



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:11.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. (MD)No.14269 of 2016

and

W.M.P. (MD) .Nos.10590 and 10591 of 2016

WEB COPY

A.Murugesan

... Petitioner

Vs.

1.The Superintending Engineer,
TANGEDCO,
Virudhunagar Electricity
Distribution Circle,
Virudhunagar,
Virudhunagar District.

2.The Assistant Executive Engineer (Rural),
TANGEDCO,
Sivakasi,
Virudhunagar District.

... 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 relating to the order made in Ku.Aa.No.AEE / R/Siva/Ko.Kattu/A.No.1417/14, dated 29.11.2014, passed by the second respondent and also the consequential order passed by the first respondent in Ku.Aa.No.005719/107/NiPi4/Oo.2/2016-3, dated 22.07.2016 and quash the same and consequently direct the respondents to reinstate the petitioner into service with all attendant benefits.

For Petitioner

: Mr.T.Lajapathi Roy

For Respondents

: Mr.T.Sakthi Kumaran

Standing counsel

O R D E R

This writ petition has been filed challenging the order of suspension dated 29.11.2014, passed by the second respondent and also the consequential order passed by the first respondent dated 22.07.2016 and quash the same and consequently direct the respondents to reinstate the petitioner into service with all attendant benefits.

2. The case of the petitioner is that he was joined as a Training Helper in Electricity Department on 18.06.2011 and subsequently, he was promoted to the post Commercial Assistant. While he was working as Commercial Assistant in the office of the Junior Engineer, Distribution, Vembakottai, Virudhunagar District, a trap was laid on 28.11.2014 and he was arrested and subsequently he



was released on bail on 17.12.2014. Thereafter, based on the criminal complaint, he was suspended from service on 29.11.2014. Aggrieved by the said order, the petitioner has filed a writ petition before this Court in W.P.(MD).No.9170 of 2015. However, this Court, by order dated 09.06.2015, dismissed the writ petition. Thereafter, the petitioner has made a representation to the first respondent in - person on 05.10.2015 and 18.01.2016, for revocation of suspension. However, the said order of suspension was not revoked. Hence, the petitioner has filed the present writ petition before this Court.

3. The learned counsel appearing for the petitioner would 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 further 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 respondents 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 respondents 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. 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.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)

akv

+1 CC to M/s.T.SAKTHIKUMARAN, Advocate (SR-4525[F] dated 11/02/2021

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-4754[F] dated 12/02/2021

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NA (CO)

KB (25.02.2021) 4P 3C