rules and as such, the suspension order has been validly made and therefore no interference is required in the present Writ Petition.

5. I have given careful attention to the submissions made by the respective counsel.

6. Apparently, the suspension order has been passed by the first respondent by invoking Rule 17 (1) (e) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, in contemplation of an "enquiry into grave charges" having involved in the issuance of fake driving licence against the petitioner. A perusal of the suspension order reveals that the first respondent herein has lost sight of the amendment of Rule 17(1) (e) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, brought in through G.O.Ms.No.29, Personnel and Administrative Reforms (N) Department dated 23.02.2012. As such, when "an enquiry into grave charges" is contemplated, the rule does not enable the respondent to place the employee under suspension unless "disciplinary proceedings" are contemplated. In the absence of any powers to place an employee under suspension for a proposed enquiry into grave charges, the impugned order of suspension itself cannot be sustained.

7. In so far as the second objection raised by the learned Special Government Pleader that the pendency of criminal proceedings against the petitioner will also enable the first respondent to place the petitioner under suspension is concerned, it would be



appropriate to have a glance at the relevant Rule of Tamil Nadu Civil Services (Discipline and Appeal) Rules.

17(e) - Conditions under which a member of a Service be placed under suspension:-

17(e) (1) A member of a service may be placed under suspension from service, where

- (i) where a disciplinary Proceedings against him is contemplated or is pending, or
- (ii) a case against him in respect of any criminal offence is under investigation, inquiry or trial.

The aforesaid Rule is clear to the effect that to enable the first respondent to invoke his powers to suspend the employee under Rule 17 (e) 1 (ii) of the said Rule, there should be a case pending against such employee in respect of the criminal offence. It is not in dispute that the First Information Report in Crime No.104 of 2019 registered on 29.08.2019, which is five days after the suspension order was passed.

8. The learned counsel for the petitioner would submit that the petitioner has not been arrayed as accused in the said First Information Report. I do not want to intend to go into sanctity on such averments with regard to the petitioner's implication in the First Information Report, since the First Information Report itself came to be registered after suspension order was passed.

9. The learned Special Government Pleader would place reliance on the affidavit filed by the petitioner in support of the Writ Petition and submitted that the enquiry itself was made by the police authorities on 22.02.2019, which was prior to the suspension order. A mere enquiry on a complaint or information may not also entitle the respondents to place the employee under suspension. The term used in Section 17(e) (1) (ii) of the Rules is that "a case" should be pending against such employee. As such the pendency of a criminal complaint or a mere information available with the police authorities cannot be termed to be "a case" for the purpose of the aforesaid Rule. Probably, if the First Information Report had been pending on the date of the suspension order or prior to that, the respondent may have been justified in placing the petitioner under suspension. While that being so, when no criminal case was registered against the petitioner as on the date of the suspension order, the respondent will not be empowered to invoke Rule 17 e 1 (ii) Tamil Nadu Civil Services (Discipline and Appeal) Rules. In the absence of any power vested with the respondents to place the petitioner under suspension, in contemplation of an enquiry into grave charges, the suspension order itself cannot be sustained.

10. In the light of the above discussions and observations, the impugned order dated 24.08.2019 in Proc R.No.32635/VA2/2019 is



hereby quashed and this Writ Petition is allowed. No costs.
Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (P&A)

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/ /2020

Sub Assistant Registrar(CS)

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To

1. The Transport Commissioner,
Chepauk, Chennai - 600 005
2. The Regional Transport Officer,
Madurai North, Madurai.

+1 CC to M/s.SPL.GP (SR-1346[F] dated 10/01/2020)

+1 CC to M/s.ANANTH.C.RAJESH, Advocate (SR-1174[F] dated 09/01/2020

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