
(2008) 01 MAD CK 0068

In the Madras High Court

Case No : Writ Petition No. 37643 of 2007 and NM.P. No. 1 of 2007

S. Kumaresan

APPELLANT

Vs

The Commissioner of Municipal Administration

RESPONDENT

Date of Decision : 04-01-2008

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 7
Tamil Nadu Municipal Services (Discipline and Appeal) Rules, 1970 — Rule 17, 17(1), 8(9)

Citation : (2008) 01 MAD CK 0068

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : R.N. Amarnath, for the Appellant;

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, J.—Prayer in this writ petition is to quash the order of suspension passed by the respondent dated 6.12.2007 and

direct the respondent to reinstate the petitioner in service with all consequential and attendant benefits.

2. The brief facts necessary for disposal of the writ petition are as follows:

(a) Petitioner was initially appointed as Junior Assistant in the year 1987 in Municipal Services in Tiruppur Municipality. Thereafter he was

promoted as Revenue Inspector in the year 2001 and now he is working as Assistant in Erode Municipality, Erode.

(b) The case of the petitioner is that while he was working as Revenue Inspector in Tiruppur Municipality in the year 2006, one R.Kandasamy

lodged a complaint to the Vigilance Inspector against one of the Bill Collector by name K.A.Palanisamy, employed in Tiruppur Municipality

alleging that he had demanded money for assessment of property tax and the officials of Vigilance and Anti Corruption Department visited the

office and enquired the petitioner about the allegation and the petitioner also answered to the queries.

(c) Subsequently, though there was no complaint against the petitioner, he was issued with a suspension order dated 10.8.2006 as if the petitioner

had demanded money. Petitioner further states that as the order of suspension was passed on mistake of fact, he made a representation to the

respondent on 10.11.2006 and on consideration of the representation, the respondent passed the order of revocation dated and restored the

petitioner in service and the petitioner joined duty at Coonoor Municipality on 8.2.2007.

(d) Petitioner further states that while he was working in the Erode Municipality, the respondent again issued the impugned suspension order dated

6.12.2007 for the same event of the year 2006. According to the petitioner, in the impugned order of suspension, there is no mention about the

earlier suspension order dated 10.8.2006 nor the revocation order dated 3.1.2007 and there is no occasion for the respondent to place the

petitioner under suspension for the second time.

(e) Hence the petitioner has filed the present writ petition on the ground that placing the petitioner under suspension for the second time for the

same event is not contemplated under the provisions of the Tamil Nadu Municipal General Services (Discipline and Appeal) Rules, 1970 and the

respondent having found that the petitioner was wrongly placed under suspension and having revoked the suspension order, passing the impugned

suspension order for the second time is unwarranted.

3. Heard the learned Counsel for the petitioner. The learned Counsel for the petitioner admitted that now the petitioner is an accused in criminal

case.

4. From the perusal of the impugned order it is seen that the petitioner is involved in a case punishable u/s 7 and 13(2) read with 13(1)(d) of the

Prevention of Corruption Act, and it is necessary in the public interest to place the petitioner under suspension with immediate effect. The said

suspension order is passed by the respondent exercising the powers conferred under Rule 8(9)(ii) of the Tamil Nadu Municipal General Services

(Discipline and Appeal) Rules, 1970, with effect from 6.12.2007, the date of the order of suspension.

5. It is not in dispute that the petitioner is an employee of the Municipal services, who is involved in a Corruption case, which is under trial before

the Criminal Court. Petitioner being an employee of the Municipal Services, he is governed by the Tamil Nadu Municipal General Service

(Discipline and Appeal) Rules, 1970. Rule 8(9)(ii) enables the department to place an employee of the Municipal Services under suspension when

an enquiry into grave charges against him is contemplated or is pending, or a complaint against him of any criminal offence is under investigation or

trial. For proper appreciation, the said rule is extracted hereunder,

Rule 8(9)(ii) A member of a service may be placed under suspension from service by the disciplinary authority or such other authority to whom the

power may be delegated or the Commissioner of the Municipality, where:

(i) An enquiry into grave charges against him is contemplated or is pending; or

(ii) A complaint against him of any criminal offence is under investigation or trial and if such suspension is necessary in the public interest:

Provided that as and when a member of the service is placed under suspension by the authority other than the disciplinary authority such authority

shall at once intimate the fact to the disciplinary authority.

From the perusal of the said rule it is evident that a member of the Municipal Service can be placed under suspension if anyone of the conditions

contained in the above rule is attracted.

6. The above said Rule the Tamil Nadu Municipal General Service (Discipline and Appeal) Rules, 1970 is similar to Rule 17(e)(1) of the Tamil

Nadu Civil Services (Discipline and Appeal) Rules, which reads as follows:

Rule 17(e)(1) A member of a service may be placed under suspension from service, where,

(i) an enquiry into grave charges against him is contemplated, or is pending; or

(ii) a complaint against him or any criminal offence is under investigation or trial and if such suspension is necessary in the public interest.

A Division Bench of this Court considered Rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules in W.A. No. 1114 of 2007

and by Judgment dated 5.11.2007 upheld the order of suspension pending

investigation/trial of criminal offence.

7. The power of the department to place an officer under suspension, on public interest, pending enquiry into the disciplinary proceeding/criminal

investigation/trial, is well settled.

(a) The Supreme Court in the decision reported in *The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers' Union*, in

paragraph 10 held thus,

10. The first question therefore that falls for consideration is the extent of the power of the employer to suspend an employee under the ordinary

law of master and servant. It is now well settled that the power to suspend, in the sense of a right to forbid a servant to work, is not an implied

term in an ordinary contract between master and servant, and that such a power can only be the creature either of a statute governing the contract,

or of an express term in the contract itself. Ordinarily, therefore, the absence of such power either as an express term in the contract or in the rules

framed under some statute would mean that the master would have no power to suspend a workman and even if he does so in the sense that he

forbids the employee to work, he will have to pay wages during the so-called period of suspension. Where, however, there is power to suspend

either in the contract of employment or in the statute or the rules framed thereunder, the suspension has the effect of temporarily suspending the

relation of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay. These

principles of the ordinary law of master and servant are well settled and have not been disputed before us by either party. Reference in this

connection may be made to *Hanley v. Pease and Partners Ltd.* 1915-1 KB 698, *Wallwork v. Fielding* 1922 2 KB 66 *Secretary of State Vs.*

Surendra Nath Goswami, and Rura Ram Vs. Divisional Supdt., N.W. Rly., Lahore, .

(b) Again in the decision reported in *R.P. Kapur Vs. Union of India (UOI) and Another*, , the Supreme Court held that the authority entitled to

appoint a public servant would be entitled to suspend him pending departmental enquiry into his conduct or pending criminal proceeding, which

may eventually result in departmental enquiry against him.

(c) In *Balvantray Ratilal Patel Vs. The State of Maharashtra*, a question arose as to whether a person, who was placed under suspension pending

further orders due to pendency of criminal case, gets automatically restored into the service if the criminal case ended in acquittal. The Supreme

Court held that even after the acquittal, a fresh order revoking the order of suspension should be passed by the department and there is no

automatic revocation of suspension arises.

8. In the case on hand, petitioner, who is an employee of the Municipal Services, was suspended for his involvement in a corruption case and the

said case is admittedly under trial. When a serious charge of demand of bribe is pending against the petitioner and the suspension order having

been passed in exercise of powers conferred under Rule 8(9)(ii) of the Tamil Nadu Municipal General Service (Discipline and Appeal) Rules,

1970, on public interest, no exception could be taken to interfere with the order of suspension passed against the petitioner.

9. The earlier suspension order was revoked on the ground that the petitioner was not made as accused in the criminal case. After investigation,

now the petitioner is implicated in the criminal case and trial is also pending against him. Hence the petitioner is not justified in contending that the

earlier order of suspension having been revoked, second order of suspension cannot be passed. In the light of the statutory provision referred

above and the power having been exercised by the appropriate authority viz., the respondent, the same cannot be held as illegal, particularly when

there is no other specific mala fide is alleged against the respondent.

10. There is no merit in the writ petition and the writ petition is dismissed in limine. However, the dismissal of the writ petition will not preclude the

respondent from considering the request of the petitioner seeking revocation of the suspension order, on its own merits. There will be no order as

to costs. Connected miscellaneous petition is also dismissed.