

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2018

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

W.P.No.20140 of 2004
and W.M.P.Nos.24230 of 2004 & 17690 and 18823 of 2006

Jayankondam Panchayat
rep.by its President, A.Balaraman
S/o Adimoola Gounder, Jayankondam
Post, Ginjee Taluk.

.. Petitioner

Vs

1. The Presiding Officer
Labour Court, Cuddalore.

2. M.Shankar

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records in I.D.No.72 of 2001 on the file of the first respondent and quash the order dated 6.5.2004 on his file.

For Petitioner : Mr.V.Bhiman
For Respondents : R1 - Labour Court
R2 - No appearance

O R D E R

Principles of Natural Justice are part and parcel of civilised society. When no person can be accused of anything without giving him proper opportunity of being heard, and right to hearing is the principles of natural justice, whether a person can be terminated without affording him a right of hearing is the issue raised in this writ petition.

2. A part time clerk working under the petitioner ie., the second respondent herein was terminated from service by the order dated 19.02.2001.

3. Challenging the order of termination, the workman raised an industrial dispute in I.D.No.72 of 2001. The labour court, by the award dated 06.05.2004, has given a finding that the termination is unjustified and therefore the second respondent should be reinstated with continuity of service, but without backwages. This order is under challenge by the petitioner / panchayat in this writ petition.

4. The main contention raised by the learned counsel for the petitioner is that the termination is justified and the power to punish the officers and servants has been given to the petitioner as contemplated under Section 106 of the Tamil Nadu Panchayat Act, and therefore, the order of termination is valid. It is also pointed out that the second respondent herein is guilty of misappropriation of funds to the extent of Rs.4,700/- and having regard to the grievous nature of the allegations levelled against him, the termination should be upheld and the labour court, without considering the materials on record, had chosen to justify the act of the second respondent herein and therefore, the order of the labour court is liable to be set aside.

5. Having regard to the facts and circumstances of the case, it is necessary to consider Section 106 of the Tamil Nadu Panchayat Act, which reads as under.

"106. Power to punish officers and servants - Subject to such control as may be prescribed, the Executive Authority, the Commissioner or the (Secretary) may censure, fine, withhold increments or promotions from, or reduce to a lower rank in the seniority list, or to a lower post or time-scale or to a lower stage in a time-scale, suspend, remove or dismiss any officer or servant in the service of Village Panchayat or Panchayat Union Council or the District Panchayat, as the case may be, for any breach of departmental rules or discipline, or for carelessness, unfitness, neglect of duty or other misconduct."

6. A perusal of Section 106 of the Tamil Nadu Panchayat Act, 1994 would go to show that it is the enabling provision giving power to the President to take action against the erring officers and employees. But, that does not mean that punishments can be imposed without even issuing show cause notice or without conducting an enquiry.

6.1. Under such circumstances, it is necessary to find out whether atleast a show cause notice has been issued to the second respondent before imposing the punishment of termination from employment. The labour court has given a finding that not even basic documents are filed on the side of the management to find out whether the charges are proved or not. There is also a finding that the termination is based upon the resolution passed by the Panchayat and it is not based upon any enquiry following the principles of natural justice. There is a specific finding

that the power under Section 106 of the Tamil Nadu Panchayat Act read with Section 311 of the Constitution of India can be used only if the charges are proved by proper oral and documentary evidence. It is also pointed out that there are no basic records to show that the second respondent is guilty of any of the charges levelled against him.

7. It is an admitted fact that the second respondent has been working under the petitioner herein from 01.04.1997 as Part Time Clerk and that the date of termination was 19.02.2001. It is also an admitted fact there is no show cause notice issued or any domestic enquiry was conducted before terminating the second respondent. The most important charge against the second respondent herein is that from the year 1997 to 2000, he was incharge of collecting rent and from the collected amount, he misappropriated a sum of Rs.4,700/-. With regard to this charge, the labour court has given a finding that there was no document filed to show that the amount was collected by issuing any receipt; the document pertaining to income and expenditure has not been filed; there was no police complaint given with regard to the misappropriation of amount; and there was no explanation as to why the President of the Panchayat took up the responsibility of paying that amount to the Government and there was absolutely no document to show that the second respondent was guilty of misappropriation.

8. Yet another contention raised by the petitioner herein is that the second respondent was a Part Time employee; he was on temporary employment and it was not necessary to follow the procedure which would be applicable to a permanent employee. It is not known how the part time employee can be given the charge of collecting money from the public and depositing the amount to the credit of the treasury. The nature of the duty that is imposed upon the second respondent herein would not lead to the conclusion that he would have been appointed temporarily for a limited duration. The order of appointment itself is not filed. The nature of document that is produced on the side of the management did not show that he is a temporary employee having been appointed only for a limited duration. The fact remains that from the year 1997 till 2001, the second respondent had been functioning under the control of the petitioner herein. Eventhough the workman is a part time worker, when the workman has worked for such a long time and when he faces an allegation, there could not be a termination without even an enquiry.

9. Dismissal or termination of any serious punishment without holding a domestic enquiry is illegal. This was so held by the Honourable Supreme Court of India and the Honourable Supreme Court in the case of Glaxo Laboratories Vs The Presiding Officer, Labour Court, reported in LAWS (SC) 1983 10-1, has observed as follows.

In the days of laissez-faire when industrial relation was governed by the harsh weighted law of hire and fire, the management was the supreme master, the relationship being referable to contract between unequals and the action of the management treated almost sacrosanct. Standing orders providing for imposition of penalty to be imposed on proof of 'misconduct' should be construed strictly like penal statutes. For a penalty to be imposed it must be quite clear that the case falls within both the letter and the spirit of the statute. Under the Act, the employer is under an obligation to specify with precision those acts of omission and commission which would constitute misconduct. Penalty is imposed for misconduct. The workmen must know in advance which act of act or omission would constitute misconduct so as to be visited with penalty.

10. Under the circumstances, when the termination order has been passed without issuing a show cause notice and without conducting domestic enquiry, the order of termination cannot be sustained and the labour court has rightly passed the award, by giving a finding that the termination is unjustified. In the absence of proof showing that the second respondent has been gainfully employed, the award of the labour court granting reinstatement with continuity of service, but without backwages, is confirmed. The writ petition is disposed of in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Presiding Officer
Labour Court, Cuddalore.

+1cc to Mr.V.Bhiman, Advocate sr.no.71837

W.P.No.20140 of 2004

kk(co)
nr 14/12/2018