

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17-6-2013

CORAM

The Hon'ble Mr.Justice N.PAUL VASANTHKUMAR
and

The Hon'ble Mr.Justice P.DEVADASS

W.A(MD)No.1456 of 2011

M.P(MD)No.2 of 2011

A. Mathialagan .. Appellant(Petitioner)

Vs.

The Deputy Commissioner of Police,
Law & Order,
Thanjavur District.

.. Respondent(Respondent)

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 1.11.2010 passed in W.P.(MD)No.11109 of 2009.

PRAYER IN WP.NO.11109 OF 2009

Petition presented under Article 226 of the Constitution of India, issue a writ of certiorarified mandamus calling for the records relating to the impugned order passed by the Respondent herein in his proceedings C.No.K4/29808/2009 D.O.No.931/2009 dated 20/08/2009 and quash the same and consequently direct the Respondent to reinstate the petitioner into service.

For Appellant :: Mr.Veera.Kathiravan
For Respondent :: Mr.A.K.Baskarapandian,
Special Govt. Pleader

J U D G M E N T

(Judgment of the Court was made by N.PAUL VASANTHAKUMAR, J.)

This writ appeal is preferred against the order of the learned single Judge dated 1.11.2010 in W.P.(MD)No.11109 of 2009, wherein the appellant has challenged the order of suspension dated 20.8.2009 issued against him under Rule 3(e)(1)(ii) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955.

2. The appellant, while working as Head Constable in Kabistalam Police Station, Thanjavur District, was placed under suspension from 19.8.2009 on the ground that he is involved in a trap case under section 7 of the Prevention of Corruption Act, 1988 on the allegation that he demanded and accepted a sum of Rs.250/- as bribe from one G.Elavarasan of Narasimmapuram.

3. The suspension order dated 20.8.2009 was challenged before this Court in W.P(MD)No.11109 of 2009. Though initially interim stay was granted, subsequently the writ petition was dismissed by order dated 1.11.2010, against which this writ appeal is preferred. In the writ appeal, no interim stay of suspension order was granted.

4. Heard the learned counsel appearing for the appellant as well as learned Additional Government Pleader for the respondents.

5. The learned counsel appearing for the appellant submitted that only due to the pendency of the criminal case in S.C.No.7 of 2011 on the file of Chief Judicial Magistrate, Thanjavur at Kumbakonam, against the appellant, the appellant is kept under suspension.

6. The learned Additional Government Pleader submitted that the criminal case may be directed to be disposed of within a time frame.

7. The scope of interference in suspension orders passed pending investigation or trial in criminal case was considered in the following decisions:

(a) In W.A.No.1114 of 2007, Judgment dated 05.11.2007 in the case of The Secretary to Government of Tamil Nadu and others V. N.Shanmugasundaram, a Division Bench of Principal Seat, set aside the order of a learned Single Judge quashing the order of suspension and allowed the Writ Appeal and upheld the order of suspension on similar grounds.

(b) Another Division Bench of the Principal Seat in the case of M.Rajammal v. Principal District Judge reported in 2009 (4) MLJ 212 held that Rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules contemplates that a member of a service may be placed under suspension from service, where an enquiry into grave charges against him is contemplated, or is pending or a complaint against him or any criminal offence is under investigation or trial and if such suspension is necessary in the public interest. In the said Judgment, the decisions of the Supreme Court in Hotel Imperial v. Hotel Workers' Union reported in AIR 1959 SC 1342 : 1959 II LLJ 544 and in R.P.Kapur v. Union of India reported in AIR 1964 SC 787 : 1966 II LLJ 164 were followed and upheld the similar order of suspension.

(c) In W.A.No.1818 of 2009, Judgment dated 15.12.2009, yet another Division Bench of the Principal seat in the case of S.Jeevanantham vs. the Government of Tamil Nadu and others considered an identical issue and confirmed the order of a learned Single Judge dismissing the Writ Petition, which was filed challenging the order of suspension. Suspension orders were also upheld in the case of D.Gnanasekaran v. Chief Educational Officer reported in 2007 (1) MLJ 457 and in the case of S.Jeyasingh Rajan v. President, Kalloorani Panchayat reported in 2006 (4) MLJ 59.

(d) The Supreme Court in the case of Allahabad Bank and another vs. Deepak Kumar Bhola reported in 1997 (4) SCC 1, upheld the order of suspension of a bank employee, who was facing a criminal offence

involving moral turpitude. In the said Judgment, the order of the High Court, Allahabad, quashing the order of suspension was set aside and the appeal filed by the bank was allowed.

(e) The Supreme Court in the case of Surain Singh v. State of Punjab reported in 2009 (1) Supreme 458 held that corruption in the administration has hampered the development of the Nation and the persons, who involved in the corruption cases, should be dealt with firmly and the persons indulging in corruption practices cannot be allowed to be in public employment to maintain purity of administration, as such attitude will definitely affect public interest. In Paragraph No.7, it is held thus:-

"7. Day in and day out the gigantic problem of corruption in the public servants is on the increase. Large scale corruption retards the nation-building activities and everyone has to suffer on that count. Corruption is corroding like cancerous lymph nodes, the vital veins of the body politics, social fabric of efficiency in the public service and moralizing the honest officers. The efficiency in public service would improve only when the public servant devotes his sincere attention and does the duty diligently, truthfully, honestly and devotes himself assiduously to the performance of the duties of his post. [See: Swatantar Singh v. State of Haryana 1997 (4) SCC 14 and State of M.P v. Shambhu Dayal Nagar 2002 (1) SCC 1."]

(f) The Supreme Court in the decisions in R.P.Kapoor v. Union of India reported in AIR 1964 SC 7871; Balwantray Ratilal Patel v. State of Maharashtra reported in AIR 1968 SC 800; A.K.K.Nambiar v. Union of India reported in 1969 (3) SCC 864; V.P.Gidroniya v. State of Madhya Pradesh reported in 1970 (1) SCC 362; Ministry of Home Affairs v. Tarak Nath Ghosh reported in 1971 (1) SCC 734; Government of Andhra Pradesh v V.Sivaraman reported in 1990 (3) SCC 57; Uttar Pradesh Rajya Krishi Utpadan Manti Samiti Parishad v. Sanjiv Rajah reported in 1993 (2) LLN 11; State of Orissa v. Bimal Kumar Mohanty reported in 1994 (1) LLN 889; State of Madhya Pradesh v. Ram Singh reported in 2000 (5) SCC 88; State Bank of India v. Rattan Singh reported in 2000 (10) SCC 396; K.C.Sareen v. CBI reported in 2001 (6) SCC 584; Union of India v Rajiv Kumar reported in 2003 (6) SCC 516, categorically held that a person involved in a criminal case, particularly in corruption case, can be placed under suspension till he is exonerated and he can claim only subsistence allowance.

(g) It is well settled principle of law that criminal offence is considered as wrong against State and the Judgment of the Supreme Court reported in (2012) 8 SCC 651 (Shyam Babu v. State of U.P.) can be usefully referred for the said proposition.

(h) Following the above cited decision the First Bench of the Principal Seat by judgment dated 26.4.2013 made in W.A.No.735 of 2013 upheld the order of suspension of a TNEB employee.

8. Thus, it is evident that a person involved in a criminal

case can be suspended and he has no right to demand revocation of suspension till he is exonerated in the criminal case.

9. In the result, the writ appeal is dismissed and the order of the learned single Judge dated 1.11.2010 in W.P(MD)No.11109 of 2009 is confirmed. The learned Chief Judicial Magistrate, Thanjavur at Kumbakonam is directed to expedite the trial in S.C.No.7 of 2011 pending on his file and pass final orders within a period of four months from the date of receipt of copy of this order. If the appellant is acquitted in the criminal case honourably, it is open to the appellant to seek revocation of the order of suspension. No costs. Connected miscellaneous petition is also dismissed. The Registry is directed to mark a copy of this order to the learned Chief Judicial Magistrate, Thanjavur at Kumbakonam.

Sd/-

Deputy Registrar(A/C)

/True Copy/

Assistant Registrar

To

1. The Deputy Commissioner of Police, Law & Order,
Thanjavur District.

2. The Chief Judicial Magistrate, Thanjavur at Kumbakonam.

+1CC TO Mr.Veerakathiravan, Advocate, SR.No.30981

+one cc to Special Government Pleader Sr.No. 31286

W.A. (MD)No.1456 of 2011

17-6-2013

vr

SMA/27/06/2013/5C/4P