



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

WEB COPY

W.P. (MD) No. 1563 of 2018

Kalamegam

.. Petitioner

Vs.

1.The District Collector,
Karur District,
Karur.

2.The Personal Assitant (Development)
to the Collector,
Karur District, Karur.

3.The Assistant Director (Panchayats),
Karur District, Karur.

4.The Block Development Officer (Panchayats),
Kulithalai Panchayat Union,
Kulithalai,
Karur District.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for records pertaining to the Na.Ka.Pa.Va.6/765/2010, dated 15.07.2014 on the file of the second respondent and quash the same and consequently direct the first respondent to re-instate the petitioner as Panchayat Secretary within the Karur District.

For petitioner
For respondents

: Mr. M.Saravanan
: Mr. K.Saravanan
Government Advocate

O R D E R

The petitioner was employed as a Panchayat Clerk in Manathathai Village Panchayat. He was accused of having misappropriated the Panchayat funds. Crime No.163 of 2009 was registered against him on the file of the Inspector of Police,



Kulithalai Police Station. The petitioner was suspended from service on 12.03.2009. The third respondent issued charge memo dated 25.07.2009. The said charge memo contained as many as eight articles of charge. The petitioner submitted his explanation dated 06.10.2010 denying the charges. Thereafter, the petitioner was dismissed from service by an order dated 15.07.2014 passed by the second respondent. The same is assailed in this writ petition.

2. The learned Government Advocate appearing for the respondents wanted this Court to sustain the impugned order for the reasons set out in the impugned order as well as in the counter affidavit. The respondents have also filed a detailed typed set of papers.

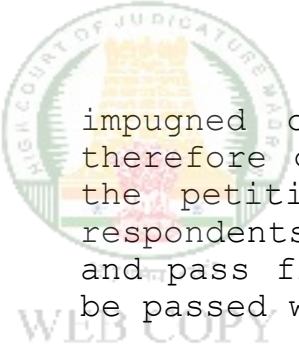
3. The learned counsel appearing for the petitioner submitted that as per the Rule 16 of Tamil Nadu Village Panchayat Secretaries (Condition of Service) Rules, 2013, the authority shall give the delinquent a reasonable opportunity of making any representation that he/she may desire to make to defend himself/herself and the authority shall take such representation, if any, into consideration before passing any order imposing such penalty.

4. Heard the learned counsel on either side.

5. In the present case, the petitioner was issued with a charge memo dated 25.07.2009. The petitioner in his representation dated 06.10.2009, denied the charges and demanded a personal enquiry. But, without holding any such personal enquiry, the second respondent had obtained a report dated 31.01.2014 from the fourth respondent. It is obvious that the said report of the fourth respondent was not furnished to the petitioner.

6. The impugned order, dismissing the petitioner from service is cryptic and utterly non-speaking. There is no consideration of the representation made by the petitioner. Rule 16 of the Tamil Nadu Village Panchayat Secretaries (Condition of Service) Rules, 2013 states that the disciplinary authority shall take the delinquent's representation into consideration before passing any order imposing any penalty. When in the representation the delinquent specifically asks for personal hearing and enquiry, said request should have been dealt with by the authority concerned. That apart, when a factual allegation is denied, the authority must conduct an enquiry. These matters cannot be determined merely on the strength of the representation made by the delinquent. In the very nature of things, an enquiry will have to be conducted where there is a denial of the factual allegations made by the disciplinary authority.

7. In this case, the impugned order has to be quashed because the disciplinary authority has failed to take into account the representation made by the delinquent wherein he specifically sought for personal enquiry. As already pointed out, that the



impugned order is bereft of reasons. The impugned order is therefore quashed. The second respondent is directed to reinstate the petitioner in service. However, liberty is given to the respondents to hold an enquiry into the charge memo dated 25.07.2009 and pass fresh orders in accordance with law. Such an order shall be passed within a period of twelve weeks from today.

8. This Writ Petition is allowed accordingly. No costs.

Sd/-
Assistant Registrar(CSII)

/True Copy/

Sub-Assistant Registrar

To:

- 1.The District Collector,
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Karur.
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to the Collector,
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Karur District, Karur.
- 4.The Block Development Officer (Panchayats),
Kulithalai Panchayat Union,
Kulithalai,
Karur District.

+1cc to The Special Government Pleader, SR.No.50905
+1cc to Mr.M.Saravanan, Advocate, SR.No.50100

kmi
RL/7C/3P/KK/SAR1/26/4/2018

ORDER MADE IN
W.P. (MD) .No.1563 of 2018

21.02.2018