



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.12.2016

CORAM :

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THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Writ Petition(MD)No.13273 of 2013

Arockiyasamy

.. Petitioner

Vs.

1. The District Collector,
Sivagangai District,
Sivagangai.
2. The Block Development Officer,
(Village Panchayat),
Devakottai Panchayat Union,
Devakottai, Sivagangai District.
3. The Assistant Director (Panchayat),
Sivagangai District, Sivagangai.
4. The President,
Siruvathi Village Panchayat,
Devakottai Taluk, Sivagangai District.
5. The Special Officer,
Siruvathi Village Panchayat,
Devekottai Taluk,
Sivagangai District.
(R5 is impleaded vide
order dated 02.12.2016
in WP(MD)No.13273/16)

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India to issue a writ of Certiorari to call for the records relating to the proceedings of the order of termination dated 06.07.2010 on the file of the fourth respondent and consequential order made in Na.Ka.R2/16414/2011, dated 22.04.2013 on the file of the first respondent and quash the same and direct the fourth respondent to reinstate the petitioner in service.

For Petitioner

:Mr.V.Kannan

For Respondents

:Mr.K.Guru (for R1 to R3 & R5)
Additional Government Pleader
No appearance (for R4)

**ORDER**

Assailing the proceedings of the fourth respondent dated 06.07.2010, terminating the petitioner from service, and the consequential order passed by the first respondent dated 22.04.2013, the present writ petition is filed.

2.The petitioner was appointed as Panchayat Clerk in the fourth respondent Panchayat on 15.08.1998 and the petitioner was also receiving Rs.1163/- before passing of G.O.Ms.No.175, dated 05.12.2006.

3.It is the case of the petitioner that the fourth respondent, who assumed charge on 25.10.2006, with ulterior motive, terminated the services of the petitioner by proceedings dated 06.07.2010 by merely stating that the petitioner had unauthorizedly absented himself from duty with effect from 13.06.2010 and that there were several discrepancies during his tenure.

4.It is the plea of the petitioner that he met with an accident on 13.06.2010 and as he was indisposed, he could not attend the duty from 13.06.2010 to 28.10.2010. He further averred that he sent representations to respondents 1 and 2 on 15.06.2011 and 18.07.2011 respectively. As the said representations did not evoke any response, the petitioner sent representations on 20.02.2011 and 04.06.2012 to the first respondent. Thereafter, ultimately, the first respondent passed the order dated 22.04.2013 refusing to interfere with the order passed by the fourth respondent. Hence, the present writ petition for the relief stated supra.

5.The learned counsel for the petitioner vehemently contended that the bare bones of principles of natural justice have been violated by the respondents in passing the impugned orders and on this sole ground, the impugned orders are liable to be set aside. The respondents have not furnished any show cause notice or even served the orders of termination, referred supra, till date, but have made grave allegations of discrepancies, without furnishing any iota of material to the petitioner in support of the said stand.

6.The learned Government Advocate appearing on behalf of the respondents justified the action of the respondents and submitted that interference of this Court is unwarranted. He further pleaded that the petitioner was not residing in the address he had given and, therefore, the proceedings could not be served and as the fault was on the part of the petitioner, that would not vitiate



7.I heard Mr.V.Kannan, learned counsel appearing for the petitioner and Mr.K.Guru, learned Additional Government Pleader appearing for the respondents 1 to 3 and 5 and there is no representation on behalf of the 4th respondent and perused the documents available on record.

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8.In the case on hand, one of the contentions raised on behalf of the respondents was that the petitioner was not residing in the address given to the employer and that is one of the causes for non-service of some documents, orders, etc. However, to rebut the said plea, the petitioner has produced a nativity certificate, dated 15.07.2013 issued by the officials of the Revenue Department to show that he was residing in the same address which was given to the employer. To counter this plea, the respondents did not file any counter.

9.Moreover, a perusal of the records show that it is merely stated by the fourth respondent that the petitioner was involved in several discrepancies, without specifying as to what are the discrepancies and as to the loss caused to the Panchayat, etc.

10.In *Meenglas Tea Estate v. The Workmen*, AIR 1963 SC 1719, the Supreme Court emphatically held as under:

"It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross-examination as he desires. Then he must be given a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character and this requirement must be substantially fulfilled before the result of the enquiry can be accepted. A departure from this requirement in effect throws the burden upon the person charged to repel the charge without first making it out against him. In the present case neither was any witness examined nor was any statements made by any witness tendered in evidence. The enquiry, such as it was, made by Mr. Marshall or Mr. Nichols who were not only in the position of judges but also of prosecutors and witnesses. There was no opportunity to the persons charged to cross-examine them and indeed they drew upon their own knowledge of the incident and instead cross-examined the persons charged. This was such a travesty of the principles of natural justice that the Tribunal was justified in rejecting the findings and asking the Company to prove the allegation against each workman de novo before it."



11. In the case on hand, admittedly, the material relied on by the respondent authorities to arrive at the conclusion regarding involvement of the petitioner in several discrepancies was not furnished to the petitioner and the said act of the respondents runs counter to the elementary principles of natural justice.

12. That apart, in *R. Shiva v. The District Collector*, [W.P.No.3445 of 2008, dated 17.11.2011], wherein, the petitioner who was working as a Panchayat Clerk was terminated, this Court held that "As per clause V of G.O.(Ms) No.175 Rural Development and Panchayats (E5) Department dated 05.12.2006, the delinquent officer/servant is required to be given a notice and offered an opportunity to defend his case. Even in the absence of the aforesaid G.O., it is fundamental that a person should be heard before his right is infringed in compliance of principles of natural justice."

13. This Court is of the view that the proceedings of the fourth respondent has been passed in gross violation of the basic principles of natural justice and fair play and the allegation against the petitioner, if any, should be proved *de novo*, after following the due process of law and the elementary principles of natural justice.

14. For the foregoing reasons,

(a) this writ petition is allowed and the impugned order dated 06.07.2010, passed by the fourth respondent and in Na.Ka.R2/16414/2011, dated 22.04.2013, passed by the first respondent, are set aside;

(b) the matter is remand back to the fifth respondent for conducting of *de novo* enquiry against the petitioner in accordance with law. No costs. Consequently, M.P. (MD) No.2 of 2013 is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Sivagangai District, Sivagangai.

2. The Block Development Officer,
(Village Panchayat),
Devakottai, Sivagangai District.



3. The Assistant Director (Panchayat),
Sivagangai District, Sivagangai.

4. The President,
Siruvathi Village Panchayat,
Devakottai Taluk, Sivagangai District.

5. The Special Officer,
Siruvathi Village Panchayat,
Devekottai Taluk, Sivagangai District.

+1cc to Mr.V.Kannan, Advocate Sr.No.79095
+1cc to Spl.Government Pleader Sr.No.79520

VS/SKN

VB/SKN/RSK/SAR2/23/11/2017/5P/8C

W.P. (MD) No.13273 of 2013
02.12.2016