

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.02.2017

CORAM :

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.19791 of 2012 and

M.P.No.1 of 2013 and

WMP.No.16090 of 2016

N.Lakshmi

... Petitioner

.Vs.

1.The District Collector,
Thiruvallur.

2.The Block Development Officer,
Minjur Block, Ponneri Taluk,
Thiruvallur District.

3.The President (Incharge),
Anuppambattu Panchayat Union,
Minjur Block, Ponneri Taluk,
Thiruvallur District.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order dated 29.06.2012 issued by the 3rd respondent and quash the same and consequently direct the respondents to reinstate the petitioner into service with all attendant benefits.

For Petitioner : Mr.Singaravelan, Senior Counsel
for M/s.V.S.Jagatheesan

For Respondents: Mr.B.Anand (for R1)
Special Government Pleader

No Appearance (for R2 and R3)

O R D E R

The instant Writ Petition is filed by the petitioner for issuance of writ of Certiorarified Mandamus to call for the records relating to the impugned order dated 29.06.2012 issued by the 3rd respondent and quash the same and consequently direct the respondents to reinstate the petitioner into service with all attendant benefits.

2.The case of the petitioner is that she was appointed as Panchayat Assistant as per the resolution of the 3rd respondent Panchayat dated 09.02.2002 on consolidated pay. Subsequently as per the resolution of the 3rd respondent Panchayat dated 27.07.2007 the petitioner was appointed as Panchayat Assistant Grade-II on regular basis and fixed the time scale of pay of Rs.1,210/-. Thereafter, as per the proceedings of the 2nd respondent dated 02.09.2009, the post of Panchayat Assistant Grade I and II was re-designated as Panchayat Assistant and their scale of pay was re-fixed as per G.O.Ms.No.234 Finance Department (PC) dated 01.06.2009. As per the request made by the 2nd respondent, the 3rd respondent has sent the petitioner's educational qualification certificate to the 2nd respondent on 10.11.2009. In the mean time the District Level seniority list was prepared for the Panchayat Assistant as on 01.01.2010 wherein the petitioner name was found place at serial No.464.

3.The petitioner's qualification at the time of appointment was fail in S.S.L.C. Subsequently the petitioner passed 10th standard on 07.06.2012 and informed the same to the respondents on 25.06.2012. In the mean time the Panchayat President of 3rd respondent Panchayat died on 17.09.2011 and therefore the Vice-President of the Panchayat become in-charge of the President and discharging the functions of the president. While so, to the shock and surprise of the petitioner, the 3rd respondent passed an order dated 26.09.2012 terminated the petitioner from service on the ground that he was not in possession of requisite qualification at the time of appointment. The above said impugned order is under challenge in this writ petition.

4.The petitioner further stated that despite the order of termination she is continuing in the said post and collecting house tax and discharging other duties. Subsequently also the 2nd respondent by its proceedings dated 09.07.2012 issued a payment

order in favor of the petitioner under NREGS Schemes 2012-2013. According to the petitioner, her service was terminated based on certain allegation. Therefore, the 3rd respondent before passing the order of termination should have followed the procedure adumbrated under Rule 17(b) of The Tamil Nadu State and Subordinate Service (D and A) Rules. The petitioner further contented that the impugned order was passed not only in violation of the above rules, but also in violation of principles of natural justice. Further the order of termination was passed by the Vice-President who was discharging the function of the President therefore he has no authority to pass the impugned order in view of the provisions of Tamil Nadu Village Panchayat (Devolution and Delegation) Rules 1999. Before terminating the service of the petitioner, the respondent shall frame charge on the specific allegations and should have conducted the enquiry, but no such procedure was followed in the case on hand. Hence, the petitioner has come up with the present writ petition seeking to quash the impugned order of termination and consequential direction.

5.I have heard Mr.Singaravelan, learned Senior Counsel, for M/s.V.S.Jagatheesan, learned counsel appearing for the petitioner and Mr.B.Anand, learned Special Government Pleader appearing for the 1st respondent and perused the materials available on record.

6.The respondents herein has not chosen to file counter affidavit to this writ petition and therefore this court proceeds to pass orders on the basis of the arguments advanced on either side and also the materials available on record. However, the learned counsel for the respondents contended that the impugned order is perfectly correct and the same is passed on the basis of the proceedings of the 1st respondent and therefore, the impugned order is not warranted interference by this Court. The respondents further contented that the petitioner is not having requisite qualification at the time of appointment to the post of Panchayat Assistant and therefore, her appointment itself is illegal and the same was terminated after verifying the educational qualification of the petitioner.

7.The present writ petition is filed by the petitioner challenging the order of termination mainly on three grounds which are as follows:

- a) Before passing the impugned order of termination the petitioner was not given an opportunity of being heard

and therefore the respondent have violated the principles of natural justice.

b) when the 3rd respondent has terminated the service of the petitioner based on certain allegations, he should have followed the procedure contemplated under Rule 17 (b) of The Tamil Nadu State and Subordinate Service (D & A) Rules by issuing charge memo and should have conducted enquiry for the charges leveled against the petitioner.

c) The order of termination was passed by the 3rd respondent, the Vice-President of the Panchayat who was holding the post of in-charge President and therefore the 3rd respondent has no authority to pass the impugned order in view of the provisions of Tamil Nadu Village Panchayat (Devolution and Delegation) Rules 1999.

8.Now, this Court will have to consider the above said 3 grounds as per as the first ground relating to violation of principles of natural justice is concerned, this court will have to accept the case of the petitioner, because from the perusal of impugned order, there is no reference for the issuance of show cause notice to the petitioner and the explanation submitted by the petitioner. Hence, the impugned order of termination is passed in gross violation of the principles of natural justice and in that ground itself the impugned order is liable to be quashed.

9.As per as the second ground is concerned, admittedly the petitioner was appointed as Panchayat Assistant on consolidated pay and subsequently she was given time scale of pay. The petitioner was appointed as earlier as on 14.02.2002 and she has been continuously working in the 3rd respondent Panchayat as Panchayat Assistant and her name was also included in the District Level seniority list prepared for the Panchayat Assistant as on 01.01.2010 in which the petitioner's name was found place at serial No.464. Therefore, if at all the respondents wanted to terminate the service of the petitioner that too on certain allegation, the petitioner should have been issued with charge memo, followed by the same, an enquiry will have to be conducted and finding should have been arrived at on the charges.

10.In this case admittedly there is no such procedure is followed by the 3rd respondent while terminating the service of

the petitioner. In order to strengthen the above said legal principle, the Learned Counsel for the petitioner relied on the judgment of this court reported in 2006 (1) CTC 660 in the case of V.L.Lakshmanakumar v. The District Manager, "TASMAC" Limited, Madurai District, Madurai & Another wherein at para 7 it is held as follows:

"7. The Apex Court, in more than one case, has held that when, an order of termination involves civil consequences and consequently amounts to stigma, the same cannot be passed without there being a charge memo, enquiry and the finding as to those charges. This proposition of law has been recently reiterated by the Apex Court in the judgment State of Haryana v. Satyender Singh Rathore, 2005 (7) SCC 518. In that judgment, the Supreme Court has relied upon the earlier judgment Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, 1999 (3) SCC 60, and has held that if findings were arrived at in an enquiry as to misconduct behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad".

11. In 2010 (1) SCC 126 in the case of Satwati Deswal v. State of Haryana & Ors. wherein at para 8 & 9 it is held as follows:

"8. Apart from that, on a cursory look of the statutory provision of the Constitution of the Parishad Working Committees, it would be clear that before imposing any major penalty against an employee, namely, an order of termination of service, an inquiry must be held in the manner specified in the statutory rules by which the disciplinary authority shall frame definite charges on the basis of allegations on which an inquiry shall be proposed and opportunity must be given to the employee to submit a written statement stating therein whether he/she desires to be heard in person and no order of termination also can be passed without the approval of the Managing Committee. On this count alone, therefore, the High Court was, in our view, in grave error in dismissing the writ petition of the writ petitioner.

9. Accordingly, the impugned judgment of the High Court is set aside and the order of termination passed against the appellant is quashed and the writ petition stands allowed. However, it would be open to the

authorities, if so desire, to initiate disciplinary proceedings against the appellant for her termination from service and if such disciplinary proceedings are initiated, the authorities shall give proper opportunity of hearing and permit the parties to adduce evidence in support of their respective stands and after giving such opportunity, the disciplinary authorities thereafter shall give hearing to the appellant and then pass a final order on the question of termination of service of the appellant in compliance with the concerned statutory rules applicable to the appellant."

12. Therefore, it is clear from the above said facts and also the proposition of law laid down in the above said judgments of our High Court and the Hon'ble Apex Court I am of the prime view that the impugned order of termination passed by the 3rd respondent involves civil consequences and the same can't be passed without being a charge memo, enquiry and finding as to the charge. Hence, the impugned order is liable to be set aside on that ground also.

13. As per as third ground is concerned whether the Vice-President who is holding the post of in-charge President is having power to pass the order of termination, as per the full bench judgment of this court reported in 2008 (7) MLJ 1256 in the case of Savariar v. Secretary, TNPSC, the person holding the post as in-charge is having the same power as that of the regular post. In view of the full bench judgment of this court, I hold that the 3rd respondent in-charge president is having power and he can exercise all the powers as conferred to the President of the panchayat. Hence the third point is answered in favour of the respondents. Even though the third point is answered in favour of the respondents, in view of the other two points which is in favour of the petitioner, the impugned order is liable to be quashed.

14. For the foregoing reasons and in the light judgments referred above, the impugned order is liable to be set aside and the petitioner is entitled for consequential attendant monetary benefits.

15. In the result:

a) This writ petition is allowed, by setting aside

the order passed by the 3rd respondent dated 29.06.2012;

b) the respondents are hereby directed to reinstate the petitioner into service with all attendant benefits from 29.06.2012;

c) the respondents are hereby directed to complete the said exercise within a period of four weeks from the date of receipt of a copy of this order. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs

To

- 1.The District Collector,
Thiruvallur.
- 2.The Block Development Officer,
Minjur Block, Ponneri Taluk,
Thiruvallur District.
- 3.The President (Incharge),
Anuppambattu Panchayat Union,
Minjur Block, Ponneri Taluk,
Thiruvallur District.

+1cc to Ms.Srividya, Advocate, S.R.No.10934

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M.P.No.1 of 2013 and
WMP.No.16090 of 2016

MG(CO)
RS(04/05/2017)

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