

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.14896 of 2009

and

M.P.No.1 of 2009

N.Sankaran

... Petitioner

Vs.

1. The Collector,
Krishnagiri, Krishnagiri District.

2. The Block Development Officer (Village Panchayats)
Kelamangalam Panchayat Union,
Kelamangalam, Krishnagiri District.

3. The President,
Nagamangalam Panchayat,
Nagamangalam, Denkanikottai Taluk,
Krishnagiri District.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the first respondent in Na.Ka.No.4081/2008/M3 (7) dated 21.11.2008 and quash the same, and direct the respondents to reinstate the petitioner in service with all attendant benefits.

For Petitioner : Mr.P.Rajendran

For R1 : Mr.R.S.Selvam
Government Advocate

For R2 : Mr.A.Arumugam

R3 -Served
No appearance

O R D E R

This Writ Petition has been filed to call for the records relating to the impugned order of the 1st respondent in Na.Ka.No.4081/2008/M3 (7) dated 21.11.2008 and to quash the

same, and to direct the respondents to reinstate the petitioner in service with all attendant benefits.

2. The case of the petitioner is that he was appointed as Makkal Nala Paniyalar on 20.07.1990 when the Makkal Nala Paniyalar Scheme was in force during the year 1989-1991 and he was ousted from service in the year 1991, when there was a change of the Government. However, when there was again a change of the Government in the year 1996, he was again appointed as Makkal Nala Paniyalar on 11.09.1997 and ousted from service in the year 2001. Similarly, when there was again a change of the Government in the year 2006, the petitioner was again appointed as Makkal Nala Paniyalar on 10.07.2006 and thereafter, he had been continuously working in the said post.

3. The petitioner would contend that he had received an order of dismissal from the District Collector, Krishnagiri, the 1st respondent herein, in Na.Ka.No.4081/2008/M3 (7) dated 21.11.2008, dismissing him from service on the ground that he had voluntarily abandoned duty and that a charge memo was sent to him by registered post on 19.08.2008, but, it was returned with the postal endorsement "not residing in the address". The petitioner would also contend that he had been residing in the permanent address for several years and he did not receive any such post from the respondent.

4. The petitioner would further contend that since his oral representations to the respondents were failed to evoke any response, he sent a representation to the Collector, Krishnagiri, through the Block Development Officer, Kelamangalam, Panchayat Union on 08.06.2009, to which, he had also received an acknowledgment to his permanent address where he was residing.

5. The petitioner would further contend that he never received the so-called charge memo and it was never sent to his address. Further, if the charge memo had been sent to his correct address, the postman would not have returned the post with the endorsement "not residing in the address". Moreover, he would contend that without even giving him an opportunity to submit his explanations and show cause as to why his services should not be terminated, the impugned order came to be passed by the 1st respondent. Further, his representation dated 08.06.2009 has also not been replied. Hence, the petitioner, with other no alternative, has filed this Writ Petition to quash the order of the 1st respondent dated 21.11.2008.

6. Denying the above allegations of the petitioner, the 2nd & 3rd respondents have filed a counter affidavit, wherein, it has been contended that the post of Makkal Nala Paniyalar does

not come under regular category of posts and they have been paid from contingency establishment of Government or Local Bodies and they are entitled to receive a pay of Honorarium in terms of G.O.Ms.No.50 Rural Development (Ma.Thi.1) Department dated 24.02.1997 and G.O.Ms.No.54 Rural Development (E5) Department dated 02.04.2007. Further, their appointments were made purely on contract and part time basis. Subsequently, as per G.O.Ms.No.234 dated 01.06.2009, the Makkal Nala Paniyalar post was brought under special time scale of pay with effect from 01.06.2009 as prescribed therein.

7. The respondents would also contend that the Makkal Nala Paniyalar were initially recruited in pursuant to the guidelines issued in G.O.(Ms).No.496 Rural Development Department dated 24.02.1997 and G.O.(Ms).No.176 dated 05.12.2006. According to the said Government Orders, it is mandatory that the Makkal Nala Paniyalar should belong to the concerned village panchayat and should be the resident of that village.

8. The respondents would further contend that the petitioner himself absented from duty without prior permission and intimation since April 2008 and he was not also residing in the given address continuously. Because of which, the work assigned to the Makkal Nala Paniyalar in Nagamangalam panchayat was affected, especially in implementing the most important Government scheme NREGS at village level, in which, the Makkal Nala Paniyalar has a greater role.

9. Moreover, the respondents would contend that since the petitioner did not turn up for duty continuously from April 2008, several reminders were issued calling him to attend the duty, through his relatives, those who are living in Nagamangalam Village, but, there was no response from the petitioner. Hence, the 3rd respondent herein had passed the impugned order in Na.Ka.No.4081/2008/M3 (7) dated 21.11.2008, dismissing the petitioner from service, and further, reported the matter to the 1st and 2nd respondents herein. The District Collector, the 1st respondent herein, having taken note of the above fact, informed the 2nd respondent to fill up the vacancy in the place of the petitioner immediately, as the progress of Government sponsored scheme were getting affected without the service of Makkal Nala Paniyalar in the concerned village, where the petitioner was working.

10. Furthermore, the respondents would contend that the 1st respondent issued a charge memo dated 19.08.2008 to be served to the petitioner through the 2nd respondent herein. Accordingly, when the charge memo was served to the petitioner, the officials of the 2nd respondent were informed by the neighbours that the petitioner had left the place and he is residing in Karnataka

State. Since whereabouts of the petitioner was not known to the respondents, they were forced to paste the notice on the wall of the house, where the petitioner was lastly resided, in the presence of the Village Administrative Officer of the concerned Village, the concerned Village President and the local residents. The Village Administrative Officer of the concerned village, also issued a certificate based on enquiry that the petitioner has shifted her residence to Athipalli Village, Anekal Taluk, Karnataka State.

11. In addition to the above, the respondents would contend that since the post of Makkal Nala Paniyalar were brought under special time scale of pay from 01.06.2009, now the petitioner is trying to get into the service, but, he was already terminated from service on 21.11.2008, because of his continuous absent without prior permission or intimation. Therefore, the respondents would contend that the petitioner, without even challenging the order of termination dated 21.11.2008, has submitted a representation dated 08.06.2009 after lapse of seven months, which deserves no consideration, and hence, sought for dismissal of the above Writ Petition.

12. Heard the learned counsel for the petitioner and the learned counsel for the respondents, and perused the materials available on record.

13. On perusal of the proceedings of the District Collector dated .09.1997, it could be seen that the persons those who had worked as Makkal Nala Paniyalar during the period between 1989 - 1991 and were ousted from service in the year 1991, due to the change of the Government, were reappointed as Makkal Nala Paniyalar on temporary basis for one year, for a monthly pay of Rs.500/-. Further, certain conditions were stipulated in the said proceedings. As per the same, the persons those who have reappointed as Makkal Nala Paniyalar, should report before the Additional Block Development Officers concerned and join the duty on 15.09.1997. Before permitting the persons to join the duty, the Additional Block Development Officers were also directed to ensure whether all the documents are in order and report the same through the Panchayat Development Officer in person, and also obtain agreement deed from those persons, after sending them to the respective Panchayats for duty. Moreover, it was stated that the selected persons will be paid their salary by the Panchayats concerned.

14. It could be also seen from the records that based on the above proceedings, the petitioner was also appointed as Makkal Nala Paniyalar on 11.09.1997. But, since he had failed to do his work and he himself absented from duty for long days, the work assigned to the Makkal Nala Paniyalar in Nagamangalam

Panchayat was very much affected and further, the charge memo dated 19.08.2008 issued to the petitioner by the 1st respondent was also returned with the postal endorsement that "the petitioner is not residing in the address". Hence, the first respondent, with no other alternative, passed the impugned order in Na.Ka.No.4081/2008/M3 (7) dated 21.11.2008, dismissing the petitioner from service. Therefore, the contention of the petitioner that without even giving him an opportunity to submit his explanations, the impugned order came to be passed by the 1st respondent, cannot be accepted.

15. It could be further seen from the records that since the respondents have not known the whereabouts of the petitioner, they had pasted the notice on the wall of the petitioner's house, where he lastly resided. If the petitioner was resided in the said address, during the relevant point of time, he has to produce a proof to prove the same. But, he has not produced any evidence to the effect. Hence, the contention of the petitioner that he had been residing only in the said address, cannot be accepted.

16. As per the appointment order dated .09.1997, the post in which the petitioner was appointed, is a temporary one. Hence, there is no possibility to reinstate the petitioner into service, that too he himself absented from duty without completing the work assigned to him and without even obtaining prior permission from the higher officials. Therefore, the prayer sought for in this Writ Petition cannot be granted.

17. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

सत्यमेव जयते

//True copy//

Sub Assistant Registrar

raja

To

1. The Collector,
Krishnagiri, Krishnagiri District.

2. The Block Development Officer (Village Panchayats)
Kelamangalam Panchayat Union,
Kelamangalam, Krishnagiri District.

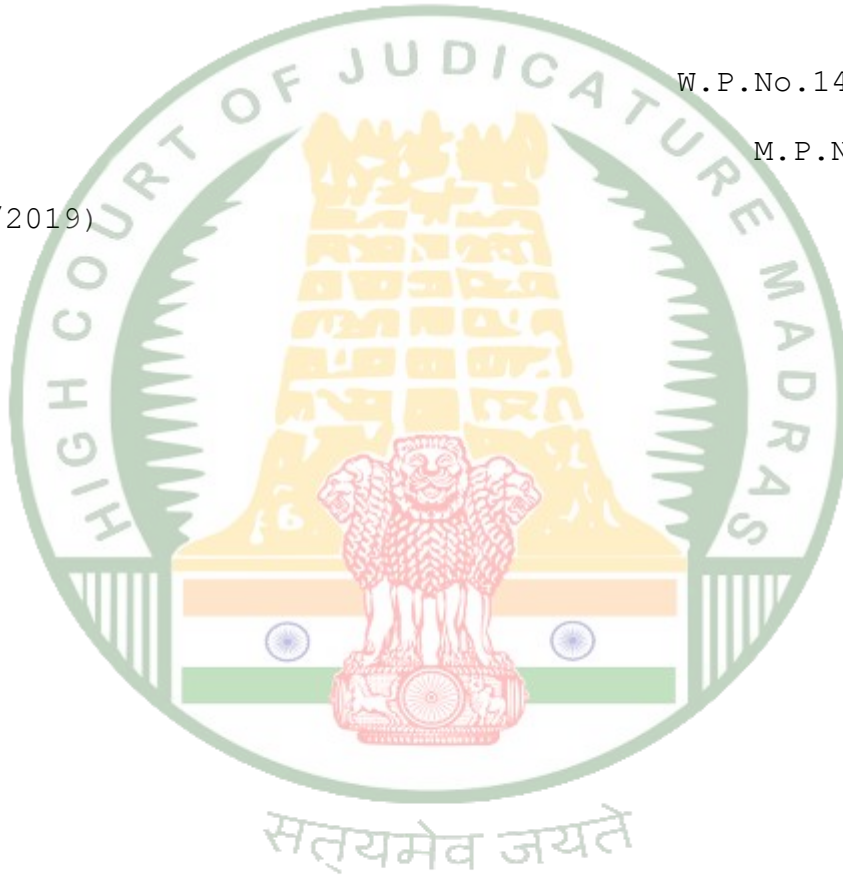
3. The President,
Nagamangalam Panchayat,
Nagamangalam, Denkanikottai Taluk,
Krishnagiri District.

+1cc to Mr.A.Arumugam, Advocate SR.No.51152

+1cc to Government Pleader in (AS) SR.No.51905

RJI (CO)
GMY (10/01/2019)

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