



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.10.2016

C O R A M

WEB COPY

THE HONOURABLE MR. JUSTICE M. GOVINDARAJ

W.P. (MD) No. 67 of 2011

N. Kalimuthu

.. Petitioner

Vs.

1. The District Collector,
Collectorate,
Pudukkottai,
Pudukkottai District.
2. The Block Development Officer,
Village Panchayats,
Kundrandarkoil Union,
Kulathur Taluk,
Pudukkottai District.
3. The President,
Themmavur Village Panchayat,
Kundrandarkoil, Kulathur Taluk,
Pudukkottai District.

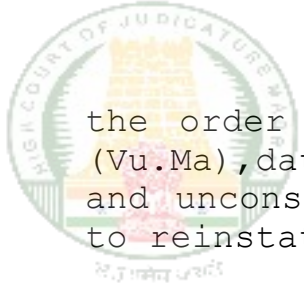
.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order of the first respondent in Na.Ka.No.484/2008/Vi.1(Development), dated 19.08.2010 conforming the order of the third respondent in Office Order No.3 of 2007 (Vu.Ma), dated 21.05.2007 and quash the same as arbitrary, illegal and unconstitutional and consequently direct the first respondent to reinstate the petitioner in service with back wages.

For Petitioner	: Mr.K.Baalasundharam
For R-1	: M/s.S.Bharathi Government Advocate
For R-3	: Mr.Palaramasamy
For R-2	: No appearance.

O R D E R

This Writ petition has been filed to call for the records relating to the order of the first respondent in Na.Ka.No.484/2008/Vi.1(Development), dated 19.08.2010 conforming



the order of the third respondent in Office Order No.3 of 2007 (Vu.Ma), dated 21.05.2007 and quash the same as arbitrary, illegal and unconstitutional and consequently direct the first respondent to reinstate the petitioner in service with back wages.

2. The Writ petitioner was originally appointed as a Part Time Clerk in Themmavur Panchayat on 01.05.1997. Later the Part Time Clerk post was redesignated as Panchayat Assistant with effect from 01.09.2006 by virtue of G.O.Ms.No.175 Rural Development and Panchayat Department, dated 05.12.2006. The President of Panchayat is the appointing authority and disciplinary authority in so far as the post of Panchayat Assistant is concerned. While the petitioner was in service, the third respondent in his proceedings Vu.Ma.A. Order No.1/2007, dated 12.02.2007, had suspended the petitioner from his service and issued a charge memo in Vu.ma.a. Order No.2/07, dated 14.03.2007. The petitioner was directed to submit his explanation within a period of one week from the date of receipt of the said Charge memo to the third respondent. The Writ petitioner in stead of submitting his explanation to the third respondent, had submitted the same to the second respondent. Since the explanation was not submitted to the third respondent, the third respondent assumed that no explanation was submitted by the petitioner and by Office Order No.3/07 (Vu.Ma), dated 21.05.2007, had removed the petitioner from service. Against which the Writ petitioner had filed an appeal before the second respondent on 11.06.2007.

3. The Writ petitioner had approached this Court by way of W.P.(MD)No.8265 of 2008 for a direction to the second respondent to dispose the appeal, dated 11.06.2007 and the same was granted with an observation to provide a reasonable opportunity to all the parties concerned and after following the procedure contemplated under the relevant rules within a period of eight weeks.

4. The second respondent in his proceedings Na.Ka.No.184/2007/Thi.1, dated 03.12.2008, directed the third respondent to issue a show cause notice enclosing a charge memo and to call for explanation from the Writ petitioner. If no explanation was submitted by the Writ petitioner, the third respondent was directed to proceed further in accordance with law. In the meanwhile, the Writ petitioner had filed an appeal dated 17.12.2008 before the first respondent challenging the continued suspension and also to set aside the order of removal from service made by the third respondent, dated 21.05.2007 and also the order passed by the second respondent, dated 03.12.2008.

5. On the basis of that the first respondent had issued a notice in proceedings Na.Ka.No.484/08/V1, dated 23.01.2009 directing the Writ petitioner to appear before him for enquiry on 30.01.2009. It is stated by the Writ petitioner that he had received the notice of the said enquiry only on 30.01.2009



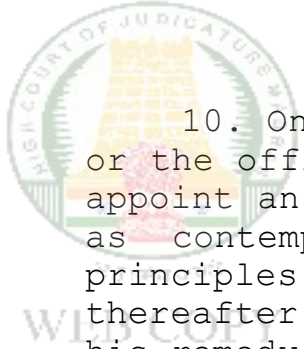
afternoon. Thereafter, he had appeared for the enquiry on 06.02.2009 and given his explanations to the first respondent. But, no order was passed on his appeal. Hence, he filed W.P.No.4361 of 2010 against the respondents 1 and 2 to direct the first respondent to consider and pass order in his appeal. This Court by Order, dated 05.04.2010 had directed the first respondent to consider and pass orders on the appeal filed by the Writ petitioner dated 17.12.2008.

6. Again the Writ petitioner had approached this Court with Contempt petition in Cont.P.No.431 of 2010 for non-compliance of the order issued by this Court. Thereafter, the first respondent in his proceedings Na.Ka.No.484/2008/Vi.1 (Development), dated 19.08.2008, had confirmed the order of the third respondent and removed the petitioner from his service. Challenging the order of the first respondent, the present Writ petition has been filed.

7. The respondents have filed their counter affidavit. According to the respondents, the Writ petitioner had filed the submission for explanation to the charges framed against him. The respondents have also filed typed set consisting of various account details and the complaint and report on the appeal made by the Writ petitioner before the first respondent. Ultimately, it is clear in the background of events that the Writ petitioner had failed to submit his explanation to the charges made against him and the third respondent also failed to appoint an enquiry officer by giving an opportunity to the Writ petitioner to defend his charges. The third respondent in spite of the directions of this Court and subsequently, the instruction given by the second respondent had not issued any show cause notice to the Writ petitioner and not called for the explanation and there was no action taken by the third respondent. The Writ petitioner also had failed to pursue his remedy in that direction, to sum up the entire issue was misdirected from removal of service to revocation of suspension.

8. The Writ petitioner has repeatedly approached this Court and sought for a direction to dispose of the appeals and representation made by him. In such circumstances, the main issue of conducting the enquiry pursuant to the charges framed against the Writ petitioner was lost sight of and the removal from service which was set aside by virtue of the order passed by this Court in W.P.No.8265 of 2008, dated 16.09.2008 has been left astray.

9. Considering the factual background, this Court is of the opinion that in stead of protracting the proceedings any further, the final direction is issued to the Writ petitioner to submit his explanation to the charges framed by the third respondent, dated 14.03.2007 in a period of four weeks from the date of receipt of a copy of this order.



10. On the submission of his explanation, the third respondent or the officer in the place of the third respondent is directed to appoint an enquiry officer to conduct the disciplinary proceedings as contemplated the rules and in accordance with law with principles of natural justice within a period of four weeks thereafter. If the petitioner is still aggrieved, he can work out his remedy as per the rules.

11. The Writ petition is disposed of with the above observations. There is no order as to costs.

Sd/-

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

To

1. The District Collector,
Collectorate, Pudukkottai, Pudukkottai District.
2. The Block Development Officer,
Village Panchayats, Kundrandarkoil Union, Kulathur Taluk,
Pudukkottai District.
3. The President,
Themnavur Village Panchayat,
Kundrandarkoil, Kulathur Taluk,
Pudukkottai District.

+1 cc to M/s.K.Balasundaram, Advocate in SR.No. 63991
+1 cc to M/s.Pala Ramasamy, Advocate in SR.No. 63495
+1 cc to The Special Government Pleader in SR.No. 64227

pmu

CSL/PV/SAR-III/01.12.2016: 4P/7C

W.P. (MD) No. 67 of 2011
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