



W.A.(MD) No.1607 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

**W.A.(MD) No.1607 of 2023
and
C.M.P.(MD)No.12488 of 2023**

The President,
Thiruchuli I Grade Panchayat,
Thiruchuli,
Virudhunagar District.
Rep. By its President,
Tmt.Panchavarnamkumar

... Appellant/3rd Respondent

-vs-

1.M.Bose

... 1st Respondent/Writ Petitioner

2.The District Collector/Inspector of Panchayats,
Virudhunagar District, Virudhunagar.

3.The Block Development Officer,
(Village Panchayat),
Thiruchuli Panchayat Union at M.Reddiyapatti,
Virudhunagar District.

... 2nd & 3rd Respondents/1st and 2nd Respondents

PRAYER: Writ Appeal has been filed under Clause 15 of Letters Patent to set aside the order, dated 30.08.2023 made in W.M.P.(MD)No.17508 of 2023 in W.P.(MD)No.21107 of 2023 on the file of this Court.



W.A.(MD) No.1607 of 2023

WEB COPY

For Appellant : Mr.K.Seemaraj
For R1 : Mr.R.Anand
For R2 & R3 : Mr.J.K.Jeyaseelan
Government Advocate

JUDGMENT

[Judgment of the Court was made by D.BHARATHA CHAKRAVARTHY, J.]

A. The Appeal & The Impugned Order :

The President, Thiruchuli I-Grade Panchayat, is before us aggrieved by the interim order passed by the learned Single Judge in W.M.P.(MD)No.17508 of 2023 in W.P.(MD)No.21107 of 2023 dated 30.08.2023. In the writ petition, the first respondent herein had challenged a charge memo dated 13.03.2023 and the suspension order dated 27.03.2023 and a consequential order dated 19.05.2023.

1.1 It is the case of the writ petitioner that the charge memo as well as the suspension order are without jurisdiction as the President of the Panchayat has no jurisdiction to issue the same. This apart it is the case of the writ petitioner that the exercise of power is made vindictively on account of



W.A.(MD) No.1607 of 2023

personal *malafide*. It is the further case of the writ petitioner that earlier upon such complaint, the Block Development Officer has conducted an internal enquiry and submitted a report before the Collector. Therefore, according to the writ petitioner, the charge memorandum and the suspension order having been issued without jurisdiction are not sustainable.

B. The order in the writ petition:

2. The learned Single Judge while considering the case of the parties, held that the question as to who will be the appropriate authority to pass an order of suspension has to be decided and that the matter is pending before the Hon'ble Division Bench of this Court and therefore pending the batch to be decided before the Hon'ble Division Bench of this Court had granted an order of interim stay. Aggrieved by the same, the present writ appeal is filed before this Court.

C. The Submissions:

3. *Mr.K.Seemaraj*, the learned counsel appearing on behalf of the President would submit that even before the Hon'ble Division Bench of this



W.A.(MD) No.1607 of 2023

WEB COPY

Court, the question was whether the President of the Panchayat Union or the higher authorities namely, the Block Development officer or the Collector will have power to suspend the writ petitioner who is working as a Village Secretary in the event of contemplation of disciplinary enquiry. However, in this matter originally orders were passed imposing a punishment of dismissal from service and by an order dated 19.05.2023, the said order of punishment has been set aside and the matter was remanded back to the Panchayat President by the District Collector. While so remanding, it is the District Collector who has ordered that the first respondent/writ petitioner shall continue to be in suspension pending the further proceedings. It is only in compliance of the same, the consequential order of suspension was issued by the appellant.

4. Per contra Mr.R.Anand, the learned counsel appearing on behalf of the first respondent would submit that originally the Government has passed G.O.Ms.No.175 dated 05.12.2006 by which power was granted to the President of the Village Panchayat to impose major punishments. However, the said Government order was superseded vide G.O.Ms.No.72 dated 09.07.2013 by which, the power of imposing the major penalties has been vested with the Personal Assistant (Development) to the Collector. Further, it is also submitted



W.A.(MD) No.1607 of 2023

WEB COPY

by the learned counsel that the said G.O.Ms.No.72 was also under challenge before this Court. In any event, the learned counsel submits that the said G.O.Ms.No.72 and the other Government orders in this regard are all now superseded as the Government has now framed Tamil Nadu Panchayat Secretaries (Conditions of Service) Rules, 2013 in exercise of its powers conferred under Section 102(1) of the Tamil Nadu Panchayats Act 1994 vide G.O.Ms.No.113 dated 13.09.2023. Therefore, he would submit that when the impugned orders of charge memo as well as the suspension suffers from want of authority as well as *malafide*, the interim order granted by the learned Single Judge need not be interfered with.

D. The Findings:

5. We have considered the elaborate submissions made by the learned counsel on either side and perused the material records of the case.

5.1 As far as the impugned charge memorandum is concerned, it is issued by the President of the Village Panchayat. Originally, it can be seen that vide G.O.Ms.No.175 dated 05.12.2006, the power to impose major punishment on the Panchayat Secretaries were vested with the President. It is



W.A.(MD) No.1607 of 2023

useful to extract Clause (v) of the G.O.Ms.No.175, dated 05.12.2006 which reads as follows:

“ப.கிராம ஊராட்சி நிர்வாகத்தில், ஊராட்சி உதவியாளர் துறையின் விதிமுறைகளை மீறல், ஒழுங்கீனம், கவனக் குறைவு தகுதியின்மை, கடமை தவறுதல், தவறான நடவடிக்கைகள் போன்றவற்றில் ஈடுபட்டால் அந்த ஊராட்சி உதவியாளரை கண்டனம், அபராதம், ஊதிய உயர்வு அல்லது பணி உயர்வை நிறுத்தி வைத்தல் அல்லது மூப்புப் பட்டியலில் தரம் இறங்குதல், அல்லது கீழ்நிலைப்பணியிடத்தில் வைத்தல் அல்லது காலமுறை ஊதியத்தில் கீழ்நிலையில் வைத்தல், தற்காலிக பணிநீக்கம் செய்தல், பணியிலிருந்து நீக்குதல் அல்லது பணிவிலக்கல் செய்யலாம். இருப்பினும் அதற்கு முன்பாக அந்த ஊராட்சி உதவியாளரை நேரடி விசாரணைக்கு அழைப்பது உட்பட அவர் தனது விளக்கத்தை அளிக்க அவருக்கு போதிய வாய்ப்பு அளிக்கப்பட்டிருக்கு வேண்டும்.”

5.2 Thereafter, vide G.O.Ms.No.72, the power to impose major punishments was vested with the Personal Assistant (Development) to the Collector. It is useful to extract Rule 15, wherein, it is also mentioned that the Block Development Officer as the appropriate authorities to initiate disciplinary action.

15. Authority Competent to impose the penalties:-

The authority competent to impose any of the above penalties shall be the Personal Assistant (Development) to the Collector. However, the Block Development Officer (Village Panchayats) may initiate disciplinary action on the Village Panchayat Secretary and remit the papers to Personal Assistant (Development) to the Collector for passing final orders.”



W.A.(MD) No.1607 of 2023

WEB COPY

5.3. Now, both the above Orders are superseded and by G.O.Ms.No.113 dated 13.09.2023 the Tamil Nadu Village Panchayat Secretaries (Condition of Service) Rules 2013 is framed and it is useful to extract Rules 16, 18 and 20 of the said Rules which reads as follows:

“16. Procedure to be followed before imposing penalty:-

In every case where a person holding the post is found guilty of any negligence, indiscipline fraud, breach of Rules or Orders etc., in consequence of which any pecuniary loss may or may not have been caused to the Village Panchayat/ Government and it is proposed to impose any of the penalties specified in rule 14, the authority shall give him/her a reasonable opportunity of making any representation that he/she may desire to make to defend himself/herself, and he/she may desire to make to defend himself/herself, and he/she shall take such representation, if any, into consideration before passing any order imposing such penalty.

18. Appeal:-

(1) An appeal shall lie with the Collector within thirty days from the date of receipt of the order, imposing the penalty by the appointing authority.

(2) Second appeal shall lie with the Commissioner/Director of Rural Development and Panchayat Raj within sixty days from the date of receipt of the orders of the Collector.

(3) While passing an order in appeal, the Appellate Authority shall consider-



W.A.(MD) No.1607 of 2023

WEB COPY

(i) Whether the facts on which the order was based have been established:

(ii) Whether the facts established afford sufficient ground for taking action, and

(iii) Whether the penalty is, adequate or inadequate or excessive and pass such orders, as it may deem fit.

20. Savings:-

Nothing contained in these rules shall adversely affect the persons holding the post on the date of coming into force of these Rules.”

5.4 Similarly as far as the suspension is concerned, as per the 2013 Rules, the appointing authority is vested with the power to suspend the Panchayat Secretary and Rule 17 of the 2013 Rules reads as follows:

“17. Suspension:-

(1) The appointing authority may place a person holding the post under suspension, if it is necessary in public interest where:-

(i) an inquiry into grave charges against him/her is contemplated or is pending: or

(ii) a complaint against him/her of any criminal offence is under investigation or trial.

(2) A person holding the post who is detained in custody whether on a criminal charge or otherwise, for a period longer than 48 hours shall be deemed to have been suspended under this rule.

(3) Review on extension of suspension of the persons holding the



W.A.(MD) No.1607 of 2023

WEB COPY

post shall be done by the Personal Assistant (Development) to Collector for every quarter.

(4) During the period of suspension, a person holding the post is eligible for subsistence allowance of 50% of the last pay and allowances drawn.”

5.5 The said Rule has been superseded and at present the Rule 22 of the 2023 Rules read as follows:

“22. Suspension:-

(1) The disciplinary authority may place a person holding the post, under suspension, if it is necessary in public interest where,-

(i) an inquiry 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.

(2) A person holding the post who is detained in custody whether on a criminal charge or otherwise, for a period longer than 48 hours shall be deemed to have been suspended under this rule.

(3) The disciplinary authority who places the person holding the post under suspension shall examine whether to continue the suspension beyond six months or not and pass appropriate orders.

(4) An order of suspension made or deemed to have been made under this rule may at any time be revoked by the disciplinary authority.”



W.A.(MD) No.1607 of 2023

WEB COPY

5.6 Therefore, it can be seen that under the erstwhile Rules, the Block Development Authority was the authority to initiate disciplinary proceedings and the Personal Assistant to the Collector was the authority to pass orders of suspension. Now in the present Rules, again the Block Development Authority is the authority to initiate disciplinary proceedings and he is also the authority to place the person under suspension.

5.7 It is in this background, even though originally the proceedings were initiated and suspension was made by the Village President himself, ultimately the proceedings ended in punishment but however an appeal, the District Collector had passed an order setting aside the order of punishment of dismissal from service dated 15.05.2023 and while remanding the matter back as ordered that fresh opportunity should be given on the charges issued against the first respondent and that he be placed under suspension pending the enquiry.

5.8 Therefore, when the fresh proceedings have virtually been ordered by the District Collector himself and that the suspension have also been ordered by him, when the authority higher than the competent authority passed an order of suspension, the same cannot be held to be without



W.A.(MD) No.1607 of 2023

WEB COURT jurisdiction.

5.9 It is true that the Charge Memorandum is originally issued by the President. Prior to the coming to force of the current Rules of 2023, admittedly the position was nebulous as there was no clarity as to whether it was the President or the Block Development Officer who was the competent authority. When there is no rule or when the rule position is not clear, it is always held that initiation of disciplinary proceedings by an authority lower than the disciplinary authority by itself will not vitiate the disciplinary proceedings. Over and above the same, now the District Collector himself as the Appellate Authority has dealt with the charges and remanded back to the original authority for fresh enquiry by giving one more opportunity. Therefore we hold that the Charge Memorandum shall be deemed to be issued by the competent authority. The further allegation of *malafide* and vindictiveness will also stand redressed by our following order since we propose the entrust the continuation of the enquiry to the appropriate authority namely Block Development Authority and the same is not going to be continued by the President. After all the gravamen of the charges is that the Village Secretary never reported for work and acted in a manner not to recognise the elected office bearers, while it is the contention of the delinquent that inspite of he reporting for work the



W.A.(MD) No.1607 of 2023

charges are issued on malafide motives. The truth or otherwise of the allegations have to be found out and there is no point in protracting the issue on technical issues.

E. The Result:

6. Therefore, we dispose of the appeal with the following directions :

(i) We hold that the charge memorandum dated 13.03.2023 shall be deemed to be initiated by the competent authority;

(ii) The Block Development Officer namely, the third respondent herein at this stage may apply his mind on the charge memorandum and the explanation submitted by the first respondent and from that stage proceed further in accordance with Rule 20 of the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules 2013. It would be open for him to drop the charges accepting the explanation or to appoint an enquiry officer to continue the disciplinary enquiry in accordance with law;

(iii) Pending the disciplinary enquiry, as ordered by the second respondent, namely, the District Collector, Virudhunagar District, the first respondent shall remain under suspension;

(iv) The disciplinary authority shall complete the enquiry and pass final orders within a period of three months from the date of receipt of a copy of this



W.A.(MD) No.1607 of 2023

WEB COPY

order;

(v) If for any reason, the disciplinary authority is unable to complete the disciplinary enquiry within the period as aforementioned, the order of suspension shall be reviewed and revoked or extended as the case may be as per the opinion of the disciplinary authority in accordance with law;

(vi) Needless to say that in the meanwhile, the first respondent will be entitled for subsistence allowance as may be permissible under the Rules and the same shall be forthwith paid to him;

7. It may be seen that our above decision and directions, finally decide the very *lis* in W.P.(MD)No.21107 of 2023 itself and as such the writ petition itself shall stand disposed of on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [D.B.C., J.]

26.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
sjj



WEB COPY



W.A.(MD) No.1607 of 2023

S.S.SUNDAR, J.
and
D.BHARATHA CHAKRAVARTHY, J.

sjj

To

- 1.The District Collector/Inspector of Panchayats,
Virudhunagar District, Virudhunagar.
- 2.The Block Development Officer,
(Village Panchayat),
Thiruchuli Panchayat Union at M.Reddiyapatti,
Virudhunagar District.

W.A.(MD) No.1607 of 2023
and
C.M.P.(MD)No.12488 of 2023

26.09.2023