



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.09.2018

C O R A M

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P. (MD) No.7159 of 2015

and

M.P. (MD) Nos. 1 and 2 of 2015

and

W.M.P. (MD) No.17484 of 2017

P.Nallaiah

... Petitioner

Vs.

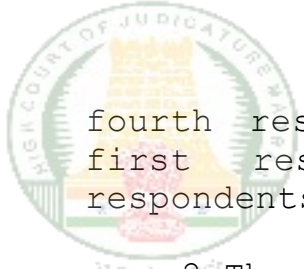
1. The District Collector,
Collectorate, Dindigul.
2. The Assistant Director of Panchayats,
Dindigul.
3. The Block Development Office (Panchayats),
Dindigul Panchayats Union,
Dindigul District.
4. The President,
A.Vellodu Village Panchayat,
Dindigul Panchayats Union,
Dindigul.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of dismissal of the 4th respondent in Na.Ka.No.2/2006 dated 25.08.2006 issued to the petitioner and quash the same as illegal and consequently direct the 1st respondent to appoint the petitioner at any post in the respondents Department within a time frame that may be stipulated by this Court.

For Petitioner : Mr.V.Palanichamy
For Respondents : Mr.P.Sethuraman
Special Government Pleader

O R D E R



fourth respondent and consequently seeking a direction to the first respondent to appoint the petitioner at any post in the respondents Department.

2.The case of the petitioner is that he was working as Village Panchayat Clerk / Assistant in A.Vellodu Village Panchayat, Dindigul Panchayat Union, Dindigul. He joined in service on 17.10.2003. While so, on 26.02.2004, the fourth respondent issued an order of temporary suspension, without conducting any enquiry, levelling some charges against the petitioner. The said suspension order was challenged before this Court in W.P.(MD) No.3656 of 2004 by the petitioner and the same was ordered in favour of the petitioner with a direction to the Block Development Officer to consider the representation of the petitioner. Thereafter, the fourth respondent passed an order of removal of the petitioner from service on 27.01.2005 referring to the proceedings of the third respondent dated 24.12.2004. Hence, W.P. (MD)832 of 2006 has been filed challenging the said order. The same was also ordered in favour of the petitioner directing the fourth respondent to initiate fresh enquiry and reinstate the petitioner in service. While so, on 25.08.2006, the fourth respondent has passed an order dismissing the petitioner from service without conducting any enquiry and giving any opportunity of hearing to the petitioner. The same has been assailed in the present writ petition.

3.The contention of the petitioner is that the fourth respondent in order to appoint his relative viz., Peter in the post of Village Panchayat Clerk / Assistant, made false allegations against the petitioner and also insisted him to give a transfer application. It is submitted that the charge memo dated 19.06.2006 was issued to the petitioner only on 24.08.2006, but on the very next day i.e., on 25.08.2006, order of dismissal of the petitioner from service was issued. Further it is stated that he has not committed any misconduct and he has filed an affidavit dated 30.04.2015 undertaking that he will not claim any backwages from the date of dismissal order till the date of reinstatement. Hence, he prays for allowing the writ petition.

4.The learned Special Government Pleader appearing for the respondent would contend that the petitioner has committed serious misconduct of misappropriation of Panchayat's funds, for which charge sheet dated 19.06.2006 was issued to the petitioner and since the petitioner refused to receive the same, it was despatched by registered post. Since the petitioner did not respond to the charge sheet, the dismissal order dated 25.08.2006 was passed and hence, the punishment order need not be disturbed, as the petitioner has committed serious misconduct.



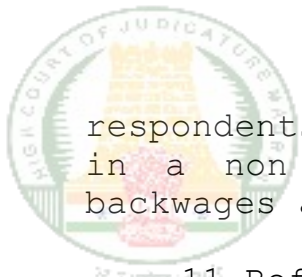
6. It is not in dispute that the petitioner was issued with charge sheet dated 19.06.2006 alleging serious misconduct of misappropriation of funds. It is very unfortunate that the fourth respondent has passed the dismissal order without giving an opportunity to the petitioner and without conducting any enquiry, thereby establishing the charges. Even though there is an evidence to the effect that the charge memo has been despatched by registered post, in the dismissal order dated 25.08.2006, the charges have not been established.

7. The burden of establishing charges is on the employer and the employer has failed to follow the principles of natural justice. From a reading of the impugned order and the charge memo, it is very clear that there is a possibility of collusion between the fourth respondent and the officials, who have signed the dismissal order. The misappropriation of funds by the petitioner cannot be ruled out. Even though the petitioner has stated that he has remitted the money, there is no evidence with regard to the date of deposit and assuming that he has remitted the amount on a particular date as mentioned in the charge memo it was only at the end of the month. It clearly shows that there is misappropriation. But, unfortunately the employer namely the respondent has not established the charge by conducting enquiry and by providing evidence.

8. After passing of dismissal order, the petitioner was given 15 days time to file an appeal. Whether the petitioner has filed an appeal or not need not be gone into, as the order passed by the second respondent is completely in violation of principles natural justice. It is very unfortunate that the Disciplinary Authority, for the reasons best known to him, had not conducted any enquiry into the charges levelled against the petitioner as as to establish the same. It is saddening to note that the person, who is not well versed with the administration is being elected as president. Even though there is evidence that the petitioner has misappropriated the Panchayat funds, the charges have not been established as there is a complete violation of principles natural justice and therefore, this Court has no other option but to interfere with the punishment.

9. Therefore, this Court is of the view that a person, who is well versed with the procedure of conducting enquiry, can be appointed to follow the correct procedure, otherwise the person like the petitioner, who commits misconduct will escape from the clutches of law.

10. Taking note of the undertaking affidavit that the petitioner is not interested in getting backwages from the date of dismissal till the date of reinstatement, this Court, while interfering with the order passed by the respondent, directs the



respondents to reinstate the petitioner into service and keep him in a non sensitive post and grant all other benefits except backwages as undertaken by the petitioner.

11. Before parting with the order, I am of the view that there appears to be collusion between the petitioner and the Disciplinary Authority and the order has been passed by the Disciplinary Authority for consideration which cannot be termed as a well "considered" order.

12. This Writ Petition is ordered accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

1. The District Collector,
Collectorate, Dindigul.
2. The Assistant Director of Panchayats,
Dindigul.
3. The Block Development Office (Panchayats),
Dindigul Panchayats Union,
Dindigul District.

+ 1 CC TO Mr.V.PALANICHAMY, ADVOCATE IN SR No. 83920
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 84300

TA

TE/SKN/SAR-4 : 03/12/2018 : 4P/6C

W.P. (MD) No. 7159 of 2015
11.09.2018