



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.03.2021

CORAM:

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

W.P. (MD)No.9873 of 2017

and

W.M.P (MD)No.7566 of 2017

G.Selvam

... Petitioner

Vs.

The Superintendent of Police,
O/o. District Superintendent of Police,
Thanjavur District.

... Respondent

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 of the impugned order in R.C.No.K4/32798/2015 D.O.1221/2015 dated 15.08.2015 issued by the respondent and quash the same as illegal and consequently direct the respondent to reinstate the petitioner in service, in the light of the Judgment of the Hon'ble Apex Court reported in (2015) 7 SCC 291 and Letter No.13519/N/2015-1 dated 23.07.2015 issued by the P and AR (N) Department Government of Tamil Nadu.

For Petitioner : Mr.S.Venkatesan

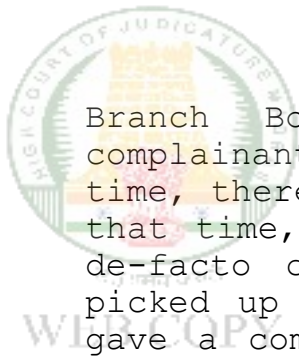
For Respondent : Mr.M.Muthugeethaiyan

Special Government Pleader

O R D E R

This writ petition has been filed challenging the impugned order dated 15.08.2015 passed by the respondent in R.C.No.K4/32798/2015 D.O.1221/2015, and to quash the same and consequently, direct the respondent to reinstate the petitioner in service, in the light of the Judgment of the Hon'ble Apex Court reported in (2015) 7 SCC 291 and Letter No.13519/N/2015-1, dated 23.07.2015, issued by the P and AR (N) Department Government of Tamil Nadu.

2.The case of the petitioner is that while he was working as Special Sub Inspector of Police in Pappanadu Police Station, one Poosari viz., Viswanathan gave a complaint against the de-facto complainant viz., Dharmalingam, alleging that the said Dharmalingam committed grave atrocity in the temple festival. After completion of enquiry, the said complaint was disposed of. Whiles, the de-facto complainant's son is running a Grocery shop in front of the petitioner's house, wherein the de-facto complainant sold TASMAL



Branch Bottles. Hence, the petitioner warned the de-facto complainant, but he did not stop the said activity. In the mean time, there was a temple festival in the petitioner's village and at that time, the Temple Poosari had not taken pooja things from the de-facto complainant's house and hence, the de-facto complainant picked up a quarrel with the poosari. Therefore, the said Poosari gave a complaint against the de-facto complainant, on 17.07.2015. Thereafter, the said de-facto complainant along with his relative gave a written complaint before the Inspector of Police, Vigilance and Anti-Corruption, Thanjavur, stating that the petitioner demanded a sum of Rs.15,000/- not to take action against him on the complaint given by the said Poosari. Therefore, the petitioner was arrested for receiving bribe amount and remanded to judicial custody on 15.08.2015 in Crime No.7 of 2015. Thereafter, the petitioner was placed under suspension vide impugned order dated 15.08.2015. Challenging the said suspension, the petitioner has filed the present writ petition.

3. The learned counsel appearing for the petitioner would submit that though the petitioner was suspended from service on 15.08.2015, 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 to quash the order of suspension.

4. Heard the learned counsel appearing for the petitioner, the learned Special Government Pleader appearing for the respondent 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 respondent and it has been exercised by the competent authority, this Court cannot go behind the order of suspension.

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:

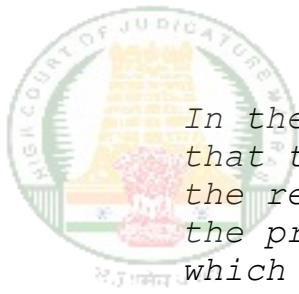
"3....The government may review the case and make further or other order but the order of suspension will continue to operate till it is rescinded by an appropriate authority."

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 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. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

The Superintendent of Police,
O/o. District Superintendent of Police,
Thanjavur District.

+1 CC to M/s.SPL GP (SR-12714[F] dated 22/03/2021)

W.P. (MD)No.9873 of 2017

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