

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25-09-2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

WRIT PETITION No.28585 of 2015

and

M.P.No.1 of 2015

K.Nagarajan

.. Petitioner

vs

- 1.The District Collector  
Coimbatore District  
Coimbatore
- 2.The Block Development Officer  
(Village Panchayats)  
Kinathukadavu  
Coimbatore District
- 3.President  
Chettiyakkapalayam Panchayat  
Negamam via  
Kinathukadavu Taluk  
Coimbatore District

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records relating to the termination order of the petitioner made in Lr.No.Nil dated 14.7.2015, on the file of the third respondent, and quashing the same.

For Petitioner : Mr.V.Ravi

For Respondents: Mr.S.Gunasekaran  
Government Advocate for R1

Mr.N.Srinivasan  
Additional Government Pleader  
for RR2 & 3

ORDER

By consent, the writ petition itself is taken up for final disposal.

2.The petitioner claims that he was appointed as a Waterman in Chettiyakkapalayam Panchayat, Kinathukadavu Taluk, Coimbatore District, and working in that capacity, for over 20 years, and his duty is to supply water through four motor line points within the Panchayat and he has performed the same honestly and sincerely without any complaint whatsoever, to the satisfaction of his superior officers and to his shock and surprise, he was issued with the impugned order of termination dated 14.7.2015, by the third

respondent and challenging the legality of the same, came forward to file this writ petition.

3.Mr.V.Ravi, learned Counsel appearing for the petitioner, would submit that prior to the impugned order of termination, the petitioner was issued with a notice on 18.6.2015, and it was received by him only on 13.7.2015, and therefore, from that date, he is having another seven days' time to offer his explanation and even without waiting for the same, on the very next day i.e., 14.7.2015, the order of termination came to be passed.

4.It is the further submission of the learned Counsel appearing for the petitioner, that as per Section 106 of the Tamilnadu Panchayats Act, 1994, the power to punish the Officers and Servants vests with the Executive Authority viz. the Commissioner/Secretary, and in the case on hand, the President viz. the third respondent, has passed the impugned order and on that ground also, the impugned order warrants interference and prays for setting aside the same.

5.Per contra, Mr.S.Gunasekaran, learned Government Advocate, who accepted notice on behalf of the first respondent, and Mr.N.Srinivasan, learned Additional Government Pleader, who accepted notice on behalf of the respondents 2 and 3, invited the attention of this Court to the typed-set of documents and would submit that number of Ward Members/Councillors repeatedly made complaints against the petitioner as to his unsatisfactory performance, and after affording all reasonable opportunity to him, he was rightly terminated from service and pray for dismissal of the writ petition.

6.This Court has carefully considered the rival submissions and also perused the materials placed before it.

7.The first and foremost ground raised by the learned Counsel appearing for the petitioner, is that as per Section 106 of the Tamilnadu Panchayats Act, 1994, the Executive Authority viz. the Commissioner/Secretary, alone has power to terminate the petitioner and the said power does not vest with the third respondent. The very same issue came up for consideration in the judgment reported in (2007) 6 MLJ 846 (S.BASKARAN AND ANOTHER V. THE INSPECTOR OF PANCHAYAT/DISTRICT COLLECTOR AND OTHERS), wherein, this Court has held that Section 84(b) of the Tamil Nadu Panchayats Act, 1994, read with G.O.Ms.No.230, Rural Development Department, dated 15.10.1996, in respect of part time Clerks and other Panchayat Servants, coming under the provisions of the Act, the President is having the power to appoint and remove them. In the light of the said judgment, this Court is of the view that the third respondent is vested with the power to remove the petitioner from service.

8.Insofar as the other ground raised by the learned Counsel appearing for the petitioner, that since impugned order of termination is a stigmatic one, the petitioner should have been afforded with an opportunity before passing such an order, this Court finds considerable force in it. A perusal of the impugned order of removal from service would indicate that non-attending of the duties came to the knowledge of the authority and therefore, the petitioner

was issued with a short cause notice on 18.6.2015, and admittedly, it was served on him only on 13.7.2015, and on the very next day, the order of termination came to be passed. In all fairness, the third respondent ought to have waited for seven more days and after affording the petitioner with a reasonable opportunity, should have passed the order of removal; but, he has failed to do so.

9. In the result, the writ petition is partly allowed and the impugned order dated 14.7.2015, passed by the third respondent, is set aside and the matter is once again remanded to the third respondent, who shall take into consideration the explanation submitted by the petitioner dated 27.7.2015, and after affording with him an opportunity of personal hearing and after due compliance of principles of natural justice, shall pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner. In the light of the fact that the order of termination of the petitioner has been set aside by this Court, the petitioner shall be reinstated in service forthwith. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

nsv

To:

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2. The Block Development Officer  
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Kinathukadavu  
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3. President  
Chettiyakkapalayam Panchayat  
Negamam via  
Kinathukadavu Taluk  
Coimbatore District

+ 1 cc to M/s. V. Ravi, Advocate Sr.52353  
+ 1 cc to M/s. N. Srinivasan, Advocate Sr.52381  
+ 1 cc to Government Pleader Sr.52438

W.P.No.28585 of 2015

AD(CO)  
Eu 30.09.15