



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 02.12.2016

CORAM :

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

WEB COPY

W.P. (MD) .No.9009 of 2011

B.Jayamurugan

.. Petitioner

.Vs.

1.The District Collector,
Ramanathapuram District,
Ramanathapuram.

2.The Panchayat President,
Venkittankurichi Panchayat,
Venkittankurichi,
Paramakudi Taluk, Ramanathapuram.

3.S.Gowri,
Panchayat Clerk,
Venkittankurichi Panchayat,
Venkittankurichi, Paramakudi Taluk,
Ramanathapuram.

4.The Special Officer,
Venkittankurichi Panchayat,
Venkittankurichi, Paramakudi Taluk,
Ramanathapuram.

... Respondents

(R4 is impleaded vide Court order dated
02.12.2016 in WP(MD)No.9009 of 2011)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 2nd respondent in connection with the impugned order of Removal from service passed by him in his Proceedings in No.Nil dated 19.01.2010 and impugned order of appointment of the 3rd respondent passed in Resolution No.104 dated 25.08.2010 by the 2nd respondent as well as the consequential impugned ratification order passed by the 1st respondent in his proceedings in Na.Ka.M1/63003/2010 dated 13.12.2010 and quash the all as illegal and arbitrary and consequently direct the 1st and 2nd respondents to reinstate the Petitioner in service with all service and monetary benefits within the time limit.

For Petitioner

: Mr.G.Thalaimutharasu

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

For Respondents

: Mr.K.Guru (for R1 and R2)

Additional Government Pleader

Mr.R.Gowri Shankar (for R3)

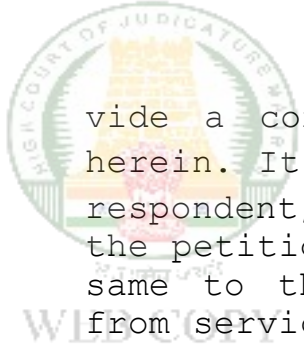
**ORDER**

The instant Writ Petition is filed by the petitioner for the issuance of writ of Certiorarified Mandamus calling for the records of the 2nd respondent in connection with the impugned Order of Removal of Service passed in proceedings No. Nill dated 19.01.2010 and impugned order of appointment of 3rd respondent passed in Resolution No.104 dated 25.08.2010 by the 2nd respondent as well as the consequential impugned ratification order passed by the 1st respondent in his proceedings Na.Ka.M1/63003/2010 dated 13.12.2010 and quash the same and consequently direct the respondents to reinstate the petitioner with all back wages, monetary and other benefits.

2.The case of the petitioner is that in the year 2002 he joined service under the 2nd respondent Panchayat Board as a Clerk. In the mean time in the year 2008 his name was found placed in the seniority list in Na.Ka.M1/3942/2009 dated 16.12.2008, prepared by the 1st respondent in the cadre of Panchayat Assistant. Thereupon he was under expectation to be absorbed as a Junior Assistant in the Panchayat. Whereas unfortunately there arose a civil dispute between the petitioner and his relatives, whereby two civil suits came to be filed by the petitioner's relatives. Both the civil suits ended in favor of the petitioner and out of the vengeance over the defeat in the above civil suits, the petitioner's relatives lodged a false criminal complaint against the petitioner. The same came to be registered under sections 294(b) & 506 (ii) of IPC in Cr.No 157 of 2009 on the file of the Inspector of Police, Paramakudi. The petitioner was arrested in the above false case and hence he was placed under Suspension.

3.In the meanwhile, the above Criminal Complaint was taken on file in C.C.No.375 of 2009 by the learned Judicial Magistrate, Paramakudi and on trial having found that the Prosecution has failed to prove the charges against the petitioner, has acquitted the petitioner under Section 248 of Cr.P.C. on benefit of doubt. Thereupon the petitioner made several requests before the respondent officials to revoke his suspension in the light of the Judgment made by the learned Judicial Magistrate, Paramakudi, so as to facilitate him to join service. But all such requests remained heedless and the respondent officials were not ready to revoke petitioner's suspension.

4.Whereas to the shock of the petitioner, the then 2nd respondent, so as to employ his blood relative into the post of the petitioner, has in hasty and illegally passed a resolution No.104 dated 25.08.2010 thereby appointing the 3rd respondent in the said post. The same was also ratified by the 1st respondent



vide a consequential order dated 13.12.2010, which is impugned herein. It is relevant to note here that for accommodating the 3rd respondent, the 2nd respondent chose to pass an order terminating the petitioner from service and has kept it, not communicating the same to the petitioner. Such act of terminating the petitioner from service beyond Law and fair play is unfair and illegal, which warrants interference by this Court.

5.I heard Mr.G.Thalaimutharasu, learned counsel appearing for the petitioner and Mr.K.Guru, learned Additional Government Pleader appearing for the respondents 1 and 2 and Mr.R.Gowri Shankar, learned counsel appearing for the 3rd respondent and perused the entire records, despite sufficient time given to the respondents, they have not chosen to file any counter, therefore this Court proceeds with the available records before it.

6.Though very many contentions are raised by either side, on careful perusal of the records, it is noticed that the order of termination of the petitioner from service is being passed without hearing the petitioner. He was not given an opportunity of being heard before passing an order of terminating his service, which is sheer violation of principles of natural justice.

7.At this juncture, the attention of this Court was drawn to the Government Order in G.O.Ms.No.175, RD & PR Department, viz. annexed in page No.10 of the typed set of papers filed in support of the writ petition, which contemplates under Clause V that a Panchayat Clerk who is about to be charged, punished or terminated should always be heard by the official respondent before passing any such order. It further contemplates that there should be a personal hearing offered and the objections or submissions of the employee is to be obtained and the same is to be considered before passing an order. The Government order enumerates that offering sufficient opportunity to the employee shall be ensured before passing an order of Termination.

8.Admittedly in the case on hand the above formalities are not being observed by the 2nd respondent before passing the impugned order. Furthermore the records reveal that the petitioner was not even issued or communicated with an order of his termination, whereas in his earlier writ petition in W.P.No.8382 of 2011 filed by writ petitioner, challenging his suspension, the impugned order stood served by the respondent official before this Court. Thereupon the said writ petition in W.P.No.8382 of 2011 was dismissed with liberty to challenge the order of Termination viz impugned herein. In addition to that the copy of information provided by the Block Development Officer, Paramakudi to the petitioner, annexed in page No.43 of the typed set of papers disclose that the Official respondents were not informed by the 2nd respondent, as to why the petitioner was absent from his duty. The above factual back ground creates a serious cloud over the appointment of the 3rd respondent. Therefore this Court is of



considered opinion that the impugned order of removing the petitioner from service is liable to be set aside on the sole ground of Violation of principles of natural justice and thus the entire proceedings stands vitiated.

9. In the result:

(a) the writ petition is allowed and the impugned order of removal from service of the petitioner by the proceedings of the 2nd respondent in No. Nil dated 19.01.2010 alone is hereby set aside;

(b) the matter is remanded to the file of the 4th respondent herein for fresh consideration. The 4th respondent is directed to conduct enquiry and pass orders on merits and in accordance with law after giving sufficient opportunity to the petitioner and in any event, the 4th respondent shall complete the said exercise within period of three months from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Ramanathapuram District,
Ramanathapuram.
2. The Panchayat President,
Venkittankurichi Panchayat,
Venkittankurichi,
Paramakudi Taluk, Ramanathapuram.
3. The Special Officer,
Venkittankurichi Panchayat,
Venkittankurichi, Paramakudi Taluk,
Ramanathapuram.

+1CC TO M/S.G.THALAIMUTHARASU, ADVOCATE, SR NO.79053
+1CC TO M/S.R.GOWRISHANKAR, ADVOCATE, SR NO.78407
+2CC TO SPECIAL GOVERNMENT PLEADER, SR NO.79035,79514

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