



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 01.09.2017

CORAM:

WEB COPY

**THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

W.A.[MD].No.1352 of 2016 and
C.M.P. (MD) No.9832 of 2016

S.Manimegalai

... Appellant/Petitioner

Vs.

1. The District Collector,
Sivagangai District, Sivagangai.

2. The District Project Officer,
Thirupathur Taluk, Sivagangai.

3. The Child Development Project Officer,
Thirupathur, Sivagangai District. ... Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent, to set aside the order dated 24.02.2016 passed by this Court in W.P (MD).No.7816 of 2008.

Prayer in WP(MD)No.7816/2008 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus, calling for the records relating to the impugned order of dismissal passed by the 1st respondent in his proceedings Na.Ka.No.5946/A1/2007 dated 1.8.2008 and quash the same as illegal and consequently direct the 1st respondent to reinstate the petitioner in service along with backwages, continuity of service and all other attendant benefits.

For Appellant : Mr.Nawazkhan for Ajmal Associates
For Respondents : Mr.T.S.Mohamad Mohideen
Additional Government Pleader.

JUDGMENT

[Judgment of the Court was delivered by G.R.SWAMINATHAN, J.]

This writ appeal is directed against the order dated 24.02.2016 made in W.P.(MD)No.7816 of 2008 filed by the appellant.

2. The appellant was appointed as Child Welfare Organizer on 10.05.1992. The second respondent herein suspended her from service on 12.02.2008 on the ground that she indulged in irregularities in



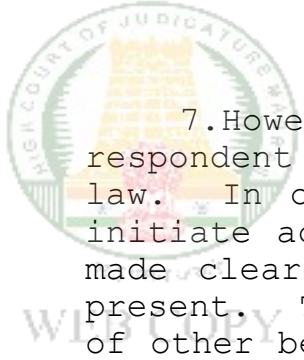
the matter of appointment of Anganwadi Helpers. Thereafter, he issued a memo dated 19.02.2008, containing the allegation that the appellant received illegal gratification.

3. The second respondent called upon the appellant to appear before him. The appellant submitted that the second respondent had suspended her and issued the charge memo and he cannot himself be the enquiry officer. She therefore did not attend the enquiry. She sought for change of enquiry officer. Thereafter, the second respondent appears to have submitted an enquiry report dated 25.06.2008 holding the appellant guilty. Based on the same, the first respondent passed the impugned order dated 01.08.2008 dismissing the appellant from service. Aggrieved by the same, the appellant filed W.P.(MD)No.7816 of 2008. The learned Judge dismissed the writ petition. Questioning the same, this intra Court Appeal has been filed.

4. Heard the learned counsel for the appellant and the Additional Government Pleader for the respondent. It is seen that the enquiry was conducted by the very same officer who also suspended the appellant from service and who issued the charge memo. Though service Rules have not been framed for the post of Child Welfare Organizer, disciplinary action pertaining to the said post will have to necessarily conform to the principles of natural justice. We perused the contentions of the memorandum dated 19.02.2008 which called upon to the appellant to offer her explanation. The second respondent had already concluded that the appellant was found guilty of the charge of reception of illegal gratification from one Alagu Meenal and Mrs.K.Jeyam. The appellant was thereafter called upon to appear before the very same second respondent for enquiry. The appellant was justified in seeking a change of enquiry officer. Without properly considering the said request, the second respondent proceeded to submit an enquiry report holding the appellant guilty of the charges.

5. The impugned order passed by the first respondent is based on the said enquiry report. The memo issued to the appellant is dated 19.02.2008. But the impugned order placed reliance on testimony of persons examined on 21.02.2008. Though on 15.05.2008 an enquiry was conducted and the persons alleged to have given illegal gratification to the appellant were examined, the same cannot be taken into account, since the enquiry took place before the second respondent. A perusal of the materials on record would show that the entire proceedings are vitiated by predetermination.

6. The appellant had submitted as many as 6 letters seeking change of enquiry officer. The said request ought to have been accepted. We are of the view that the impugned order in this proceedings is liable to be set aside. We set aside the order dated 24.02.2016 made in W.A.P.(MD)No.7816 of 2008. The appellant shall be reinstated as Child Welfare Officer.



7. However, the matter is remitted to the file of the first respondent with a direction to proceed afresh in accordance with law. In other words, liberty is given to the first respondent to initiate action against the appellant, if he is so advised. It is made clear that the benefit of reinstatement alone is ordered at present. The question of regularising her service and disbursement of other benefits would depend upon the outcome of the disciplinary proceedings to be continued by the respondents 1 to 2. The charge memo dated 19.02.2008 stands.

8. It is seen that the appellant has sought copies of the statements made against her, so that she could give a proper explanation. The second respondent is directed to furnish the copy sought for by the appellant herein within a period of three weeks from the date of receipt of a copy of this order. The appellant is given a further time of two weeks to submit her explanation. Thereafter, it is open to the first respondent to appoint a new enquiry officer and based on the enquiry report and the representation received from the appellant herein, it is open to the first respondent to pass appropriate orders in accordance with law. The entire exercise shall be completed within a period of four months from the date of receipt of a copy of this order. This writ appeal is allowed as indicated above. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Sivagangai District,
Sivagangai.
2. The District Project Officer,
Thirupathur Taluk,
Sivagangai.
3. The Child Development Project Officer,
Thirupathur, Sivagangai District.

+ 1 CC TO M/s.AJMAL ASSOCIATES, ADVOCATE IN SR No. 76297
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 76680

GSP/MM

TE/KK/SAR-3 : 08/12/2017 : 3P/6C

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