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Court : Chennai

Decided On : Mar-31-2010

Judge : K. Chandru, J.

Acts : Code of Civil Procedure (CPC) - Section 79 - Order 1, Rules 9 and 10 - Order 27, Rule 1; ;[Constitution of India](#) - Articles 77, 226 and 300; ;Tamil Nadu Civil Services (Discipline and Appeal) Rules - Rule 17

Appeal No. : W.P. No. 6405 of 2010 and M.P. No. 1 of 2010

Appellant : R. Devi

Respondent : Tmt. S. Lakshmi, Superintendent of Police, Central Range, Directorate of Vigilance and Anti Corrupti

Advocate for Pet/Ap. : M. Radhakrishnan, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

K. Chandru, J.

1. The petitioner is an Assistant working in the office of the Vigilance and Anti Corruption Department. She has come forward to file the present Writ Petition seeking to challenge the order passed by the Superintendent of Police, Central Range, Vigilance and Anti Corruption (for short 'DVAC'), Chennai dated 23.3.2010 in placing her under suspension in terms of Rule 17(e)(i) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Though the Superintendent of Police who passed the order has been made as a party in her individual name but the office which held by her is not shown as a party to the Writ Petition.

2. In the order of suspension, which is impugned in this Writ Petition, it was stated that when the petitioner was working as an Assistant in the Directorate of Vigilance and Anti Corruption, she contacted Commercial Tax Check-post officials at Pethikuppam in order to influence them to release a Lorry bearing Regn. No. MP-07 G4828 loaded with ceramic goods belonging to her relative. In view of the grave allegation, the Department conducted a discreet enquiry. Therefore, in public interest, she was placed under suspension. The order of suspension referred to the Special Report dated 1.2.2010 sent by the Deputy Superintendent of Police, V&AC;, Chennai 35 and also another report from the same officer dated 15.2.2010.

3. It is also seen from the records that the petitioner was transferred by an order dated 22.12.2009 to work under the Tuticorin detachment of DVAC. However, she filed a Writ Petition before this Court in W.P. No. 27479 of 2009 and challenged the order of transfer and on 30.12.2009 she obtained an ex-parte stay order on the transfer.

4. In the present Writ Petition, only three individuals have been shown as party respondents in their individual capacity. Neither the State of Tamil Nadu nor the Head of the DVAC were made as parties in their official capacity. When questioned about the maintainability of the Writ Petition, the learned Counsel for the petitioner stated that it is enough if they are shown in their individual capacity as he had made allegations of mala fides against them. Therefore the Writ Petition is in order. About the State Government represented by the Secretary or any of other authorised officers not being made as parties, he also submitted that it was

unnecessary to make them as parties as it will make duplication of parties.

5. This Court is of the opinion that such a Writ Petition is not maintainable, if filed, only against the officers made as parties in their individual names. In cases involving the Government if any relief is claimed, it is only the State, which alone can represent its interests and if ordered can grant relief to aggrieved government servants. The question of individual officers being sued in the place of the Government may not be permitted. It is only the individuals, who are before this Court. Since, no relief can be given against any individual, such a Writ Petition under Article 226 of the Constitution is not maintainable.

6. Though the provisions of the Code of Civil Procedure are not directly applicable to writ proceedings, but the principle underlying the CPC can apply to the proceedings under Article 226 of the Constitution. In this context, it is necessary to refer to Section 79 of the Civil Procedure Code, it is mandated that where any suit against the Government, the authority to be named as defendant in the case of a suit against the State Government, is the State.

7. A petition under Article 226 will lie only if the respondent is either the State or an instrumentality of the State and not any individuals. Even though the law required that in case of personal mala fides, the officers should be made individually as parties, that is in addition to not in derogation of State being made as a party.

8. In this context even [Constitution of India](#) gave a direction as to how suits can be filed against the Government in Article 300, which reads as follows:

300. Suits and proceedings. - (1) The Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the State and may, subject to any provisions which may be made by an Act of Parliament or of the Legislature of such State enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted.

9. The Supreme Court vide its judgment in Chief Conservator of Forests v. Collector : (2003) 3 SCC 472 in paragraphs 12 and 13 in dealing with the scope of Section 79 of CPC held as follows:

12. It needs to be noted here that a legal entity - a natural person or an artificial person - can sue or be sued in his/its own name in a court of law or a tribunal. It is not merely a procedural formality but is essentially a matter of substance and considerable significance. That is why there are special provisions in the Constitution and the Code of Civil Procedure as to how the Central Government or the Government of a State may sue or be sued. So also there are special provisions in regard to other juristic persons specifying as to how they can sue or be sued. In giving description of a party it will be useful to remember the distinction between misdescription or misnomer of a party and misjoinder or non-joinder of a party suing or being sued. In the case of misdescription of a party, the court may at any stage of the suit/proceedings permit correction of the cause-title so that the party before the court is correctly described; however, a misdescription of a party will not be fatal to the maintainability of the suit/proceedings. Though Rule 9 of Order 1 CPC mandates that no suit shall be defeated by reason of the misjoinder or non-joinder of parties, it is important to notice that the proviso thereto clarifies that nothing in that Rule shall apply to non-joinder of a necessary party. Therefore, care must be taken to ensure that the necessary party is before the court, be it a plaintiff or a defendant, otherwise, the suit or the proceedings will have to fail. Rule 10 of Order 1 CPC provides remedy when a suit is filed in the name of the wrong plaintiff and empowers the court to strike out any party improperly joined or to implead a necessary party at any stage of the proceedings.

13. The question that needs to be addressed is, whether the Chief Conservator of Forests as the appellant-petitioner in the writ petition/appeal is a mere misdescription for the State of Andhra Pradesh or whether it is a case of non-joinder of the State of Andhra Pradesh - a necessary party. In a lis dealing with the property of a State, there can be no dispute that the State is the necessary party and should be impleaded as provided in Article 300 of the Constitution and Section 79 CPC viz. in the name of the State/Union of India, as the case may be, lest the suit will be bad for non-joinder of the necessary party. Every post in the hierarchy

of the posts in the government set-up, from the lowest to the highest, is not recognised as a juristic person nor can the State be treated as represented when a suit/proceeding is in the name of such offices/posts or the officers holding such posts, therefore, in the absence of the State in the array of parties, the cause will be defeated for non-joinder of a necessary party to the lis, in any court or tribunal. We make it clear that this principle does not apply to a case where an official of the Government acts as a statutory authority and sues or pursues further proceeding in its name because in that event, it will not be a suit or proceeding for or on behalf of a State/Union of India but by the statutory authority as such.

10. The Supreme Court even earlier in *State of Kerala v. G.M., Southern Rly.* reported in : (1976) 4 SCC 265 held that if a Suit is not filed making State as a party, the same is not maintainable. In paragraph 10, it was observed as follows:

10. The Bombay High Court in two cases, *Sukhanand Shamlal v. Oudh & Rohilkhand Railway* and *Hirachand Succaram Gandhi v. G.I.P. Railway Co.*, has held that a suit against a State railway should be brought against the Government. Similar view was expressed by Patna High Court in *Shaikh Elahi Baksh v. E.I. Railway Administration* and a Full Bench of Assam High Court in the case of *Chandra Mohan Saha v. Union of India*. The observations of a Division Bench of the Madras High Court in the case of *P.R. Narayanaswami Iyer v. Union of India* also lend support to the above view. It may be stated that the reasoning employed in the cases mentioned above was different and not identical, but whatever might be the nature of that reasoning the fact remains that the learned Judges deciding those cases were all at one on the point that such a suit should be brought against the Government, which means in the present case the Union of India. Any contrary view would be against the well-established practice and procedure of law, as evidenced by various decisions of the High Courts, and as such, must be rejected.

11. Once again in *Secy., Ministry of Works & Housing Govt. of India v. Mohinder Singh Jagdev* : (1996) 6 SCC 229, the Supreme Court dealt with the scope of Section 79 and Article 300 and in paragraph 5 observed as follows:

5. Having given due consideration to the contentions of the counsel and having gone through the facts and circumstances of the case, first question that arises is

whether the appeal has been competently laid? It is not disputed and cannot be disputed that the Union of India can lay the suit and be sued under Article 300 of the Constitution in relation to its affairs. Under Section 79 read with Order 27 Rule 1 Code of Civil Procedure, in a suit, by or against the Central Government, the authority to be named as plaintiff/defendant shall be the Union of India. The Secretary, Ministry of Works and Housing is a limb of the Union of India transacting its functions on behalf of the Government under the Department concerned as per the business rules framed under Article 77 of the Constitution. Therefore, the appeal came to be filed by the Secretary, though wrongly described. The nomenclature given in the cause title as Secretary instead of the Union of India, is not conclusive. The meat of the matter is that the Secretary representing the Government of India had filed the appeal obviously on behalf of the Union of India.

12. Though in the affidavit filed in support of the Writ Petition, certain allegations are made against certain officers, who are named in their individual capacity as respondents, at the stage of suspension order, this Court is not inclined to go into the details of the merits or demerits of those allegations. A suspension order need not contain elaborate reasons. If the power is exercised by a competent authority for ordering a suspension, which is only on pending further enquiry, no interference can be called for. A reading of the impugned order showed a clear case of misconduct against the petitioner. At the stage of scrutinising a suspension order, it is not necessary to take into account the defence pleaded by a government servant. If done, it may amount to conducting a preliminary enquiry that too before the government could frame charges against the employee. This Court is not inclined to interfere with the impugned order both on grounds of maintainability and on merits.

13. Hence, the Writ Petition stands dismissed. No costs. The connected Miscellaneous Petition stands closed.

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