



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.A(MD) .No.1292 of 2013
and
M.P(MD)No.1 of 2013

Arjunan
S/o.Muthiah,
Panchayat Secretary (Under Suspension),
Vaiyoor Village Panchayat,
T.Kallupatti Panchayat Union,
Madurai District.

.. Petitioner

Vs.

1.The Inspector of Panchayat &
The District Collector,
Madurai District,
Madurai.

2.The Assistant Director (Panchayats),
Madurai District,
Madurai.

3.The Assistant Director (Audit),
Madurai District,
Madurai.

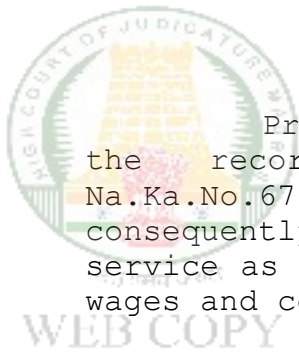
4.The Block Development Officer (Village Panchayats),
T.Kallupatti Panchayat Union,
Madurai District.

5.The President,
Kenjampatti Village Panchayat,
T.Kallupatti Panchayat Union,
Madurai District.

6.The President,
Vaiyoor Village Panchayat,
T.Kallupatti Panchayat Union,
Madurai District.

.. Respondents

Writ Appeal is filed Under Clause 15 of Letter Patent Act, to
set aside the order, dated 11.11.2013 passed in W.P.(MD)No.18128 of 2013
by this Hon'ble Court and allow this Writ Appeal.



Praying to issue a Writ of Certiorarified Mandamus, to call for the records from the 1st respondent in his proceedings Na.Ka.No.67097/2012/c.t.6, dated 4.10.2012 and to quash the same and consequently to direct the respondents to reinstate the petitioner into service as village panchayat secretary at 6th respondent office with back wages and continuity of service.

For Appellant : Mr.N.Sathish Babu
For R1 to R4 : Mr.A.K.Baskara Pandian
Spl. Govt. Pleader
For R5 : Mr.R.Karthikeyan
For R6 : Mr.C.Selvaraj

O R D E R

[Order of the Court was made by V.M.VELUMANI, J]

The appellant herein filed W.P(MD)No.18128 of 2013, to quash the proceedings in Na.Ka.No.67097/2012/C.T.6, dated 04.10.2012, passed by the first respondent. The said writ petition was dismissed on 11.11.2013. Against the said order, the petitioner has filed the present writ appeal.

2.The appellant was working as Panchayat Secretary of Kenjampatti Village Panchayat, T.Kallupatti Panchayat Union. He was suspended by the first respondent, District Collector, on the ground that he colluded with the Panchayat President and misappropriated a sum of Rs.3,85,000/-. The appellant filed the writ petition challenging the order of suspension on the ground that the Panchayat President alone is the Competent Authority to take action against him. The appellant has a right of appeal to the Block Development Officer, the fourth respondent and further appeal to the first respondent, the District Collector.

3.A learned Single Judge of this Court dismissed the writ petition on the ground that the Panchayat President himself is involved in the misappropriation and in the circumstances, the order passed by the first respondent is valid.

4.Against the said order of dismissal of the writ petition, dated 11.11.2013, the appellant has come out with the present writ appeal.

5.The learned counsel for the appellant contended that by impugned order of suspension passed by the District Collector the appellant has lost his right of appeal to the fourth respondent, the Block Development Officer and further appeal to the District Collector, the first respondent. Therefore, he prayed for allowing the writ appeal.

6.The learned counsel for the respondents submitted that the order of suspension is only pending enquiry and no final order has been passed by the respondents. He also relied on the judgment of a Division Bench of this Court in W.A(MD)No.659 of 2011, dated 20.07.2011 (A.Solaimalai vs. The District Collector-cum-Inspector of Panchayats, Collectorate, Dindigul and others) the relevant portions are read as follows:-

"2.The contention raised by the appellant, as submitted by the learned counsel for the appellant is that, as per the provisions of Section 83 of the Tamil Nadu Panchayats Act 1994, the executive authority is the President of the Village Panchayat, who has got control over the service conditions of



the writ petitioner/appellant as per Section 84(b) of the Act. Since the writ petitioner/appellant happens to be the Panchayat Clerk, the impugned order passed by the second respondent Block Development Officer suspending the writ petitioner/appellant pending enquiry, is not sustainable.

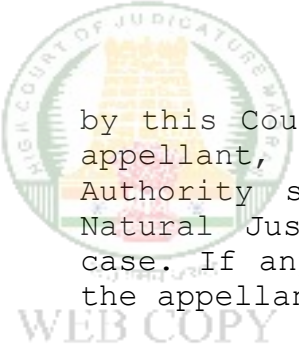
3. According to the learned counsel, the appellant is losing one more right of filing an appeal against the order of the President to the Block Development Officer. We do not subscribe to the said view. As it was held by the Supreme Court in *Surjit Ghosh v. Chairman & Managing Director, United Commercial Bank and others* reported in 1995(2) SCC 474, that such plea can be raised only in cases where the final order has been passed by the authority, who is above the original authority competent to pass orders and in such an event, it is open to the charged officer to raise the ground that his right of appeal is denied. But in the present case, it is an order of suspension pending enquiry, which has been passed by the second respondent Block Development Officer. There is no question of appeal against the order and final order has to be passed after enquiry.

4. The learned Single Judge has correctly relied upon the earlier judgment of this Court reported in 2011(3) MLJ 630 for rejecting the claim of the appellant. There is nothing to interfere with the order of the learned Single Judge. The Writ Appeal fails, and the same is, accordingly, dismissed. As submitted by the learned counsel for the appellant, if the authority competent has framed charges against the appellant, the authority shall complete the same in accordance with law after giving necessary opportunity to the appellant in accordance with law and pass appropriate orders with liberty to the appellant to challenge the same in the manner known to law and such order shall be passed by the concerned authority within a period of eight weeks from the date of receipt of a copy of this order."

and prayed for dismissal of the writ appeal.

7. We have heard the arguments of the learned counsel for the appellant and the respondents and perused the available materials on record and considered the arguments of the learned counsel for the appellant and the respondents.

8. The issue to be decided in this writ appeal is whether the order of suspension passed by the first respondent is valid or not. This issue was already considered by a Division Bench of this Court in W.A.(MD)No.659 of 2011 following the judgment of the Hon'ble Apex Court reported in 1995(2) SCC 474 (*Surjit Ghosh vs. Chairman & Managing Director, United Commercial bank and others*) and held that the Appellate Authority has power to pass an interim order of suspension, pending enquiry. The said judgment squarely applies to the facts of the present case. Further the allegations against the appellant is that he colluded with the Panchayat President and misappropriated funds. In view of such an allegation, the contention of the learned counsel for the appellant that only the Panchayat President is the Competent Authority to take action is untenable. The learned Single Judge has taken this fact into account and dismissed the writ petition. There is no reason warranting interference



by this Court. If the Competent Authority has framed charges against the appellant, it is open to the appellant to submit his explanation. The Authority shall conduct enquiry, as per law, following Principles of Natural Justice, giving opportunity to the appellant to put-forth his case. If any adverse order is passed against the appellant it is open to the appellant to challenge the same in the manner known to law.

9. With the above directions, the Writ Appeal is dismissed. No costs. Consequently, connected miscellaneous appeal is closed.

Sd/-

Assistant Registrar (Per. Admn)

/True copy/

Sub-Assistant Registrar

To

1. The Inspector of Panchayat &
The District Collector,
Madurai District, Madurai.
2. The Assistant Director (Panchayats),
Madurai District, Madurai.
3. The Assistant Director (Audit),
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Vaiyoor Village Panchayat,
T. Kallupatti Panchayat Union,
Madurai District.

+1cc to Mr. N. Sathish Babu, Advocate SR.No.58586

+1cc to special Government Pleader SR.No.58871

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W.A (MD) No.1292 of 2013
05.10.2015