



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:17.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. (MD)No.11397 of 2016

and

W.M.P. (MD) .Nos.8720 and 8721 of 2016

M.Mohandass

... Petitioner

Vs.

1.The Chairman cum Managing Director,
TANGEDCO,
Chennai.

2.The Chief Engineer,
Tuticorin Thermal Power Station,
Tuticorin.

3.The Superintending Engineer,
Purchase and Administration,
Tuticorin Thermal Power Station,
Tuticorin -4.

4.The Executive Engineer,
Ash Handling Plant,
Tuticorin Thermal Power Station,
Tuticorin -4.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the Impugned Memo No.EE/AHP/TTPS/F Doc,/D, 08/11 dated 23.09.2011 passed by the 3rd respondent and order dated 07.06.2016 passed by the 3rd respondent in his proceedings in Letter No.4054/102/Mu.Ni.A/Ni.Pi3 (3)/2016 and quash the same and consequently direct the respondents to reinstate the petitioner in service with consequential benefits by following the proceedings issued by the 1st respondent in (Per) CMD TANGEDCO Proceedings No.90, dated 25.05.2016.

For Petitioner

: Mr.K.Seemaraj

For Respondents

: Mr.T.Sakthi Kumaran
Standing counsel



O R D E R

This writ petition has been filed challenging the impugned Memo dated 23.09.2011 and the order dated 07.06.2016, passed by the third respondent and quash the same and consequently, direct the respondents to reinstate the petitioner into service with consequential benefits, by following the proceedings issued by the first respondent, dated 25.05.2016.

2. The case of the petitioner is that he was joined as daily wages employee in Tuticorin Thermal Power Plant and thereafter he was appointed as Helper in the year 1999. Subsequently, he was promoted to various posts and finally, he was redesignated as Assistant Engineer in the year 2007. While he was working as Assistant Engineer, a trap was conducted by the Deputy Superintendent of Police, Vigilance and Anticorruption, Tuticorin, on 22.09.2011, alleging that he has received illegal gratification of Rs.10,000/- from one Manikandan, for the purpose of sanctioning the bill. Thereafter, he was arrested and remanded to judicial custody and he was placed under suspension on 23.09.2011. Challenging the same, the petitioner has filed a writ petition before this Court in W.P.(MD).No.2303 of 2015. However, the said writ petition was dismissed by this Court, dated 26.02.2015, with a direction to the third respondent to consider the representation of the petitioner, dated 15.10.2014. In compliance of the said order, the third respondent has rejected the petitioner's representation, on 18.04.2015. Challenging the order of suspension dated 23.09.2011, as well as the rejection of petitioner's representation dated 07.06.2016, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner would submit that though the petitioner was trapped under the Prevention of Corruption Act, the law enforcing agency has filed the charge sheet against the petitioner in the year 2012 and the same was taken on file in Special Case No.2 of 2012 on the file of the learned Chief Judicial Magistrate cum Special Judge, Tuticorin and till date there is no progress. He would further submit that the petitioner has rendered unblemished service and he has been falsely implicated in the criminal case and he has not committed any offence. He would also submit that the very same issue was already decided by the Hon'ble Apex Court in the case of **Ajaykumar Choudhary vs. Union of India and another** reported in **2015 (7) SCC 291** and hence, he seeks direction to the third respondent to reinstate the petitioner into service with all attendant benefits.

4. Heard the learned counsel appearing for the petitioner, the learned Standing counsel appearing for the respondents and perused the materials available on record.



5. This Court is unable to go into the merits of the allegations made by the petitioner. So long as the power of suspension is available with the third respondent and it has been exercised by the competent authority, this Court cannot go behind the order of suspension.

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6. The Hon'ble Supreme Court in its decision reported in **1990 (3) SCC 60 (Director General and Inspector General of Police, Andhra Pradesh, Hyderabad and others Vs. K.Ratnagiri)** has held in Paragraph No.7 as follows:

"7....The Rule 13(1) empowers the authority to keep the respondent under suspension pending investigation or enquiry into the criminal charges where such suspension is necessary in the public interest. When the first information report is issued, the investigation commences and indeed it has commenced when the respondent was kept under suspension. The order of suspension cannot, therefore, be said to be beyond the scope of Rule 13(1) merely because it has used the word 'prosecution' instead of investigation into the charges against the respondent. A wrong wording in the order does not take away the power if it is otherwise available. The Tribunal seems to have ignored this well accepted principle."

7. Further, it was observed in Paragraph No.3 as follows:

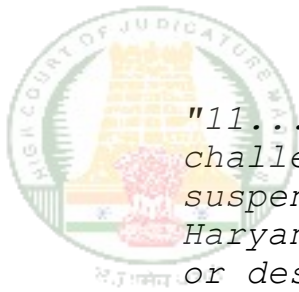
"3....The government may review the case and make further or other order but the order of suspension will continue to operate till it is rescinded by an appropriate authority."

8. Once again, the Hon'ble Supreme Court vide its decision reported in **1994 (2) SCC 617 (State of Haryana Vs. Hari Ram Yadav and others)** held in Paragraph No.10 as follows:

"10....The law is well settled that in cases where the exercise of statutory power is subject to the fulfilment of a condition then the recital about the said condition having been fulfilled in the order raises a presumption about the fulfilment of the said condition, and the burden is on the person who challenges the validity of the order to show that the said condition was not fulfilled. In a case, where the order does not contain a recital about the condition being fulfilled, the burden to prove that the condition was fulfilled would be on the authority passing the order if the validity of the order is challenged on the ground that the condition is not fulfilled...."

9. Further, in Paragraph No.11 of the judgment, it was

<https://hcservices.ecourts.gov.in/hcservices/>
observed as follows:



"11.....There is no averment in the said petition challenging the validity of the impugned order of suspension on the ground that the Governor of Haryana was not satisfied that it was either necessary or desirable to place Respondent 1 under suspension. In the absence of any such averment it must be held that the impugned order was passed after fulfilling the requirement of Rule 3(1) of the Rules in view of the presumption as to the regularity of official acts which would be applicable and the absence of a recital in the order about the Governor being satisfied that it was either necessary or desirable to place respondent 1 under suspension is of no consequence...."

10. In the light of the above, the writ petition filed by the petitioner is misconceived and deserves to be dismissed. Accordingly, the Writ Petition stands dismissed. However, it is open to the petitioner to seek a review of the order of suspension by making a fresh representation before the competent authorities and if any such representation is made, it is needless to state that the authorities will consider the said representation and pass orders on the same, in accordance with law. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

akv

To

1.The Chairman cum Managing Director,
TANGEDCO,
Chennai.

2.The Chief Engineer,
Tuticorin Thermal Power Station,
Tuticorin.



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Purchase and Administration,
Tuticorin Thermal Power Station,
Tuticorin -4.

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Ash Handling Plant,
Tuticorin Thermal Power Station,
Tuticorin -4.

+1 CC to M/s.T.SAKTHI KUMARAN, Advocate (SR-5755[F] dated
17/02/2021)

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