

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.02.2015

CORAM:

The Honourable Mr.Justice K.K.SASIDHARAN

W.P.No.21668 of 2009

R. Sivakumar

...Petitioner

- Vs. -

1. The Director of Rural Development
Panagal Building
Saidapet
Chennai-600 015.
2. The District Collector
Namakkal District
Namakkal.
3. The Block Development Officer
Namakkal Panchayat Union
Namakkal.
4. Keerampur Village Panchayat
Rep.by its President
Keerampur
Namakkal District.

...Respondents

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the District Collector, Namakkal District, Namakkal, the second respondent herein made in Na.Ka.No.6304/2009/Thee.1 dated 20.4.2009 (ii) the resolution of the Keerampur Village Panchayat, the fourth respondent herein dated 19.11.2001 made in No.1 communication by the proceedings dated 29.11.2001 by the fourth respondent, in so far as the dismissal of the petitioner is concerned, quash the same and pass order to the effect that the petitioner is deemed to be in service as Panchayat Clerk in Keerampur Village Panchayat with all consequential service and monetary benefits and disburse all the arrears within a short date that may be fixed by this Court.

For Petitioner : Mr.K. Rajkumar

For Respondents : Mr.M.S.Ramesh
Additional Government Pleader
for RR1 and 2
Mr. S. Anitha for RR3 and 4

ORDER

The petitioner is aggrieved by the decision taken by the fourth respondent to terminate him from service and the related order passed by the District Collector pursuant to the resolution passed by the local body.

The facts:

2. The petitioner was appointed as Panchayat Clerk on 6 January 1997. The fourth respondent passed a resolution appointing him to the post of Panchayat Clerk. Thereafter, the petitioner was suspended from service on 17 August 2001 alleging acts of misappropriation. The petitioner remitted the amount resulting in re-instating him in service on 19 September 2001. Thereafter local body election was conducted and a new President assumed office. The President instructed the office not to permit the petitioner to function as Panchayat Clerk. The Council passed a resolution to remove the petitioner from service on account of misappropriation and his failure to attend office. The resolution was forwarded to the petitioner by the Block Development Officer, Namakkal.

3. It is the grievance of the petitioner that termination order was passed behind his back without conducting enquiry. The petitioner filed a writ petition before this Court in W.P.No.2830 of 2009 for a direction to the District Collector to consider his representation submitted for the purpose of recalling the resolution passed by the local body. The District Collector pursuant to the order dated 16 February 2009 in W.P.No.2830 of 2009 passed an order rejecting the request made by the petitioner for re-instatement on the ground, that he failed to join duty in spite of revoking the order of suspension. Feeling aggrieved by the resolution passed by the local body and the order passed by the District Collector dated 20 April 2009, the petitioner is before this Court.

4. According to the petitioner the order of suspension was revoked and he was permitted to join duty. While he was working as Panchayat Clerk, the elected body took charge and thereafter he was not permitted to work. Therefore, it cannot be said that he failed to join duty even after revoking the order of suspension. The petitioner has taken up a specific contention that he was not permitted to function as Panchayat Clerk by the newly elected Panchayat.

5. The fourth respondent in his counter affidavit justified the impugned resolution and the resultant order passed by the District Collector. According to the fourth respondent, the petitioner was initially suspended and thereafter dismissed from service on 7 September 2001 and as such he was not permitted to attend office work.

Submissions:

6. The learned counsel for the petitioner contended that the fourth respondent very clearly admitted that the petitioner was not permitted to discharge his duty as Panchayat Clerk. In view of the counter affidavit filed by the fourth respondent, the District Collector was not correct in his contention that the petitioner failed to join duty even after revoking the order of suspension. The learned counsel further contended that failure on the part of the Panchayat to conduct enquiry before terminating the petitioner from service is liable to be set aside on the ground of violation of the principles of natural justice.

7. The learned Additional Government Pleader supported the impugned resolution and the order passed by the District Collector rejecting the claim made by the petitioner.

Analysis:

8. The petitioner was appointed as Panchayat Clerk in Keerampur Village Panchayat, pursuant to the resolution passed by the local body. The petitioner joined duty on 6 January 1997. It is the case of the petitioner that the President of the Panchayat misappropriated a sum of Rs.7,300/- from the Panchayat Fund and he was made a scapegoat. The petitioner was placed under suspension on 17 August 2001 alleging acts of misappropriation. The petitioner remitted a sum of Rs.7,300/- and thereafter suspension was revoked. The petitioner joined duty on 19 September 2001. It is the case of the petitioner that he was not permitted to function as Panchayat Clerk by the newly elected President. The contention taken by the petitioner is supported by the counter affidavit filed by the fourth respondent. The fourth respondent in paragraph 7 of the counter affidavit very clearly stated that the President did not allow the petitioner to attend office work. The second respondent was therefore not correct in his contention that the petitioner failed to join duty in spite of revoking the order of suspension.

9. The primary ground taken by the respondents to terminate the services of the petitioner goes, on account of the counter affidavit filed by the fourth respondent.

10. The petitioner worked as Panchayat Clerk for years together. In case the respondents were of the view that the

petitioner failed to attend office, action should have taken to initiate appropriate disciplinary proceedings against the petitioner on account of unauthorised absence. The learned Additional Government Pleader very clearly submitted that no such enquiry was conducted before dismissing the petitioner from service.

11. The resolution passed by the Panchayat would result in serious civil consequences to the petitioner. Being an employee of the Panchayat, the petitioner has got every right to function till the age of superannuation. In case the respondents are of the view that the petitioner indulged in serious misconduct, they should have conducted enquiry by adhering to the principles of natural justice. However the respondents have not adopted a transparent procedure before terminating the petitioner from service.

12. The learned counsel for the petitioner placed reliance on the judgment of this Court dated 22 December 2004 in W.P.No.30847 of 2004 in support of his contention that in similar circumstances this Court quashed the order of dismissal and directed the management to proceed from the stage when they received reply from the delinquent.

13. In the subject case, even a show cause notice was not issued to the petitioner. It is an admitted case of the parties that straight away the impugned resolution was passed by the fourth respondent dismissing the petitioner from service. The second respondent without ascertaining as to whether appropriate enquiry was conducted by the fourth respondent rejected the representation given by the petitioner. I am therefore of the view that the petitioner is entitled to succeed.

Disposition:

14. In the result, the resolution passed by the panchayat dismissing the petitioner from service and the order passed by the District Collector rejecting the request made by the petitioner are quashed. The fourth respondent is directed to reinstate the petitioner into service forthwith. The petitioner is not entitled for payment of back wages on account of the principle "no work no pay".

15. The writ petition is allowed as indicated above. No costs.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

Tr/

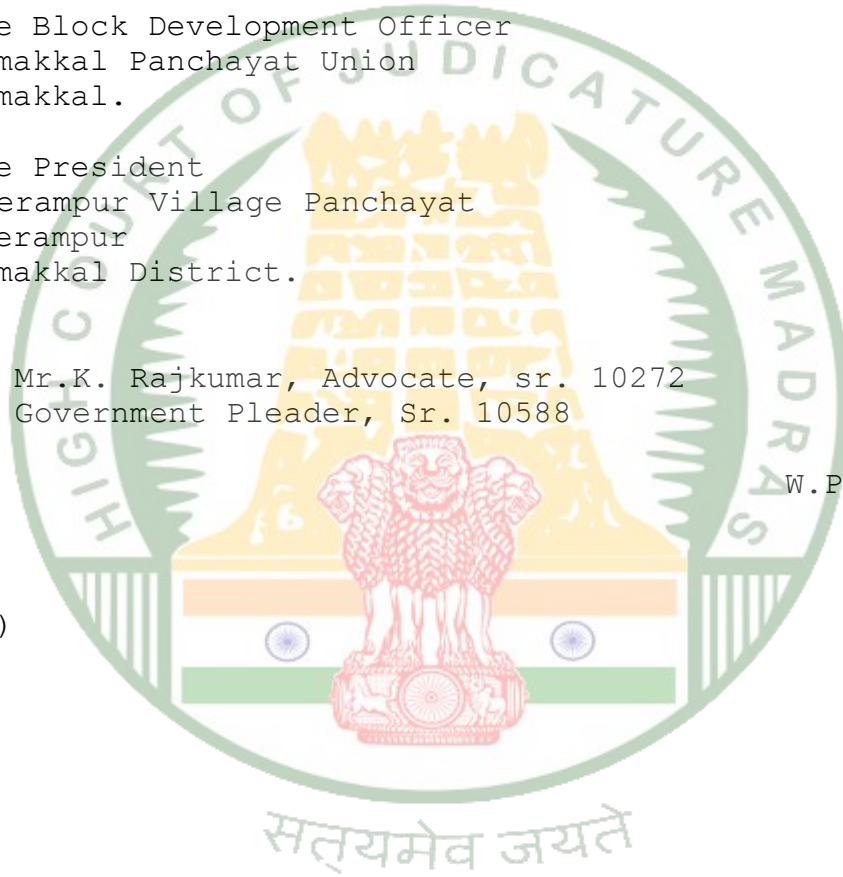
To

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4. The President
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Namakkal District.

1 cc to Mr.K. Rajkumar, Advocate, sr. 10272
1 cc to Government Pleader, Sr. 10588

W.P.No.21668 of 2009

SCD (CO)
kk 10/3



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