



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.02.2021

CORAM:

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

**W.P. (MD)No.2407 of 2016**

**and**

**W.M.P. (MD)Nos.2144 and 3195 of 2016**

S.Mohammed Sirajudeen

... Petitioner

versus

1. The District Collector,  
Ramanathapuram District,  
Ramanathapuram.

2. Personal Assistant to Collector,  
(Noon Meal Program),  
District Collectorate,  
Ramanathapuram.

3. N.Ganapathy,  
Personal Assistant to Collector,  
(Noon Meal Program)  
District Collectorate,  
Ramanathapuram.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of writ of certiorari, to call for the records relating to the impugned order of suspension passed by the 1<sup>st</sup> respondent in his proceedings No.Na.Ka.W1/2966/2015 dated 20.01.2016 (served on 29.01.16) and quash the same as illegal.

For Petitioner : Mr.M.Jerin Mathew  
for Mr.M.E.Ilango

For Respondents : Mr.A.Karthick,  
Government Advocate

**ORDER**

This writ petition is filed for the issuance of writ of certiorari, to call for the records relating to the impugned order of suspension passed by the 1<sup>st</sup> respondent in his proceedings No.Na.Ka.W1/2966/2015 dated 20.01.2016 and quash the same as illegal.



2. The case of the petitioner is that he was appointed as Noon Meal Organizer in Sathakathun Jaria Middle School in the year 1985 and he rendered more than 30 years of service. While so, he was placed under suspension, by an order of the first respondent dated 20.01.2016, on the ground that there was excess stock than the balance quantity of stock entered in the Register. Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner submitted that the inspection was made by the 3<sup>rd</sup> respondent, namely, the Personal Assistant to Collector, Ramanathapuram District. Though the impugned order was drawn in the name of the 1<sup>st</sup> respondent, it was signed by the 3<sup>rd</sup> respondent on behalf of the 1<sup>st</sup> respondent. Since the petitioner was appointed by a minority school management, the 3<sup>rd</sup> respondent cannot act as a disciplinary authority. It is further contended that an employee could be placed under suspension only when charges are pending or when disciplinary action is contemplated or when criminal case is pending. But, the impugned order does not disclose any such charges. Further, the petitioner should have been afforded an opportunity to defend himself, which was not provided. Therefore the suspension order is unsustainable in law. Furthermore, the suspension order was passed in the year 2016, but, the same is yet to be revoked and no other action has also been taken on the said order of suspension and the petitioner has also not been paid any subsistence allowance. In the light of the fact that no action has been taken for a period of more than four years on the suspension, the petitioner is entitled for reinstatement and, accordingly, prays for a positive relief.

4. The learned Government Advocate appearing for the respondents submits that the suspension order was passed after due enquiry made by the 3<sup>rd</sup> respondent and the power was delegated to the 3<sup>rd</sup> respondent to sign the suspension order on behalf of the 1<sup>st</sup> respondent/District Collector. Therefore, the said order does not suffer the vice of illegality and, therefore, no interference is required in the impugned suspension order.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondent.

6. 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 1<sup>st</sup> 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.

7. The Supreme Court in in **1990 (3) SCC 60 (Director General and Inspector General of Police, Andhra Pradesh, Hyderabad & Ors. vs. K. Ramagiri)** has held in paragraph 7 as follows:

<https://hcrvicesrecords.don.in/hcrvices/>



"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."

8. 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...."

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9. 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.

10. In the case on hand, the respondents, upon inspection, have found excess stock not tallying with the stock entered in the register and the discrepancy has 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.

11. 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 petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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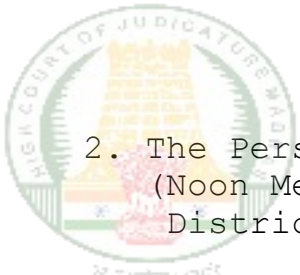
/ /2021

Sub Assistant Registrar(CS)

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To

1. The District Collector,  
Ramanathapuram District,  
Ramanathapuram.



2. The Personal Assistant to Collector,  
(Noon Meal Program),  
District Collectorate, Ramanathapuram.

+1 CC to Mr.M.E.ILANGO, Advocate ( SR-5046[F] dated 15/02/2021 )

+1 CC to SPL GP ( SR-5090[F] dated 15/02/2021 )

**W.P. (MD)No.2407 of 2016**

**12.02.2021**

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