

(2010) 11 MAD CK 0453

In the Madras High Court

Case No : Writ Petition (MD) No's. 10750 and 10978 of 2009 and M.P. (MD) No's. 1, 1 and 2 of 2009 and 1 of 2010

P. Palanisamy

APPELLANT

Vs

The District Revenue Officer

RESPONDENT

Date of Decision : 18-11-2010

Acts Referred:

Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 13(1), 17(1), 3(1)

Citation : (2010) 11 MAD CK 0453

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : T. Lajapathi Roy, for the Appellant; R. Janakiramulu, Spl. G.P., for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—These two writ petitions are classic cases of abuse of the process indulged by the Petitioner. The Petitioner is one and the same person in both writ petitions. Both writ petitions relate to suspension of the Petitioner made in public interest.

2. The Petitioner was working as a Village Administrative Officer of Varaganeri Village in Tiruchirappalli Taluk. On 26.5.2005, the Petitioner was caught in a trap case by the Vigilance and Anti Corruption Department for having demanded and accepted bribe amount. The Petitioner was proceeded under the provisions of the Prevention of Corruption Act. A criminal case was registered against him in Crime No. 8 of 2005 by the Vigilance and Anti Corruption Police. Therefore, suspension was made in terms of Rule 17(e)(1)(ii) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules by the Revenue Divisional Officer, Tiruchirappalli.

3. The Petitioner filed a writ petition being W.P.(MD) No. 1833 of 2006. Though the said writ petition was to set aside the suspension order, when the matter was listed on 28.8.2006, the counsel for the Petitioner restricted his relief into one of

directing the Respondent to dispose of his representation, dated 24.12.2005. Accordingly, this Court directed the Respondent to dispose of his representation within four weeks. Pursuant to the said direction, the Revenue Divisional Officer, Tiruchirappalli by his proceedings, dated 17.10.2006 found that there was no such representation, dated 24.12.2005 received by his office. Even otherwise, since this Court had given directions, the Revenue Divisional Officer called the Petitioner and after making an enquiry and on considering his representation had refused to revoke the order of suspension. It was informed that since a case had been registered in Crime No. 8 of 2005 and appropriate proceedings have been taken by the Anti Corruption department to file a charge memo, the question of his revoking suspension did not arise. Further, the Petitioner was informed that if he so desires, he can make a further appeal to the District Revenue Officer, Tiruchirappalli.

4. Accordingly, the Petitioner sent a further representation to the District Revenue Officer, Tiruchirappalli. Even while the appeal is pending with the District Revenue Officer, the Petitioner had chosen to challenge the order of the Revenue Divisional Officer, dated 17.10.2006 in refusing to reconsider his suspension in W.P.(MD) No. 5250 of 2009. When the matter came up on 25.6.2009, this Court noted that the charge memo has been filed before the Chief Judicial Magistrate, Ramnad in C.C. No. 2 of 2008. Therefore, the Respondent District Revenue Officer was once again directed to consider the Petitioner's representation, dated 15.6.2009 on merits. Thus, the second writ petition was disposed of without going into the merits of the matter. The District Revenue Officer, Tiruchirappalli by his proceedings, dated 18.8.2009 had rejected the Petitioner's request and held that the Inspector of Police, Department of Vigilance and Anti Corruption drew the attention of a Government letter, dated 05.11.1996 in which persons who are caught in trap cases and who are placed under suspension if allowed to join, it will harm the Government's objectives of maintaining honesty in public service. It will also create embarrassment for the State Government and affect the discipline of other Government servants. Hence persons who are placed under suspension cannot be restored to service pending finalisation of corruption cases. Basing upon the Government guidelines, the District Revenue Officer found that the Petitioner's case is pending before the Special Judge-cum-Chief Judicial Magistrate, Tiruchirappalli in Special C.C. No. 10 of 2007. Therefore, his permission to join duty will also hamper the smooth process of the case. Accepting the report of the Investigating Officer, the Petitioner was informed that his suspension cannot be revoked. The Petitioner placed reliance upon a Government Order in G.O. Ms. No. 40, P&AR Department, dated 30.1.1996. It was also held that the said G.O. has no application to the case of the Petitioner. A perusal of the G.O. itself indicates that it will not apply to the pending corruption cases.

5. The Petitioner challenging the order of the District Revenue Officer, Tiruchirappalli, dated 18.8.2009 filed W.P.(MD) No. 10750 of 2009. When the matter came up on 24.10.2009, the learned Special Government Pleader took

notice. Therefore, it was directed to be posted after one week. But, even when the said writ petition is pending, the Petitioner has come up with the fourth writ petition in W.P.(MD) No. 10978 of 2009 challenging the original order of suspension, dated 30.5.2005. Though in paragraph 9 of the affidavit, the Petitioner had mentioned about the previous writ petition in W.P.(MD) No. 10750 of 2009 as passing reference, the circumstances that led to filing of the fourth writ petition is clearly an abuse of the process of the court. Because, the order of suspension dated 30.5.2005 which is challenged in the fourth writ petition, was the subject matter of challenge in two writ petitions, i.e. W.P.(MD) No. 1833 of 2006 and W.P.(MD) Nos. 5250 of 2009. Both writ petitions were disposed of with a direction to consider the representation of the Petitioner. But the same was rejected. The rejection by the appellate authority is also the subject matter of challenge in W.P.(MD) No. 10750 of 2009. Thus, the suspension order was reviewed by the competent authority and also by the appellate authority. Thus the original order got merged with the appellate authority's order. When that is under challenge, there is no question of challenging the original order of suspension on any ground. Perhaps, the only attempt by the Petitioner was to get an interim order and that is why, when no interim order was granted on 24.10.2009, within five days he has filed the fourth writ petition challenging the original order of suspension. However, unmindful of the earlier notice ordered, this Court, by an order dated 29.10.2009 passed the following interim order which is as follows:

In view of the submission of the learned Counsel for the Petitioner that the Petitioner is under prolonged suspension right from the year 2005 and there is no progress in the criminal proceedings and also considering the Division Bench order of this Court in State V. K.A. Joseph reported in AIR 1970 Mad 155, this Court is constrained to grant the relief of interim stay.

6. When the third writ petition came up on 02.11.2009, this Court directed both writ petitions to be tagged on together. Thus both writ petitions came to be heard by this Court. The learned Counsel for the Petitioner has no explanation for filing the second writ petition within one week. There is no change in circumstance or new facts were pleaded in the fourth writ petition. All grounds which are to be raised had to be raised in one writ petition. The Petitioner cannot be allowed to file writ petition after writ petition raising grounds on piecemeal basis. The conduct of the Petitioner itself is questionable because at the earliest point of time, he filed W.P.(MD) No. 1833 of 2006. Though he challenged the original order of suspension, later he confined himself with the disposal of his representation, dated 24.12.2005 by the Revenue Divisional Officer, Tiruchirappalli. The RDO, Tiruchirappalli, in his order, dated 17.10.2006 had held that no such representation had been received by his officer and he was forced to summon the Petitioner to make a personal enquiry. Therefore, the attempt of the Petitioner is some how to get an order from this Court by all means.

7. The court cannot condone the action of the Petitioner, who has deliberately

chosen to file writ petition after writ petition against the very same suspension order and within a period of three years. The first and second writ petitions though were filed challenging the order of suspension and the review order, for reasons best known, the Petitioner had confined his relief only to dispose of his representation alone. Even in the first writ petition, the compliant of the Respondent was that there was no such representation received by his office. But, yet a direction was given to dispose of the non available representation. In any event, having got the relief of direction to consider his suspension first by the competent authority and next by the appellate authority, the Petitioner had exhausted all his remedies in impugning the order of suspension.

8. Before dealing with the merits of the Petitioner's case in the fourth writ petition an interim stay was granted on the basis of the legal principles enunciated in *State v. K.A. Joseph* reported in AIR 1970 Mad 155. In the said case, there was initial disobedience of the order passed by this Court in not framing the charges. Thereafter, the suspension was revoked. There was objection for restoration of service on the ground that this Court has no jurisdiction to interfere with the suspension which was rejected. Thirdly when the embarrassment of restoration of a Government servant facing serious charges to the very same place was made, the court also directed his being posted to some other post in the very same status and salary.

9. From a reading of the very short judgment, it is clearly seen that the court was only concerned about the delay in framing of charges by the department. It did not deal with any case involving criminal prosecution that too on corruption charges. Secondly, the court gave an opportunity to the Respondent to frame charges and not to be merely contended keeping a person under suspension. When that was not forthcoming and the order of the court was violated, the court revoked the suspension order, but also took care in granting liberty to the Government to post that person in some other place.

10. In the second writ petition, a vacate stay application was also filed with supporting counter affidavit, dated 25.01.2010 justifying the order of suspension and stating that the Petitioner could not be reinstated.

11. 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:

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.

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.

12. 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:

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....

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....

13. Further, this Court had gone extensively into the scope of judicial review over such suspension orders in R. Ravichandran v. The Additional Commissioner of Police, Traffic, Chennai and Anr. in W.P. No. 12590 of 2009, dated 05.10.2010. That case also related to suspension on similar allegations. Hence it is useful to reproduce the following passages found in paragraphs 80 to 83 which are as follows:

80. No Government servant, particularly a person charged with a misconduct of corruption, has right to insist that he should be retained in service and allowed to discharge his duties and enjoy the privileges of the post held by him, during the pendency of the enquiry into grave charges or trial, involving moral turpitude and it is the absolute discretion of the appointing/disciplinary authority or the Government to suspend such government servant from discharging the duties attached to the post and to forbid him from exercising the privileges, except to the extent of payment of salary, regulated in the Statute or rules, applicable to

the case of such Government servant.

81. For the purpose of suspension, it is sufficient that the competent authority has arrived at a prima facie conclusion that the Government servant has committed a serious misconduct, which entails major penalties, like dismissal, removal or compulsory retirement, etc., from service. Illustrative cases, where action has to be taken immediately, are persons, involving in serious acts of misdemeanor, such as, (a) offence or conduct involving moral turpitude, (b) corruption, embezzlement or misappropriation of Government money, (c) possession of disproportionate assets, (d) misuse of official powers for personal gain, (e) serious negligence or dereliction of duty, (f) desertion of duty and (g) refusal or deliberate failure to carry out written orders of superior officers; (h) apprehension of tampering with witnesses or documents or likelihood of causing prejudice to an inquiry, investigation or trial; (j) likelihood of subversion of discipline in office; (k) involvement of scandals, and (l) likelihood of ultimate conviction out of departmental proceedings, and in all these illustrative cases, it is the matter of necessity and public interest, involved and therefore, it which must be left to the absolute discretion of the competent authority, with whom, the power is vested to suspend and that such discretion exercised in public interest should not be interfered with lightly.

82. When the criminality of the government servant is adjudicated before the Court of competent jurisdiction and when the Police, Vigilance and Anti-Corruption Department has launched prosecution or proposed to launch for imposing appropriate punishment under the penal laws, the appointing/disciplinary authority/government, should be allowed to exercise their discretion to place the government servant under suspension, which is a step in aid, to complete the investigation/trial. Courts have consistently held that even if the materials are not adequate for prosecution or even after acquittal, when the appointing/disciplinary authority/government is empowered to place the government servant under suspension, the power can be exercised on proper consideration of relevant materials, in public interest.

83. Once the objective consideration of the allegations, the material on record, warrants suspension, till the completion of enquiry or trial, in public interest, it is not for this Court to examine the nature of the allegations, the evidence and to record any finding thereon, which would hamper the progress of the departmental enquiry or investigation or trial against the government servant.

14. In the light of the above, both writ petitions will stand dismissed with an exemplary cost of Rs. 10,000/-(Rupees ten thousand only). The cost shall be paid within a period of eight weeks from the date of receipt of copy of this order. Consequently, all miscellaneous petitions stand dismissed and vacate stay application stands closed as infructuous.