

(2007) 07 MAD CK 0128

In the Madras High Court

Case No : Writ Petition (MD) No. 3121 of 2007 and M.P. (MD) No. 1 of 2007

I. Selvaraj

APPELLANT

Vs

The Superintendent of Police

RESPONDENT

Date of Decision : 13-07-2007

Acts Referred:

Citation : (2007) 07 MAD CK 0128

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : M. Ajmal Khan, for the Appellant; V. Chellammal, Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—I have heard Mr. M. Ajmal Khan, learned Counsel appearing for the petitioner and Mrs. V. Chellammal, learned Special

Government Pleader taking notice for the respondents and have perused the records.

2. The impugned order dated 24.9.2006 is one of suspension pending enquiry. The petitioner is working as an Head Constable at Kurangani

Police Station under the respondent Department.

3. The suspension is made under Rule 3(e)(i)(ii) of the T.N.P.S.S. (D & A) Rules. The reason found in the order is that a criminal proceeding is

pending against the petitioner in Vigilance and Anti-Corruption Crime No. 16/2006 for having demanded and accepted some bribe amount. His

petition for reviewing the order was also considered and rejected by the respondent vide order dated 9.2.2007. A detailed counter affidavit has

also been filed justifying the suspension.

4. The grievance of the petitioner is that even though the order of suspension has been passed as early as in the year 2006, the application for review was also rejected erroneously. However, it is argued by the counsel that the provision quoted in the order of suspension is wrong and therefore, there is a mechanical application of mind by the respondent.

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 Director General and Inspector General of Police, Andhra Pradesh, Hyderabad and others Vs.

K. Ratnagiri, has held in paragraph 7 as follows:

Para 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:

Para 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 Supreme Court vide its decision reported in State of Haryana Vs. Hari Ram Yadav and others, held in paragraph 10 as follows:

Para 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:

Para 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 as well as the Miscellaneous Petition will stand dismissed. No costs.