

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2018

CORAM:

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

Writ Appeal No.1607 of 2018

1. The District Collector,
Collectorate,
Ariyalur,
Ariylaur District.
 2. The Block Development Officer (VP),
Sendurai Panchayat Union,
Sendurai, Ariyalur District.
 3. The President,
Keelamaligai Village Panchayat,
Sendurai Panchayat Union,
Ariyalur District.
- ... Appellants

G.Devendran

Vs.

.... Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 05.03.2018 passed by a learned Single Judge of this Court in W.P.No.4964 of 2012.

W.P. 4964/2012:

Writ Petition filed under Article 226 of the constitution of India, praying for the issuance of a Writ of certiorarified Mandamus to call the records of the 1st respondent in his proceedings Na. Ka. No. V.P. VA 2/399/2012 dt 23.2.2012 which was served on the petitioner on 26.2.2012 quash the same and consequently direct the 3rd respondent to permit the petitioner to join duty in the 3rd respondent Panchayat.

For Appellants : Mr.P.S.Sivashanmugasundaram,
Special Government Pleader

For Respondent : Ms.S.Harinyi

J U D G M E N T
(Judgment delivered by Huluvadi G.Ramesh,J.)

Being aggrieved by the order dated 05.03.2018 passed by the learned Single Judge in W.P.No.4964 of 2012, Respondents therein have come up with the present Writ Appeal.

2. It is seen that the Writ Petitioner, viz. G.Devendran, who is the Respondent herein, was issued with a Charge Memo on 16.12.2010 and was placed under suspension on the same day, for certain acts of misconduct in respect of financial irregularities allegedly committed by him, while discharging his duties as Panchayat Assistant in Keelamaligai Village Panchayat, Sendurai Panchayat Union, Ariyalur District. The Writ Petitioner offered his explanation denying the charges and on the basis of the explanation, further order was passed by the 1st Appellant herein on 29.06.2011, revoking the suspension order. Thereafter, the Writ Petitioner was reinstated into service and he was transferred to Sirukadambur Village Panchayat from the 3rd Appellant/Village Panchayat and he served there from 29.06.2011 till 07.08.2011.

3. Thereafter, the Writ Petitioner was once again placed under suspension vide order dated 16.08.2011 and served with a Charge Memo dated 08.08.2011. The Writ Petitioner offered his explanation to the said Charge Memo, however, no further action was taken. On 31.08.2011, yet another Charge Memo containing six Articles of charges, was issued to the Writ Petitioner for the same acts of misconduct, and an explanation was offered by the Writ Petitioner to the said Charge Memo. In the meanwhile, the Writ Petitioner challenged the suspension order dated 08.08.2011 before this Court in W.P.No.27347 of 2011 and the said Writ Petition was disposed of by this Court on 25.11.2011 with certain observations regarding grant of subsistence allowance to the Writ Petitioner.

4. Thereafter, by proceedings dated 23.02.2012, the 1st Appellant/District Collector, Ariyalur District, dismissed the Writ Petitioner from service, by holding that the charges framed against him stand established. Challenging the same, the Writ Petitioner filed W.P.No.4964 of 2012 and this Court by an order dated 05.03.2018, allowed the said Writ Petition, by holding as under:

"9. Although individual affidavits have been filed in respect of all three respondents and there was denial of the averments contained in the affidavit filed in support of the writ petition. However, no specific stand has been disclosed in none of the counter affidavits as to

the factual and legal points raised on behalf of the petitioners. In any event, the respondents cannot offer any valid explanation as to how the first respondent who was the second appellate authority, usurp the power of the original authority, namely, 3rd respondent and pass the impugned order. Moreover, as regards non-conducting of the enquiry, except bald denial, no specific averment has been made in the counter affidavits as to why enquiry was not conducted in the matter before taking adverse action against the petitioner. Therefore, this Court is constrained to hold that the impugned orders passed in proceedings No.Na.Ka.No.V.PL.VA 2/399/2012 dated 23.02.2012 cannot be sustained in law and therefore, the same is hereby quashed.

10. It is needless to mention that the issues raised in the present Writ Petition are squarely covered by the order passed by the learned Judge of this Court in the aforesaid Writ Petition in W.P.(MD) No.8602 of 2006 dated 22.4.2010. In view of the quashment of the impugned order, the petitioner shall be reinstated in service forthwith with all attendant benefits to which, he is entitled to on notional basis. It is made clear that the petitioner is not entitled to arrears of pay on such reinstatement on the principal 'no work no pay'. The authorities, however, are not precluded from proceeding against the petitioner by following proper procedure as laid down by the relevant Rules and Regulations and follow the established principles of natural justice."

5. Heard the learned counsel for the parties and perused the material documents available on record.

6. On a perusal of the order dated 23.02.2012 impugned in the Writ Petition, it is seen that no enquiry was conducted into the charges levelled against the Writ Petitioner. Also, it is seen that no specific averment has been made in the counter affidavits, as to why enquiry was not conducted in the matter before taking adverse action against the Writ Petitioner. Furthermore, the 1st Appellant, by usurping the power of the 3rd Appellant, who is the original Authority, has passed the impugned order. The Hon'ble Supreme Court has time and again held that a party should be heard before any adverse order is passed against him. In the case on hand, the 1st Appellant/District Collector, Ariyalur, has passed the impugned

order of dismissing the Writ Petitioner from service, without conducting any enquiry, which is against the principles of natural justice. Hence, we are of the view that the Learned Single Judge is right in quashing the impugned order and ordering reinstatement of the Writ Petitioner into service with all attendant benefits.

7. In the light of the discussion made above, this Court finds no infirmity in the order passed by the Learned Single Judge and, accordingly, the Writ Appeal is dismissed, confirming the order passed by the Learned Single Judge. No costs. Consequently, connected C.M.P.No.12908 of 2018 is closed.

s/d-
Assistant Registrar (CS VII)

True Copy

Sub-Assistant Registrar

(aeb)

To

1. The District Collector,
Collectorate,
Ariyalur,
Ariyalur District.
2. The Block Development Officer (VP),
Sendurai Panchayat Union,
Sendurai, Ariyalur District.

+1 CC to Ms.S. Harinyi, Advocate sr 58056.

W.A.No.1607 of 2018

KGK (CO)
SP (17/09/2018)

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