



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2021

CORAM:

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

W.P. (MD)No.21475 of 2016
and
W.M.P. (MD)No.15343 of 2016

S.Balamurugan

... Petitioner

versus

1. The Joint Registrar,
Office of the Joint Registrar,
R.K.10, Virudhunagar District
Central Co-operative Bank Ltd.,
Virudhunagar - 626 001.

2. The President,
S.P.S.P.L.86, Naloor Primary Agricultural
Co-operative Credit Society,
Naloor,
Thiruchuli (Taluk),
Virudhunagar District.

... Respondents

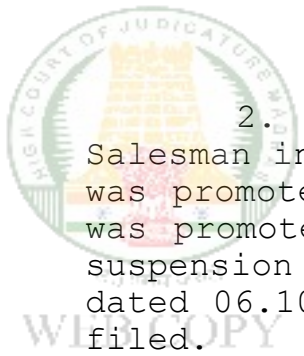
Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of suspension dated 06.10.2016 passed by the 2nd respondent and to quash the same and consequently, directing the respondents to reinstate the petitioner in service with all monetary benefits.

For Petitioner : Mr.V.Santhakumaresan

For Respondents : Mr.S.Seenivasagam for R1
No appearance for R2

ORDER

This writ petition has been filed seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of suspension dated 06.10.2016 passed by the 2nd respondent and to quash the same and consequently, direct the respondents to reinstate the petitioner in service with all monetary benefits.



2. The case of the petitioner is that he was appointed as Salesman in the 2nd respondent Society on 22.08.1988. Thereafter, he was promoted to the post of Clerk on 01.10.1991. Subsequently, he was promoted to the post of Secretary on 01.07.2007. While so, a suspension order was passed by the second respondent, vide order dated 06.10.2016. Challenging the same, the writ petition has been filed.

3. Learned counsel appearing for the petitioner submitted that though the petitioner was placed under suspension in the year 2016, even after the lapse of four years, the suspension was not revoked. Further, as per the decision of the Hon'ble Supreme Court, in the case of **Ajay Kumar Choudhary Vs Union of India (2015 (7) SCC 291)** and **State of Tamil Nadu Vs Pramod Kumar (2018 SCC Online SC 1079)**, the prolonged suspension is illegal. Hence, he prayed for allowing the writ petition.

4. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the first respondent.

5. The facts in the present case are not in dispute. The suspension of the petitioner has been done in consonance with the power available to the respondent. In such a backdrop, when the power is vested with the competent authority, this Court cannot go into the same unless the said suspension is shown to be illegal or done with mala fide intent.

6. The Supreme Court in in **1990 (3) SCC 60 (Director General and Inspector General of Police, Andhra Pradesh, Hyderabad & Ors. Vs. K.Ratnagiri)** has held in paragraph 7 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.

* * * * *

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."



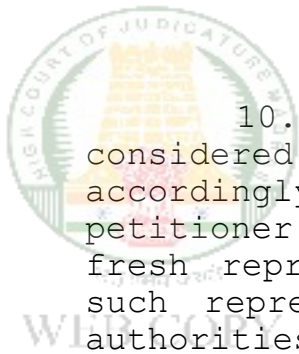
7. Once again, the Supreme Court in **1994 (2) SCC 617 (State of Haryana Vs. Hari Ram Yadav and others)** held in paragraph 10 as follows:

"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...."

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...."

8. From the ratio laid down in the aforesaid decisions, it is clear that the authority, vested with the right to pass the order of suspension, shall exercise the same in accordance with law and if at all the petitioner is aggrieved, he has to avail his remedy in a manner known to law.

9. In the case on hand, the respondents, upon inspection, have found that (i) there was a false entry showing excess weight of jewels in the account ledgers than the actual weight of the jewel pledged; (ii) improper deduction of wastage of jewels pledged; (iii) sanctioning of loan to low quality jewels and (iv) lesser interest calculation, which led to the suspension of the petitioner. True it is that the order of suspension has been passed in the year 2016 and no action has been taken on the said suspension till date. Equally true the petitioner has also not made any representation to the competent authorities for revisiting the order of suspension. In such a backdrop, the suspension order cannot be said to be bad in law.



10. For the reasons aforesaid, this Court is of the considered view that the writ petition deserves to be dismissed and, accordingly, the same is 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 as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2021

Sub Assistant Registrar

To

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