



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.A(MD)No.1200 of 2017
and
C.M.P.(MD)No.8414 of 2017
against
WP(MD)No.15888 of 2017

S.Ramaraj

.. Appellant/Petitioner

Vs.

1. The District Collector,
Virudhunagar District,
Virudhunagar.

2. The Block Development Officer,
(Village Panchayat),
Vembakottai,
Virudhunagar District.

.. Respondents/Respondents

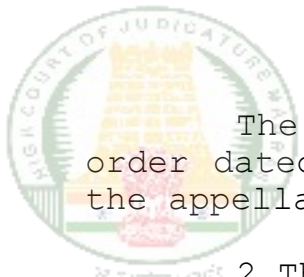
PRAYER: This Writ Appeal is filed under Clause 15 of Letters Patent Act, against the order dated 24.08.2017 made in W.P.(MD)No.15888 of 2017.

Prayer in WP(MD)No.15888/2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorari calling for the records of the first respondent 10.08.2017 made in Na.Ka.No.R/21789/2017 and consequential proceedings of the second respondent dated 17.08.2017 made in Na.Ka.B4/2299/13 and quash the both as illegal and unconstitutional.

For Appellant : Mr.A.Sivaji
For Respondents : Mr.T.S.Mohamed Mohideen
Additional Government Pleader

JUDGMENT



The unsuccessful writ petitioner is on appeal challenging the order dated 24.08.2017 dismissing W.P.(MD)No.15888 of 2017 filed by the appellant herein.

2.The appellant was appointed as Secretary in Thayilpatti Village panchayat, Virudhunagar District. The Assistant Director of Rural Development (Audit), Virudhunagar served a show cause notice calling upon him to explain regarding the non remittance of house tax and water tax collection in the bank account. The amount involved was Rs.47,063/-. Following the direction of Assistant Director of Rural Development (Audit), Virudhunagar, the appellant remitted the entire amount. Thereafter, the first respondent herein issued the impugned order dated 10.08.2017 directing the second respondent herein to transfer the appellant from Thayilpatti Village Panchayat to Valayapatti Panchayat. The second respondent passed the consequential order dated 17.08.2017.

3.The allegation of the appellant is that the proceedings are traceable to a pseudonymous complaint lodged by one Raveendran of T.Ramalingapuram Village, Virudhunagar District. Questioning the order of transfer, the appellant herein filed W.P.(MD)No.15888 of 2017. In the grounds filed in support of the writ petition, the appellant specifically contended that in view of the interim order of stay granted in W.P.(MD)No.16884 of 2013 staying the operation of Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules, 2013, the transfer order is liable to be quashed. The appellant further contended that the impugned order has been passed without jurisdiction.

4.The learned Judge noted that the appellant had clearly committed irregularity and therefore sustained the order of transfer and dismissed the writ petition. Questioning the same, this writ appeal has been filed.

5.Heard learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

6.The learned counsel for the appellant rested his entire case on Rule 11 (1) of Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules, 2013 issued by the G.O.M.S.No.72, Rural Development & Panchayat Raj (E5), 9th July 2013. The said provision reads as under.

'11.Transfer:-

(1)Transfer of a person holding the post shall be made only on administrative grounds supported by valid reasons and after proper enquiry by the authorities concerned.

(2) Transfer and postings within the Block shall be made by the Block Development Officer (Village Panchayats) of the Panchayat Union concerned. Transfer and postings to other Blocks within the District shall be made by the Personal Assistant (Development) to the



Collector. All transfers and postings within the Block and the District shall be done in consultation with the Executive Authority of the Village Panchayat concerned. The Commissioner/Director of Rural Development and Panchayat Raj is the competent authority to made transfer from one district to another district based on the specific report form the Collector.''

7.It is the contention of the learned counsel for the appellant that only after proper enquiry is conducted by the authorities concerned, transfer order could have been made. In this case, such enquiry was not conducted by any of the respondents. We are unable to agree with the said submission for more reasons than one.

8.Firstly, the stand of the appellant herein before the learned single Judge was that the said Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules, 2013 are applicable to him. He would also refer an interim order of stay of the said rules passed by this Court. We have not been informed as to whether the stay order is still enforce. In any event after taking a specific plea that the Rules issued by G.O.M.S.No.72, Rural Development & Panchayat Raj (E5), 9th July 2013 is not applicable to him, in view of the interim stay passed by this Court, it is not open to the appellant now to place reliance on the very same Rule.

9.Secondly, in the instant case, the appellant was put on notice that he had not remitted the house tax and water tax collection in the bank account. He was directed to remit the amount of Rs.47,063/- in the account of the panchayat.

10.Admittedly the appellant complied the said direction and remitted the said amount. Therefore, the question of holding enquiry in this case does not even arise. The appellant by his own conduct had admitted that he was guilty of irregularity. Therefore, holding an enquiry does not arise. In this case there was an enquiry by the audit official. In a matter of financial irregularity, it is the audit Wing which is competent to hold the enquiry. The first respondent is the Inspector of Panchayats. Therefore the authority and jurisdiction of the first respondent to direct transfer of the appellant cannot be questioned. There is absolutely no merit in this Writ appeal. It stands dismissed.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar



To:

1. The District Collector,
Virudhunagar District,
Virudhunagar.

2. The Block Development Officer,
(Village Panchayat),
Vembakottai,
Virudhunagar District.

+ 1 CC TO MrT.S.MOHAMED MOHIDEEN, ADVOCATE IN SR No. 77577

+ 1 CC TO Mr.A.SIVAJI, ADVOCATE IN SR No. 78137

VSG/RMI

TE/MR-KKR/SAR-3 : 20/12/2017 : 4P/5C

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C.M.P. (MD)No.8414 of 2017 against
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