

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2569 of 2018
and
CMP No.20835 of 2018

P.K.Madhaiyan ..Appellant/6th Respondent

Vs.

1. K.Balachandran
Vice Chairman,
Panamarathupatti I Grade Town Panchayat,
Panamarathupatti,
Salem - 636 204.

2. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Municipal Administration &
Water Supply Department,
Secretariat, Fort St. George,
Chennai - 600 009. ..1st Respondent/Writ petitioner

3. The Director of Town Panchayat,
Kuralagam Buildings,
Chennai - 600 108.

4. The Director of Vigilance and Anticorruption,
Raja Annamalaipuram,
Chennai - 600 028.

5. The District Collector,
Salem District, Salem.

6. The Assistant Director of Town Panchayat,
Salem Zone Collectorate,
Salem.

7. The Executive Officer,
Panamarathipatti Grade I Town Panchayat,
Salem District. ..Respondents/Respondents 1to5 &7

Writ Appeal filed under Clause 15 of the Letters Patent
against the Order dated 20.06.2018 made in W.P.No.15308 of
2015. Writ petition filed under Article 226 of the
constitution of India praying to issue a writ of Mandamus to

direct the respondents 1 to 5 to recover the sum of Rs.33,53,580.20p(Rs.Thirty Three lakhs fifty three thousand five hundred and eighty and paise twenty only) from the 6th respondent and consequently to take necessary action against the 6th respondent for having caused the said huge sum of loss to the petitioner Town Panchayat

For Appellant : Mr.G. Sankaran
For Respondents: Mr.R. Udayakumar, AGP.,
for RR2 to 7
N.A.for R1

J U D G E M E N T

(Order of the Court was delivered by S.MANIKUMAR, J)

Vice Chairman of Panamarathipatti Grade I Town Panchayat, Salem District has filed W.P.No.15308 of 2015 for a mandamus, directing respondents 1 to 5 therein to recover a sum of Rs.33,53,580.20p from the 6th respondent / appellant herein and consequently to take necessary action against him, for having caused huge loss to the abovesaid Town Panchayat.

2. Averments made in writ petition though appears to be a public interest litigation filed by the Vice Chairman of the Panamarathipatti Grade I Town Panchayat, writ Court on notice to the respondents therein and after hearing the official present in the Court, had come to a prima facie conclusion that huge amount in any Small Panchayat has been misappropriated by an employee, and no action has been taken, and hence vide order dated 20.06.2018 made in W.P.No.15308 of 2015, directed the official respondents 1 to 5 therein to initiate appropriate action against all the officers concerned to recover the financial loss alleged to have caused in the Town Panchayat.

3. Being aggrieved, respondent No.6 therein has filed the instant appeal on the grounds that the writ Court has failed to consider that departmental action has already been taken and orders are yet to be passed. Appellant has contended that observation of the writ Court that misappropriation has been done by the employee, which in the case on hand the appellant, as pointed out by Vice Chairman, Panamarathipatti Grade I Town Panchayat, in the writ petition, would influence the mind of the disciplinary authority, while passing orders on the disciplinary action taken against the appellant, under Rule 17 (b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules.

4. Attention of this Court was also invited to the disciplinary action taken under Rule 17(b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules, even in the year 2016 itself and that therefore, contention has been made that the observation of the writ Court that no action has been taken is actually not correct.

5. On the above submissions, on instructions, Mr.R.Udayakumar, learned Additional Government Pleader submitted that a charge memorandum was issued to the 6th respondent / appellant in 2013, for which explanation was submitted. Not satisfied with the same, an enquiry officer was appointed. He submitted his report on 26.03.2015. So far no order has been passed in the said disciplinary proceedings. There was another charge memorandum dated 25.05.2015 issued to the appellant, by the Director of Town Panchayat, Chennai.

6. Mr.G.Sankaran, learned counsel for the Appellant submitted that as regards the second charge memorandum stated supra, enquiry was conducted on 15.06.2015. So far no action has been taken.

7. Mr.R.Udayakumar, learned Additional Government Pleader submitted that as the files were pending with the Vigilance Department in respect of Audit Objections, on the second charge memorandum, so far, enquiry report has not been submitted.

8. Thus, from the submissions of the learned counsel for both parties, it is evident that disciplinary action has already been taken against the 6th respondent / appellant herein. Correct facts have not been made to the writ Court and hence the observations.

9. As rightly contended by the learned counsel for the appellant, prima facie conclusion of the writ Court that there is misappropriation by the employee, in the case on hand, the appellant, as pointed out by the writ petitioner and no action has been taken for many years to recover such financial loss, should not influence the mind of either the enquiry officer, who is yet to submit the report on the second charge memorandum, or the disciplinary authority, as the case may be. Action has already been taken. Had the respondents, more particularly the Government placed relevant materials to the writ Court, observations and the consequential directions would not have been issued. In the light of the above discussion, observation of the writ Court is expunged. Respondents 1 to 5 in the writ petition, are directed to pass orders on the disciplinary proceedings, as expeditiously as possible and not later than two months from today, by following the procedure.

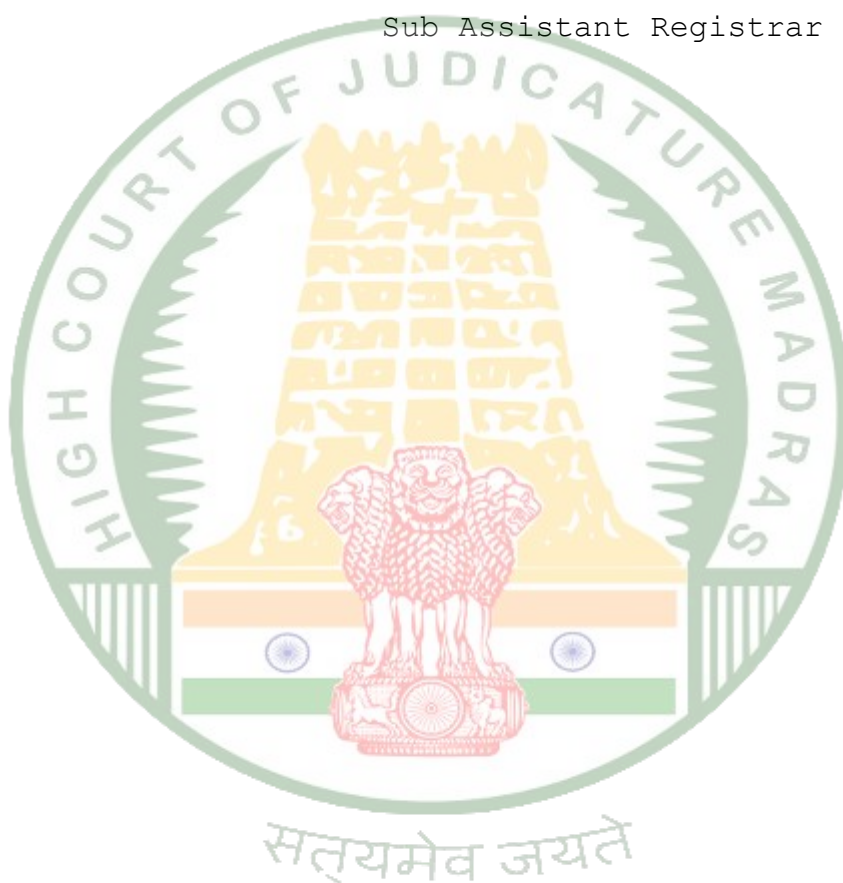
10. Accordingly, with the above directions, instant Writ Appeal is allowed. No Costs. Consequently, the connected Civil Miscellaneous Appeal is closed.

Sd/-
Assistant Registrar (CS-VII)

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Sub Assistant Registrar

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TO

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Rep. by its Secretary to Government,
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Salem District.

+ 1 cc to Mr.K. Selvaraj, Advocate Sr.80992
+ 1 cc to Mr.G. Sankaran, Advocate Sr.80778

W.A.No.2569 of 2018
and
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RV(CO)
EU(28/11/2018)

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