

(2011) 02 MAD CK 0072

In the Madras High Court

Case No : Writ Petition No. 10174 of 2009 and M.P. No's. 1 and 2 of 2009

S.P. Selvam

APPELLANT

Vs

The District Collector, The District Planning Officer and Tr.
Sivadharmasivam

RESPONDENT

Date of Decision : 15-02-2011

Acts Referred:

Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 17
Tamil Nadu Government Servants Conduct Rules, 1973 — Rule 20(1)

Citation : (2011) 02 MAD CK 0072

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : M. Ravi, for the Appellant; B. Vijay Govt. Advocate for R1 and R2,
for the Respondent

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—The Petitioner challenges the order of suspension, which reads as under:

ORDER:

WHEREAS Thiru S.P. Selvam, Jeep Driver, District Planning Section, Tiruvannamalai has committed the following lapses.

1) There appear to be some gross dereliction of duty along with causing of some intentional lapses. Thereby he has violated Rule 20(1) of Tamil

Nadu Government Servants" Conduct Rules, 1973.

AND WHEREAS an inquiry into grave charges against Thiru S.P. Selvam, Jeep Driver, District Planning Section, Tiruvannamalai is contemplated.

AND WHEREAS in the circumstances of the case, it is necessary in public interest to place the said Thiru S.P. Selvam, Jeep Driver, District

Planning Section, Tiruvannamalai under suspension from service.

NOW, THEREFORE, under Sub-rule (e) of Rule 17 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the said Thiru S.P. Selvam,

Jeep Driver, District Planning Section, Tiruvannamalai is from the date of relief from duty, placed under suspension until further orders.

2) During the period of suspension, the said Thiru S.P. Selvam, Jeep Driver, District Planning Section, Tiruvannamalai will be paid subsistence

allowance and Dearness allowance as admissible under Rule 53(1) of Fundamental Rules.

3) The head quarters of the said Thiru S.P. Selvam, Jeep Driver, District Planning Section, Tiruvannamalai during the period of suspension shall be

Tiruvannamalai and the said Thiru S.P. Selvam, Jeep Driver, District Planning Section, Tiruvannamalai shall not leave the head quarters without

obtaining the prior permission of the authority concerned.

2. The impugned order of suspension is challenged on the ground that order of suspension was issued on account of malafides of Respondent No.

3 District Planning Officer, therefore, cannot be sustained.

3. The contention of learned Counsel for the Petitioner was that allegations of malafides levelled against Respondent having not been controverted,

would be deemed to be admitted, which would render the order of suspension, to be bad in law.

4. This contention, though looks attractive on the face of it, but when seen in depth, has no substance. The order of suspension has been passed by

the Respondent No. 1, and not by Respondent No. 3, and there is no allegation of mala fide against Respondent No. 1. Furthermore, it may be

noticed that the charge sheet has not been issued so far, therefore, it is difficult to connect the order of suspension, with the allegation of malafide

against Respondent No. 3.

5. The contention of learned Counsel for the Petitioner that the impugned order was issued at the instance of Respondent No. 3, as is clear from

the reading of the order, showing that action was taken in pursuance to letter dated 15.04.2009, issued by the Respondent No. 3.

6. This contention again cannot be accepted. It is true that Respondent No. 3, being the immediate officer, reported lapses of Petitioner to

Respondent No. 1 and the impugned order has been passed by Respondent No.

1, in accordance with the rules, as it is within the jurisdiction of the competent authority to place an employee under suspension, if departmental enquiry is contemplated.

7. Learned Counsel for the Petitioner contends that reading of impugned order, shows that allegations made against the Petitioner are totally vague, which lacks material particular and order of suspension on the basis of such allegations cannot be sustained.

8. This contention again is misconceived. The impugned order has not been passed on the basis of any specific charges. The first part of impugned order refers to Rule 20(1) to show that allegations against the Petitioner would fall under Rule 20(1). Further, the impugned order has been passed on the basis of contemplated enquiry and the charge sheet is yet to be issued. It is only after the charge sheet issued, that it will be possible to see, as to whether charges are vague or specific. The right of an employer to suspend an employee when departmental enquiry is contemplated, cannot be doubted or disputed.

9. Learned Counsel for the Petitioner also contended that after stay by this Court, impugned order of suspension stood revoked, and the Petitioner was issued a posting order, and he is working. The writ petition, therefore, deserves to be disposed of in terms of the order passed by this Court in W.P. No. 10553 of 2009 decided on 11.06.2010.

10. This contention again is misconceived. The order of suspension in the case of the Petitioner has not been revoked finally, but has been revoked temporarily to comply with the order passed by this Court. In the impugned order, it is made clear that the order of temporary revocation would be subject to final decision of writ.

11. The Petitioner cannot take any advantage from the order passed by this Court in W.P. No. 10553 of 2009, as it was a consent order, which cannot be held to be precedent.

12. The judgment of this Court in W.P. No. 18389 of 2007 decided on 23.03.2009 in the case of A. Alaganantham v. The District Adi Dravidar and Tribal Welfare Officer also cannot advance the case of the Petitioner, as it is well settled that an employee can be placed under suspension, when enquiry is contemplated.

13. It was finally contended by the learned Counsel for the Petitioner that after issuance of order of suspension, till date, no charge sheet has been issued.

14. This again cannot be the ground to revoke the order of suspension, especially when the Petitioner approached this Court and matter is pending adjudication and the order of suspension was stayed. Though the order of stay of suspension did not bar the Respondents to issue charge sheet, still the Petitioner cannot take any benefit, if the department did not proceed with the matter, due to the pendency of writ.

15. For the reasons stated above, finding no merit in this petition, the writ petition is ordered to be dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

16. The Respondents are directed to issue charge sheet, if any, to the Petitioner within a period of one month of receipt of the certified copy of this order. It is made clear that in case, charge sheet is not issued, within the stipulated period, it would be deemed that there is no material with the Respondents to proceed against the Petitioner. In that event, the order of suspension would automatically lapse.