

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2016

CORAM

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.29734 of 2010

and M.P.No.1 & 2 of 2010

Sumathi

... Petitioner

Vs.

1. The District Collector,
Coimbatore District,
Coimbatore.

2. The President
Vellalapalayam Panchayat,
Pollachi North Union,
Pollachi Taluk,
Coimbatore.

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for records reference Na.Ka.No:09/2010-11 dated 25.09.2010 from the file of the second respondent and quash the same.

For Petitioner : Mr.S.Gunalan

For Respondents : Mr.P.Sanjay Gandhi,
Addl.Govt.Pleader

O R D E R

The prayer in the writ petition is for issuance of writ of certiorari calling for records reference Na.Ka.No:09/2010-11 dated 25.09.2010 from the file of the second respondent and to quash the same.

2. The petitioner was appointed as Panchayat Assistant in the second respondent Panchayat on 23.09.2002. Initially she worked at Santhegoundampalayam Panchayat, Pollachi Taluk for six years and thereafter, transferred to the second respondent Panchayat on

06.09.2008. Since then, she had been working in the second respondent Panchayat.

3. While the petitioner was working as such, the second respondent issued a show cause notice on 24.04.2010 to the petitioner, for certain alleged irregularities, for which, the petitioner gave her explanation on 04.05.2010. Thereafter, on 11.05.2010 an order of dismissal was issued by the second respondent against the petitioner.

4. Challenging the said order of dismissal dated 11.05.2010, the petitioner had filed a writ petition in W.P.No.11009 of 2010. The said writ petition came to be allowed by this Court on 13.07.2010, wherein and by which the order of removal of service dated 11.05.2010 was set aside and the respondents were directed to reinstate the petitioner in service forthwith. Further, liberty was given to the respondents to proceed with the charge memo, from the stage at which it is challenged in accordance with the procedure laid down under law and the respondent was directed to complete the disciplinary proceedings within 12 weeks.

5. Pursuant to the said order, the petitioner had made a request on 06.08.2010 to the second respondent to reinstate her in service, as no irregularities were made. The petitioner caused a legal notice dated 30.08.2010 to the second respondent. Only thereafter, the petitioner was reinstated in service on 13.09.2010.

6. Though the petitioner was reinstated in service on 13.09.2010, she was not allowed to work from 27.09.2010. When the petitioner questioned the action of the second respondent, a copy of the impugned order dated 25.09.2010 was served on her, by which, the second respondent had suspended the petitioner from 25.09.2010.

7. The case of the petitioner is that, after the impugned order dated 25.09.2010 was passed and served on the petitioner, the petitioner was discharged from service by virtue of the impugned order.

8. Subsequently, a letter in Naka No.9/2010-11 dated 14.09.2010 was served on the petitioner only on 11.10.2010. The said letter dated 14.09.2010 is a charge memo consisting of 12 charges against the petitioner, wherein the second respondent had directed the petitioner to give her explanation within three days.

9. Though charges had been framed against the petitioner vide letter dated 14.09.2010, the same was served to the petitioner only on 11.10.2010, prior to which, the impugned order dated 25.09.2010 was passed and pursuant to which, the petitioner had been suspended once again. Challenging the said order, the present writ petition has been filed with aforesaid prayer.

10. Heard both sides.

11. Learned counsel appearing for the petitioner would contend that even though in the first round of litigation that is in WP.NO.11009 of 2010 this Court, by order dated 13.07.2010, directed to reinstate the petitioner forthwith of course liberty was given to the respondent to proceed with the charge memo, from the stage at which it was challenged in accordance with law. However, the second respondent did not reinstate the petitioner immediately, and only after legal notice was issued, the petitioner was reinstated on 13.09.2010. Thereafter, within a period of two weeks, she was placed under suspension through the impugned order dated 25.09.2010. Thereafter, on 11.10.2010, the charge memo dated 14.09.2010 was served on the petitioner. Therefore the impugned order was passed with non-application of mind. According to the learned counsel appearing for the petitioner, as the impugned order was passed without even giving any opportunity to the petitioner to reply to the charges framed against her, by order dated 14.09.2010, and the same have been served to the petitioner only on 11.10.2010, the impugned order is liable to set aside. Hence, the learned counsel requested that the writ petition has to be allowed.

12. Per contra, the learned Additional Government Pleader for the respondents would contend that, pursuant to the orders of this Court dated 13.07.2010, in W.P.No.11009 of 2010, the petitioner had made a request for reinstatement on 06.08.2010. On the said date, when the second respondent received the request of the petitioner, the petitioner was permitted to join duty in the second respondent, Panchayat. The second respondent also made an endorsement in the petitioner's letter dated 06.08.2010 itself. On the same date, the second respondent issued a proceedings in letter no.5/10-11 dated 06.08.2010 addressed to the Block Development Officer, Pollachi, Union informing that the petitioner who was already dismissed, had been reinstated, pursuant to the orders of the High Court, Madras with effect from 06.08.2010 and she also joined duty at the second respondent Panchayat on the said date.

13. The learned Additional Government Pleader, further submitted that though several attempts have been made by the second respondent to serve the charge memo dated 14.09.2010 to the petitioner, the petitioner had evaded from the place. Even one such attempt was directly made by the second respondent, to serve the charge memo directly to the petitioner and even that also had been refused by the petitioner. Thereafter, having no other option, the second respondent proceeded to pass the impugned order dated 25.09.2010, pursuant to which, the petitioner was suspended and was not allowed to continue duty from 27.09.2010. The impugned order is only putting the petitioner under suspension pending enquiry and once the petitioner cooperates for the enquiry and completed the same within the time frame fixed by this Court in the earlier order, the enquiry would have been completed long back and only

because of the non-cooperation of the petitioner, the second respondent could not proceed further in the enquiry. In the meanwhile the writ petition is filed. Even though there is no order of stay of the impugned order, the second respondent had not proceeded further with the enquiry, except a letter dated 28.01.2011. The second respondent addressed to the Block Development Officer concerned to appoint an enquiry officer to look into the charges levelled against the petitioner. Since no enquiry officer was appointed by the Block Development Officer concerned, the enquiry was not proceeded further. Therefore, the learned Additional Government Pleader submits that impugned order is fully sustainable one.

14. This Court has given its anxious consideration on the submissions made by both sides as well as the documents placed before this Court for perusal. During the hearing, it was brought by the learned Additional Government Pleader that enquiry officer was subsequently appointed and the enquiry is in progress.

15. It is an admitted fact that the earlier order dated 11.05.2010 by which the second respondent removed the petitioner, had been quashed and the second respondent was directed to reinstate the petitioner forthwith, of course, liberty was given to the second respondent to proceed with the charge memo, from the stage where it was challenged before this Court. Though there is a dispute as to the compliance of the said order, on the first part of the reinstatement, the learned counsel appearing for the petitioner, claimed that the petitioner was reinstated only on 13.09.2010.

16. The learned Additional Government Pleader claim that the petitioner was reinstated on 06.08.2010. Be that as it may. It is a fact that the petitioner had been reinstated atleast from 13.09.2010 and the said fact has not been disputed by the petitioner. When she was working, the present impugned order dated 25.09.2010 was passed, placing the petitioner under suspension, pursuant to which, on 27.09.2010 the petitioner was placed under suspension.

17. But the very issue pertinently to be decided is that before passing the impugned order, the second respondent issued a charge memo dated 14.09.2010. Even as per the document produced by the second respondent, the said charge memo dated 14.09.2010 was served on the petitioner only on 11.10.2010 acknowledgement of the same had been produced by the second respondent before this Court. If that is so, even before the charge memo dated 14.09.2010 being served on the petitioner, the present impugned order had been passed on 25.09.2010. Hence it is absolutely clear that there is no opportunity given to the petitioner to respond to the charge memo dated 14.09.2010. Without giving opportunity to the petitioner, the present impugned order was passed on 25.09.2010 placing the

petitioner under suspension and therefore this Court is of the considered view that the impugned order cannot be sustained under these circumstances and accordingly it is liable to be quashed. It is not in dispute that when the charge memo was served on 11.10.2010, to the petitioner, there was an order of suspension of the petitioner. Though there is no stay of the impugned order in this writ petition all along the second respondent was not in a position to proceed the enquiry against the petitioner pursuant to the charge memo, merely because of the delay caused by the BDO concerned in appointing the enquiry officer. At any rate, now since the writ petition is taken up for final hearing, there is no further impediment for the respondent, especially the second respondent to proceed with the enquiry against the petitioner pursuant to the charge memo dated 14.09.2010.

18. In so far as the period of suspension from 25.09.2010 till date, it is admitted that the petitioner is out of service or under suspension. Though a stay petition was filed before this Court, no stay was granted till date. Therefore the petitioner's suspension period cannot be condoned at this stage. The petitioner had been in suspension from 25.09.2010 till date therefore she would be entitled to subsistence allowance as per rule. The same shall be paid by the second respondent to the petitioner within two months from the date of receipt of a copy of this order. However, this Court feels that the petitioner in view of the aforesaid facts and circumstances, is entitled to get reinstatement immediately without waiting for any further proceedings, including disciplinary proceedings initiated against her. In the result the following orders are passed.

1. Impugned order dated 25.09.2010 is quashed.
2. The second respondent is directed to proceed with the enquiry immediately and complete the same within three months from the date of receipt of a copy of this order.
3. In view of the impugned order having been quashed, the petitioner shall be reinstated forthwith and the proceeding reinstating the petitioner shall be issued by the second respondent or the authority concern who is in the helm of affairs at the office of the second respondent, within one week from the date of receipt of a copy of this order and such compliance shall be reported to the first respondent forthwith.

19. With the above directions the writ petition is allowed. No costs. Connected Miscellaneous Petition are closed.

dpq

Sd/-
Assistant Registrar (CS-)

/TRUE COPY/

Sub-Assistant Registrar

To

1. The District Collector,
Coimbatore District,
Coimbatore.
2. The President
Vellalapalayam Panchayat,
Pollachi North Union,
Pollachi Taluk,
Coimbatore.

+1 CC Mr.S.Gunalan Advocate SR.No.62431

+1 CC Government Pleader SR.No.62859

W.P.No.29734 of 2010
and M.P.No.1 & 2 of 2010

सत्यमेव जयते

EV [CO]

MSI 29/12/2016

WEB COPY