

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.5139 of 2016

and WMP Nos.4503 & 4504 of 2016

V.Gopalakrishnan

... Petitioner

vs.

The District Collector,
Collectorate, Nagapattinam District,
Nagapattinam

... Respondent

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a writ of certiorari, to call for the records on the file of the respondent in connection with the order passed by him in Proc.Na.Ka.No.543 O.V.6/2016 dated 01.02.2016 and quash the same.

For Petitioner : Mr.R.Singaravelan
for Mrs.M.Srividhya

For Respondent : Mr.A.Kumar
Special Government Pleader.

O R D E R

This writ petition has been filed by Mr.V.Gopalakrishnan, challenging the impugned order of suspension dated 01.02.2016, in Proceedings Na.Ka.No.543 O.V.6/2016 passed by the District Collector, Kancheepuram District, on the ground of want of jurisdiction to issue the same, as per G.O.Ms.No.72, Rural Development & Panchayat Raj (E5) Department, dated 09.07.2013.

2. Learned counsel for the petitioner straight away drawing the notice of this Court to G.O.Ms.No.72, Rural Development & Panchayat Raj (E5) Department, dated 09.07.2013, submitted that as the petitioner is serving as Panchayat Secretary, his appointing authority is only Personal Assistant (Development to the Collector) and the appellate authority as

per Rule 18, is the District Collector. While so, instead of the Personal Assistant (Development to the Collector), issuing appropriate lawful order, the Collector in the present case, who is an appellate authority as per Rule 18, has wrongly passed the impugned order of suspension. Therefore, the same is liable to go. The reason he pleaded is that, if for any reason, the petitioner is aggrieved by the order of suspension, he is deprived of filing appeal before the competent authority for the reason that the appellate authority has stepped into the shoes of the disciplinary authority.

3. Mr.A.Kumar, learned Special Government Pleader, accepts notice on behalf of the respondent.

4. Heard the learned counsel for the petitioner and the learned Special Government Pleader, appearing for the respondent.

5. In this regard, it is relevant to extract Rule 4, 17 and 18 of the G.O.Ms.No.72, Rural Development & Panchayat Raj (E5) Department, dated 09.07.2013.

"4. Appointing Authority: The appointing authority for the post shall be the Personal Assistant (Development to the Collector)

17. Suspension: (i) the appointment authority may place a person holding the post under suspension if it is necessary in public interest where (ii) an inquiry into grave charges against him / her is contemplated or is pending or (iii) a complaint against him / her of any criminal 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 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.

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:-

(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 orders, as it may deem fit."

6. A mere perusal of the above, clearly shows that the learned counsel for the petitioner is perfectly right in challenging the impugned order, since the same has been wrongly passed by the appellate authority viz., District Collector. As a matter of fact, when the petitioner is serving as a Panchayat Secretary, his competent authority to take any disciplinary action, is only the Personal Assistant (Development to the Collector). Therefore, the impugned order is liable to be set aside. Accordingly, it is set aside. Learned Government Pleader also finding that the order passed by the respondent was not by the appointing authority, but, by the appellate authority, has sought for an order remanding the matter back to the competent authority. It is left open to the competent authority to take appropriate action. Therefore, the writ petition is allowed and the impugned order stands set aside. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The District Collector,
Collectorate, Nagapattinam District,
Nagapattinam.

+lcc to M/S.M.Srividhya, Advocate, S.R.No.12345
+lcc to the Government Pleader, S.R.No.12522

W.P.No.5139 of 2016

sns (CO)
srg (04/03/2016)



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