

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 28619 of 2007

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of Certiorari calling for the records relating to the proceedings No.1/ 2007, dated 30.09.2007 on the file of the 4th respondent and further action of respondents 2 and 3 in not taking any action on the representation, dated 25.05.2007 made by the petitioner and thereby allowing the 4th respondent to abuse the powers conferred upon him as illegal, arbitrary and violative of principles of natural justice.

2) The averments in the affidavit filed in support of the writ petition would show that the petitioner was initially appointed by clerk in 4th respondent society on 21.10.1993. Thereafter, in the month of November, 1994, proposals were sent for approval of the authorities and the same was in fact approved. While things stood thus, a notice came to be issued by the President of the society on 09.04.2007 alleging that the petitioner was absent from duties for two months. The petitioner has submitted his explanation stating that he was attending duties and assisting the inspecting staff. In spite of that the 4th respondent without verifying the facts issued proceedings/ notice dated 16.05.2007 directing the petitioner to show the government order authorizing the petitioner to attend the inspection and record work. The petitioner submitted a representation dated 25.05.2007 before the 3rd respondent

explaining about the powers exercised by the President of the society. Having come to know about the representation made by the petitioner to the 3rd respondent, the President of the Society again issued notice dated 30.06.2007 directing the petitioner to show-cause as to why he shall not be removed from service. The petitioner submitted a representation dated 11.07.2007 requesting the authorities to conduct a detailed enquiry. Thereupon, the Secretary of the society was appointed as an Enquiry Officer and a charge memo was issued on 04.08.2007. The petitioner again submitted detailed explanation dated 25.08.2007. On the same day, the Enquiry Officer conducted enquiry and submitted a report holding that the charge was proved. Basing on the said enquiry report, a show-cause notice was issued on 31.08.2007. Without furnishing the enquiry report, the President of the society has straightaway issued proceedings No.1/2007 dated 30.09.2007 dismissing the petitioner from service. Hence, the writ petition.

3) The 1st respondent filed counter denying the averments made in the affidavit filed in support of the writ petition. It is further stated that the petitioner has neither made any allegation nor has sought for any relief against the 1st respondent, hence, the 1st respondent is not a proper and necessary party to the proceedings.

4) The 3rd respondent filed counter denying the averments made in the affidavit filed in support of the writ petition. It is

stated that from the attendance register of the 4th respondent society, it is evident that the petitioner was absent duty, without applying leave or sought prior approval of the 3rd respondent. The Enquiry Officer conducted enquiry on 25.08.2007. During the enquiry, the petitioner though not produced any witness on his behalf, admitted that he had registered himself as a contractor in Roads and Buildings Department. As the charges leveled against the petitioner are proved, the enquiry officer submitted his enquiry report recommending the managing committee of the 4th respondent society for taking disciplinary action against the petitioner. After careful examination of the enquiry report, the managing committee of the 4th respondent society has taken a decision to dismiss the petitioner from service, as it is detrimental to the interest of the society. Accordingly, the President of the Society issued the impugned proceedings.

5) A reading of the material placed before the Court would show that during enquiry the petitioner has not submitted any defence and he did not examine any witnesses on his behalf. Apart from that, he himself admitted that he had registered himself as a contractor in Roads and Buildings Department. The allegation that the 4th respondent is predetermined to see that the petitioner is out of employment is without any basis and there is no material to substantiate the same. Insofar as the plea that the enquiry proceedings are in violation of the principles of natural justice, it appears to be incorrect as the petitioner herein received notices and participated in the said enquiry. The

petitioner was given ample opportunity to prove his case. Basing on the material available on record the enquiry officer recommended to take disciplinary action against the petitioner, as such, the same cannot be found fault with. After careful examination of the enquiry report, the President of the 4th respondent society issued impugned proceedings, dismissing the petitioner from the service after following the principles of natural justice. Since the material on record discloses that the petitioner was absent for duty without applying for leave nor sought prior approval of the 3rd respondent and as there is no material to find fault with the procedural aspects, I see no reasons to interfere with the findings arrived at by the enquiry officer.

- 6) Accordingly, the writ petition is dismissed.
- 7) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

21.03.2017
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