



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.02.2021

CORAM:

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

W.P. (MD)No.6075 of 2016

and

W.M.P (MD)No.5378 of 2016

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P.Kubendran

... Petitioner

Vs.

1. The Superintending Engineer,
Tamil Nadu Generation and Distribution
Corporation (TANGEDCO),
Theni, Theni District.

2.The Assistant Executive Engineer,
Tamil Nadu Generation and Distribution
Corporation (TANGEDCO),
Uthamapalayam,
Theni 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 pertaining to the impugned order passed by the first respondent Ku.No.00807/MePo/Theni/VuNiA/NiPi1/Vu3/Ko.Marai/15, dated 27.01.2015, and quash the same as illegal and direct the first respondent to revoke the suspension order and permit the petitioner to continue his services.

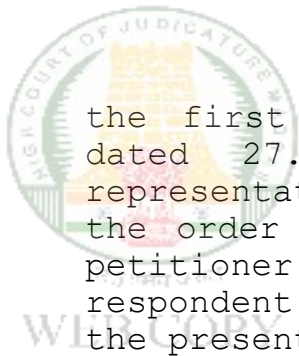
For Petitioner : Mr.M.Saravanan

For Respondents : Mr.T.Sakthi Kumaran
Standing Counsel

O R D E R

This writ petition has been filed against the order of suspension, dated 27.01.2015, passed by the first respondent and also for a direction to the respondents to revoke the suspension order and permit the petitioner to continue his services.

2. The case of the petitioner is that the petitioner was appointed as Helper on 14.05.2003 under the first respondent and thereafter he was promoted as Commercial Inspector. While he was working as Commercial Inspector at Utamapalayam, he was implicated in a criminal case in Crime No.1 of 2015 dated 23.01.2015, which was registered against him for the offence under Section 7 of the Prevention of Corruption Act, 1988, by the Inspector of Police, Vigilance and Anti Corruption, Theni, based on a complaint lodged by one Kasiviswanathan and he was remanded to jurisdictional jail. Pursuant to the involvement of the petitioner in the criminal case,



the first respondent issued a suspension order vide proceedings dated 27.01.2015. Thereafter, the petitioner has made a representation dated 18.04.2015 to the first respondent to revoke the order of suspension and reinstate him in service. However, the petitioner's representation was not considered by the first respondent so far. Challenging the impugned order dated 27.01.2015, the present writ petition is filed by the petitioner.

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

4. The learned counsel for the petitioner submitted that though the order of suspension has been passed on 27.01.2015, there has been no review. The prolonged suspension cannot be allowed to continue for a long time. He has drawn attention of this Court to the judgment of the Hon'ble Apex Court reported in **(2015) 7 SCC 291 (Ajay Kumar Choudhary v. Union of India)**, in which, it is held that suspension must necessarily be for a short duration. The above said judgment was followed by this Court in the case of **State of Tamil Nadu vs. Promod Kumar IPS**. Therefore, he prays for allowing this writ petition.

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, the Court cannot go behind the order of suspension.

6. The 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 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 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."

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8. Once again, the Supreme Court vide its decision reported 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...."

9. Further, in paragraph 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 shall stand dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.



11. 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 ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Superintending Engineer,
Tamil Nadu Generation and Distribution
Corporation (TANGEDCO),
Theni, Theni District.

2.The Assistant Executive Engineer,
Tamil Nadu Generation and Distribution
Corporation (TANGEDCO),
Uthamapalayam,
Theni District.

+1 CC to M/s.R.J.KARTHICK, Advocate (SR-4544[F] dated 11/02/2021)

+1 CC to M/s.T.SAKTHI KUMARAN, Advocate (SR-4343[F] dated
10/02/2021)

W.P. (MD) .No.6075 of 2016
10.02.2021

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