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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.08.2016

CORAM

THE HONOURABLE **MR. JUSTICE T. RAJA**

W.P(MD) .No.14654 of 2016

and

W.M.P. (MD) .Nos.10872 and 10873 of 2016

R.Murthy

... Petitioner

Vs

1.The Executive Officer,
Rayagiri Town Panchayat,
Sivagiri Taluk,
Tirunelveli District.

2.The Junior Assistant/Enquiry Officer,
Rayagiri Town Panchayat,
Sivagiri Taluk,
Tirunelveli District.

... Respondents

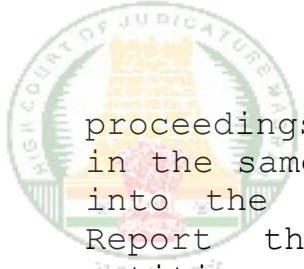
Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the 1st Respondent in Na.Ka.No.244/2015 dated 06.07.2016 and to quash the same and consequently direct the respondents to conduct enquiry on the charges framed against the petitioner in proceedings in Na.Ka.No.244/2015 dated 02.03.2016 by appointing a competent Enquiry Officer.

For petitioner : Mr.G.Sankaran
For respondent : Mr.G.Muthukannan
Government Advocate

ORDER

The petitioner herein challenged the proceedings, dated 06.07.2016, passed by the first respondent, appointing the second respondent, a Junior Assistnat, as an Enquiry Officer against him.

2. The case of the petitioner is that, subsequent to the <https://hcservices.courts.gov.in/hcservices/chargesheet.html>, dated 02.03.2016, issued by the first respondent, the petitioner submitted his explanation, whereupon, by the impugned



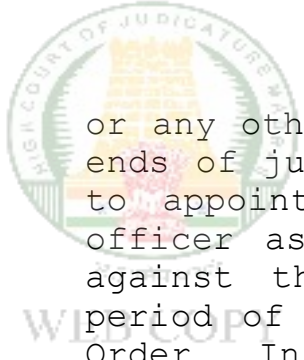
proceedings, the respondents appointed a Junior Assistant working in the same department as an Enquiry Officer to conduct an enquiry into the charges levelled against the petitioner and submit a Report thereon. According to the learned Counsel for the petitioner, when serious allegations have been levelled against the petitioner, the Enquiry Officer appointed to conduct the enquiry, should be person of knowledge in Service Law so that the attempt of the respondents will be fruitful to arrive at a correct decision. In the case on hand, the petitioner is working as Office Assistant, whereas, the Enquiry Officer, a Junior Assistant, is in the next cadre coming from the Tamil Nadu Ministerial Service. Learned Counsel cites an example that, in case an enquiry is conducted as against a Cook, an Office Assistant or a Watchman in the higher cadre is appointed an Enquiry Officer, a fair enquiry cannot be conducted. As per Rule 17(b) of the Civil Services (Discipline and Appeal), only a competent authority can go into the correctness of the allegations. So stating, learned Counsel pleads that if the respondents appoint a Senior Officer, the petitioner is ready to face the enquiry.

3. *Per contra*, learned Government Advocate submitted that, in the case on hand, the enquiry is conducted in consonance with G.O.Ms.No.47, Personnel and Administrative Reforms (N) Department, dated 29.04.2011. Specifically, he pointed out that the Government has directed that, in disciplinary cases arising out of either Vigilance or Non-Vigilance matters, the Inquiry Officer should be in the rank above the one held by the delinquent. In the present case, the petitioner is working as an Office Assistant and a Junior Assistant is appointed as an Enquiry Officer, who is in the next higher rank to that of an Office Assistant. Therefore, the petitioner cannot find fault with the appointment of the second respondent as enquiry Officer.

4. In reply, learned counsel for the petitioner submitted that in G.O.Ms.No.47, Personnel and Administrative Reforms (N) Department, dated 29.04.2011, it is clearly stated in paragraph No.3 that inquiries should be conducted by an Officer "who is sufficiently senior to the officer / delinquent" and therefore, the contentions of the learned Government Advocate are to be negatived.

5. Considered the rival submissions made on either side and perused the materials available on record.

6. This Court finds some merits in the contentions of the learned Counsel for the petitioner. In the case on hand, the allegations are so serious and therefore, the Enquiry Officer should be more prudent enough to cull out various points to find out whether the petitioner is really a handicapped person and the job secured by him was in a genuine manner. Therefore, this Court is of the view that appointing the Executive Officer-II



or any other superior officer in the Town Panchayat will meet the ends of justice. Accordingly, this Court directs the respondents to appoint either Executive Officer-II or any other superior officer as an Enquiry Officer to go into the charges levelled against the petitioner. Such exercise shall be done within a period of two weeks from the date of receipt of a copy of this Order. In other words, the order impugned herein stands sustained and the respondents, after appointing the Enquiry Officer, as directed above by this Court, shall proceed with the enquiry and complete the proceedings, on merits and in accordance with law, within a period of twelve weeks from the date of appointing the enquiry officer. It is made clear that the petitioner has to extend his full co-operation for the enquiry to be conducted by the respondents without prolonging the matter further.

With the above direction, this Writ Petition stands disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(RTI)

/TRUE COPY/

Sub Assistant Registrar

To

1.The Executive Officer,
Rayagiri Town Panchayat,
Sivagiri Taluk,
Tirunelveli District.

2.The Junior Assistant/Enquiry Officer,
Rayagiri Town Panchayat,
Sivagiri Taluk,
Tirunelveli District.

+1cc to M/S.G.SANKARAN, ADVOCATE, SR NO: 44032

SSM
JA-SKS-RR-6.10.2016-3P:4C

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