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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.06.2011

CORAM:

THE HONOURABLE MR. JUSTICE K. VENKATARAMAN

W.P. (MD) No. 689 of 2011

and

M.P. (MD) No. 1 of 2011

A. Solaimalai,
S/o. A. Andiyappan,
Panchayat Board Clerk,
Sengattampatti Panchayat,
Battalakundu Panchayat Union,
Nilakottai Taluk,
Dindigul District.

: Petitioner

Vs.

1. Inspector of Panchayat and
the District Collector,
Office of the District Collector,
Dindigul.

2. The Block Development Officer
(Village Panchayat),
Battalakundu Panchayat Union,
Nilakottai Taluk,
Dindigul District.

3. The President,
Sengattampatti Panchayat,
Battalakundu Panchayat Union,
Nilakottai Taluk,
Dindigul District.

: Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus, to call for the records of the respondents particularly that of the second respondent's impugned order of suspension in Na.Ka.No.1355/2010/B4, dated 13.04.2010 and quash the same as without jurisdiction, illegal, unlawful and against the principles of natural justice and consequently, direct the second respondent to revoke the suspension of the petitioner.

For Petitioner : Mr. K. Anandan

<https://hcservices.ecourts.gov.in/hcservices/> Respondent No.1 : Mr. B. Pugalendhi
Special Government Pleader
For Respondent No.2 : Mr. K. Balasubramanian
For Respondent No.3 : No Appearance



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ORDER

Heard Mr.K.Anandan, learned counsel appearing for the petitioner, Mr.B.Pugalendhi, learned Special Government Pleader appearing for the first respondent and Mr.K.Balasubramanian, learned counsel appearing for the second respondent. Though notice has been sent to the third respondent and the name of the third respondent is printed in the cause-list, the third respondent has not chosen to appear before this Court.

2. By consent of the learned counsel appearing for the petitioner as well as the learned Special Government Pleader appearing for the first respondent and the learned counsel appearing for the second respondent, the Writ Petition itself is taken up for final hearing.

3. Challenging the impugned order of the second respondent dated 13.04.2010, an order of suspension, the present Writ Petition is laid. The petitioner was appointed as a Part Time Clerk in Sengattampatti Panchayat from 06.09.1999. While so, the second respondent, without prior notice or opportunity, suspended the petitioner from service. He has no jurisdiction to pass the order of suspension. The third respondent alone is competent to pass an order of suspension. Hence, the petitioner has come up with the present Writ Petition.

4. On notice, the learned Special Government Pleader appearing for the first respondent submits that the second respondent has passed the impugned order at the instance of the first respondent and hence, the second respondent is competent to pass the order of suspension.

5. The learned counsel appearing for the second respondent has drawn my attention to a judgment in C.Shaju v. District Collector, Coimbatore District reported in 2011(3) MLJ 630 and submitted that the Principal Bench has held that the District Collector, even though the appellate authority, has got power to pass the order of suspension. He has also relied on a decision of JUSTICE K.CHANDRU made in W.P.No.22826 of 2007, wherein His Lordship has taken a similar view.

6. However, the learned counsel appearing for the petitioner submits that the third respondent alone has got competency to pass the order of suspension against the petitioner. The first respondent or the second respondent can only be the appellate authority and hence, the impugned order of suspension passed by the second respondent is liable to be set aside.

<https://hcservices.ecourts.gov.in/hcservices/>

7. I have considered the submission made by the learned counsel appearing for the petitioner, the learned Special Government Pleader appearing for the first respondent and the learned counsel appearing for the second respondent.



8. It is not disputed that the second respondent has passed the order of suspension against the petitioner. The first respondent is the appellate authority, who can go into the aspect whether the order of suspension passed by the second respondent is justified or not. While so, it cannot be totally said that either the first respondent, the District Collector or the second respondent, the Block Development Officer, has no power to pass the order of suspension. This has been extensively considered by JUSTICE K.CHANDRU in the judgment in W.P.No.22826 of 2007, by an order dated 29.01.2008. Paragraph Nos.6 and 7 of the order made thereunder are usefully extracted hereunder:

"6. The learned counsel appearing for the petitioner relied upon the judgment of the Supreme Court reported in 1995(2) SCC 474 [Surjit Ghosh v. Chairman & Managing Director, United Commercial Bank and others]. In that case, the question that arose was whether the dismissal can be imposed by an appellate authority thereby denying the right of appeal to the charged officer. The relevant passages found in paragraphs 5 and 6 may be usefully extracted below:

Para 5: "..... However, since the action against him was taken by the Deputy General Manager although the Divisional Manager and AGM (Personnel) were available for taking the action, the appellant was denied the right of an appeal and also the right of a review which lay only against the appellate order. The impugned order of dismissal passed by the Bank, therefore, suffers from an inherent defect."

Para 6: "..... Although the argument looks attractive at first sight, its weakness lies in the fact that it tries to place the Rules/Regulations which provide no appeal on par with the Rules/Regulations where appeal is provided. It is true that when an authority higher than the disciplinary authority itself imposes the punishment, the order of punishment suffers from no illegality when no appeal is provided to such authority. However, when an appeal is provided to the higher authority concerned against the order of the disciplinary authority or of a lower authority and the higher authority passes an order of punishment, the employee concerned is deprived of the remedy of appeal which is a substantive right given to him by the Rules/Regulations. An employee cannot be deprived of his substantive right."

7. But, in the present case, we are not concerned with the order of punishment. It is only suspension pending enquiry. Therefore, the same logic cannot be made applicable and the Inspector of Panchayats cannot be a mute spectator when series of complaints were made on the basis of spot inspection and it is always open to him to order for suspending a Panchayat



servant being the controlling authority of the Panchayat."

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9. In 2011(3) MLJ 630, JUSTICE S.MANIKUMAR has passed the order stating that the District Collector has jurisdiction to pass an order of suspension against Panchayat employee pending formulation of charges or enquiry into acts of misconduct committed by them.

10. However, the learned counsel appearing for the petitioner, pointing out the impugned order of suspension, submitted that pending enquiry, the first and second respondents may have jurisdiction to pass an order of suspension, but, the impugned order clearly reveals that the charges made against the petitioner was said to be proved and hence, the judgment relied on by the learned counsel appearing for the second respondent may not be applicable to the case of the petitioner.

11. However, I am unable to accept the said contention of the learned counsel appearing for the petitioner. In the present case on hand, no charge memo has been issued to the petitioner and no enquiry was conducted. The petitioner has been placed under suspension, since the petitioner has not offered any explanation for the infirmities pointed out against him. It is not even the case of the petitioner in the affidavit filed in support of the Writ Petition that an enquiry against the petitioner was over and that final orders have been passed.

12. In view of the above stated position, I am not inclined to interfere with the order of suspension passed by the second respondent at the instance of the first respondent. In fine, the Writ Petition stands dismissed. However, since the petitioner has sent a representation dated 10.12.2010 to the second respondent, it is open to the second respondent, if he has received the said representation, to consider the same on merits and in accordance with law. Consequently, the connected miscellaneous petition is also dismissed. However, there is no order as to costs.

Sd/-

Assistant Registrar (Crl.Side)

/True Copy/

Sub-Assistant Registrar



2.The Block Development Officer
(Village Panchayat),
Battalakundu Panchayat Union,
Nilakottai Taluk,
Dindigul District.

3.The President,
Sengattampatti Panchayat,
Battalakundu Panchayat Union,
Nilakottai Taluk,
Dindigul District.

+One cc to Mr.K.Balasubramanian, Advocate, SR.No.19111

SML
rl/5c - 20.6.201

Order made in
W.P.(MD)No.689 of 2011

Dated: 17.06.2011