



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.03.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.21035 of 2021

and

W.M.P. (MD) Nos.17646 & 17647 of 2021

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N.Aboothahir

... Petitioner

-vs-

The District Collector,
Kanyakumari District,
Kanyakumari.

... Respondent

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records relating to the impugned order passed by the respondent in his proceedings in No.A3/8103/2020 dated 18.11.2021 and quash the same as illegal.

For Petitioner : Mr.M.Ajmal Khan,
Senior Counsel
for M/s.Ajmal Associates

For Respondent : Mr.A.K.Manikkam,
Special Government Pleader

O R D E R

The order of suspension dated 18.11.2021, is sought to be quashed in the present writ petition.

2. The petitioner was appointed as Senior Revenue Inspector, Vilavancode Taluk, Kuzhithurai, Kanyakumari District by direct recruitment through Tamil Nadu Public Service Commission. The petitioner states that he was serving as an Office Bearer of the Popular Front of India in Kanyakumari District and participated in some agitations in accordance with law. Thereafter, he left his native place and settled in Chennai for the purpose of preparation of public service examinations. While so, the impugned order of suspension has been issued placing the writ petitioner under suspension on the ground that the petitioner, who was holding the post of Senior Revenue Inspector, has acted as Popular Front of India (PFI) Thuckalay Town President in 2009 and District Speaker in 2013 and was engaged in PFI activities intensely. Further, he participated in PFI/SDPI demonstrations/agitations and delivered speeches condemning the State Government/Hindu Organizations functionaries. In the year 2013, a case in Thuckalay Police Station in Crime No.566/2013 under Sections 147, 448, 294(b), 353, 427 and 506(i) IPC was registered against the petitioner along with eight others for allegedly delivering derogatory speeches against



Sundarajan (Supervisor of TASMAL outlet), damaging TASMAL properties etc., situated at Azhagiayamandapam Junction, Thuckalay Police Station limit during the SDPI agitation conducted in front of the said TASMAL outlet and the case is pending trial before the Judicial Magistrate-I, Padmanabhapuram.

WEB COPY

3. The learned Senior Counsel appearing on behalf of the petitioner mainly contended that the participation of the petitioner in Popular Front of India was a previous involvement, which is no way connected with the services of the petitioner after his appointment as Senior Revenue Inspector. As a citizen, the petitioner has got every right to be part of legal organisations. Therefore, the said incident may not be a ground for the respondents to place the writ petitioner under suspension.

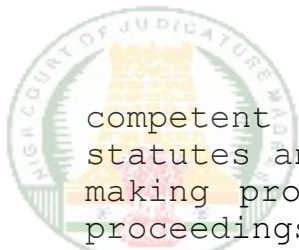
4. The learned Senior Counsel drew the attention of this Court with reference to the judgment of the Hon'ble Supreme Court of India in the case of **State of Madhya Pradesh vs. Ramashanker Raghuvanshi and Another** reported in (1983) 2 SCC 145 wherein, the Hon'ble Supreme Court made an observation in paragraph 10 as follows:-

"10. We are not for a moment suggesting that even after entry into Government service, a person may engage himself in political activities. All that we say is that he cannot be turned back at the very threshold on the ground of his past political activities. Once he becomes a Government servant, he becomes subject to the various rules regulating his conduct and his activities must naturally be subject to all rules made in conformity with the Constitution."

5. However, in the said case decided by the Hon'ble Supreme Court, the employee/respondent therein was terminated from services on 5th November, 1974. Therefore, Hon'ble Supreme Court made certain observations regarding the participation of the respondent therein in RSS and Jan Sangh. However, in the present case, it is an order of suspension, which is to be construed as initiation of disciplinary proceedings and therefore, the said case is of no avail, as the merits and the involvement and other aspects are to be considered by the original authority and certainly not by the High Court in a writ proceedings at this stage. High Court cannot consider the original issues in a writ proceedings under Article 226 of the Constitution of India, while adjudicating the disputed facts. All such disputed facts are to be adjudicated with reference to the documents and evidences available on record and a roving enquiry cannot be conducted by the High Court.

6. The power of judicial review under Article 226 is to ensure the processes through which a decision is taken by the

<https://hcservices.ecourts.gov.in/hcservices/>



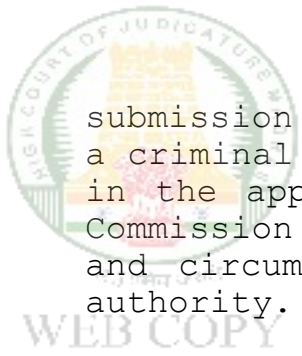
competent authorities in consonance with the provisions of the statutes and rules, but not the decision itself. Thus, the decision making process is to be looked into by the High Court in a writ proceedings and not the decision and more so in respect of certain initiation, the High Court is expected to exercise restraint and allow the original authorities to adjudicate the issues in the manner known to law and the aggrieved person should participate by availing the opportunities under the rules. Contrarily, in the event of entertaining the merits, in such circumstances, the same may lead to miscarriage of justice, as the High Court is not benefitted with all the original documents and evidences, which require an elaborate adjudication.

7. High Court cannot usurp the power of the original authority, who is empowered to conduct adjudication in respect of the issues involved in disciplinary proceedings. In the event of usurping the powers of the original authority, the High Court is no doubt exceeding the powers of judicial review contemplated under Article 226 of the Constitution of India.

8. In the present case, the order of suspension is under challenge. The suspension is not a punishment. It is only initiation of disciplinary proceedings. Suspension would not contain all the details regarding the allegations. The *prima facie* ground cited is as a reason for placing an employee under suspension. Therefore, neither the petitioner, nor the Court form an opinion that the reasons stated in the impugned order of suspension are allegations to be considered for quashing the suspension order. Mostly, suspension orders are formatted even under the rules. Suspension orders are issued by adopting the formats published by the Government. It is an interim arrangement to keep an employee away from service for conducting a free and fair enquiry and nothing more. Therefore, suspension can be quashed only on certain limited grounds. If the order of suspension is issued by an incompetent authority or tainted with mala fides then alone the High Court can exercise the power of judicial review for quashing the order of suspension and not otherwise.

9. Equally, prolonged suspension also is not desirable. On initiation of disciplinary proceedings, the authorities competent are expected to continue the disciplinary proceedings and conclude the same by following the procedures as expeditiously as possible. Prolonged suspension would also cause prejudice to the interest of the employees. Thus, the competent authorities are expected to conclude the enquiry within a reasonable period of time by providing opportunity to the delinquent officials and by following the procedures as contemplated under the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

10. The learned Special Government Pleader while objecting <https://hcservices.ecourtsofmadras.in/hcservices/> raised on behalf of the petitioner, made a



submission that it is not only the involvement of the petitioner in a criminal case, but the petitioner has suppressed the criminal case in the application submitted before the Tamil Nadu Public Service Commission for recruitment to the post. Therefore, various facts and circumstances are also to be adjudicated by the disciplinary authority.

11. The learned Senior Counsel brought to the notice of this Court that the criminal case registered against the writ petitioner was quashed by this Court in Crl.O.P.(MD) No.1576 of 2022 dated 28.01.2022.

12. Perusal of the said order reveals that the criminal original petition was filed only in the year 2022, after passing of the order of suspension on 18.11.2021. Therefore, the petitioner after the order of suspension filed a quash petition in Crl.O.P.(MD) No.1576 of 2022 and it was quashed merely on certain technical grounds.

13. Mere acquittal or quashing of the criminal case by the High Court would not be a ground to seek exoneration by an employee. The procedures adopted in the criminal cases are distinct and different and the standard of proof required to convict a person cannot be compared with the proof required to punish an employee under the Service Rules. No such strict proof is required to punish an employee under the Service Rules. Preponderance of probabilities are enough to punish an employee. Even moral turpitudes are the misconducts under the Tamil Nadu Government Servants Conduct Rules. Therefore, mere exoneration in a criminal case would not be a bar for the disciplinary authority to continue the disciplinary proceedings in accordance with the rules in force.

14. The counter filed by the District Collector, Kanyakumari District, reveals that the Superintendent of Police concerned submitted a report regarding the involvement of the petitioner and his affiliation with PFI. However, the order of suspension was not issued for mere involvement of the individual in political agitations. It is based on his name is arrayed in a criminal case for damaging the property and caused loss to the Government. Even considering the fact that the criminal case is quashed on certain technical grounds, the competent authorities are empowered to consider the nature of the allegations and other aspects involved with reference to the Tamil Nadu Government Servants Conduct Rules. Further, the counter reveals that the petitioner denied his involvement for the occurrence for which his name was included in the FIR, but the petitioner concealed the pending criminal case in the TNPSC application form. The documents received from TNPSC vide Letter No.2400/OTD-C2/2018-1, dated 10.12.2021, state that the petitioner stated "No" for the question criminal case registered. Even participation of political activities also, he marked "No". Therefore, the counter reveals about certain suppression of fact by the petitioner at the time of submission of application.



15. This Court cannot go into the merits of the allegations or otherwise, which all are to be adjudicated by the competent authorities with reference to the documents and evidences by providing opportunity to the petitioner to defend his case.

16. As far as the judgment of the Hon'ble Supreme Court is concerned, the facts are not comparable and furthermore, the judgment was delivered in respect of the case of termination and the case on hand is with reference to the order of suspension, which is not a punishment.

17. For all the above reasons, the respondents are empowered to continue the departmental disciplinary proceedings and conclude the same as expeditiously as possible by following the procedures as contemplated under law. The petitioner is also directed to cooperate for completion of the enquiry and in the event of non-cooperation, the same may be recorded in the proceedings itself and in such circumstances, the petitioner is not entitled to claim any relief merely on the ground of delay in disposing of the disciplinary proceedings. The petitioner is entitled to defend his case by availing the opportunities to be provided by the disciplinary authority during the course of enquiry.

18. With the above observations, this Writ Petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Writs)

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/ /2022

Sub Assistant Registrar(CS)

abr

To

The District Collector,
Kanyakumari District,
Kanyakumari.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-13681[F] dated 23/03/2022)

+1 CC to M/s.SPL GP (SR-14233[F] dated 24/03/2022)

W.P. (MD) No.21035 of 2021

22.03.2022