

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.1152 of 2012

S.Arichandran

.. Petitioner

Vs.

1.The Inspector of Panchayats and
District Collector,
Salem District, Salem.

2.The Block Development Officer,
Konganapuram Panchayat Union,
Konganapuram,
Salem District.

3.The President,
Samuthram Panchayat,
Samuthram, Salem District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorarified Mandamus, calling for the records connected with the orders passed by the 1st respondent in Proceedings Na.Ka.No.6967/2004/A5 dated 11.06.2009, quash the same and also direct the respondent to reinstate the petitioner with continuity of service, back-wages and other attendant benefits.

For Petitioner : Ms.S.Girija

For R1 : Ms.R.Janaki,
(Additional Government Pleader)

For R2 : Mr.I.Arokiasamy

For R3 : No appearance

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O R D E R

The present Writ Petition is filed by the petitioner for a Writ of Certiorarified Mandamus, calling for the records connected with the orders passed by the 1st respondent in Proceedings Na.Ka.No.6967/2004/A5 dated 11.06.2009, quash the same and also direct the respondents to reinstate the petitioner with continuity of service along with back-wages and other

attendant benefits. The petitioner is challenging the impugned order of dismissal.

2. According to the petitioner, the charges leveled against him relates to irregularities, misappropriation and misconduct committed by the erst-while President, the 3rd respondent. The 1st respondent without any proper enquiry dismissed the petitioner from service by an order dated 25.10.2005. The petitioner challenged the said order by filing W.P.No.1710 of 2007. This Court by the order dated 07.01.2009 allowed the Writ Petition, holding that "No enquiry, whatsoever was held as required under law" and remanded the matter to the 1st respondent for "fresh disposal in accordance with law". He also directed the 1st respondent to appoint a competent Enquiry Officer to conduct necessary enquiry into the charges, after affording sufficient opportunity to the petitioner and on getting such report, to pass appropriate final orders. As per the orders of this Court, the 1st respondent appointed one K.V.Rajasekaran, Assistant Director of Rural Development (Audit) as Enquiry Officer. As per the instructions of the Enquiry Officer, the petitioner appeared before him on 06.04.2009 and submitted written statement. No complaint was given against the petitioner by the Panchayat. The 1st respondent after receipt of report of the Enquiry Officer, passed the impugned order without issuing second show cause notice to the petitioner and the petitioner was deprived of opportunity to put forth his defense. The impugned order is invalid and prayed for setting aside the same and allowing the Writ Petition.

3. The 2nd respondent filed counter affidavit. The 1st respondent has not filed any counter. The learned Additional Government Pleader appearing for the 1st respondent and the learned counsel appearing for the 2nd respondent contended that a fair and proper enquiry was conducted and petitioner was given opportunity. The petitioner was found guilty based on the records of the Panchayat and prayed for dismissal of the Writ Petition.

4. Heard the learned counsel appearing for the petitioner, learned Additional Government Pleader appearing for the 1st respondent as well as the learned counsel appearing for the 2nd respondent and perused the materials available on record. Though notice has been served on the 3rd respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

5. From the impugned order of the 1st respondent, it is seen that the Enquiry Officer has given his report holding that the charges leveled against the petitioner was proved only based on the explanation given by the petitioner. No witness was examined before the Enquiry Officer and petitioner was not given any

opportunity to prove that the charges leveled against him are false. Further, the 1st respondent after receipt of report of the Enquiry Officer did not issue second show cause notice to the petitioner enclosing copy of the report calling upon the petitioner to submit his reply. From the impugned order, it is seen that the 1st respondent has extracted the report of the Enquiry Officer and without giving any reason for accepting the finding of the Enquiry Officer, in one line has held that "all the charges leveled against the petitioner seems to be proved". The impugned order is not a speaking order and the same has been passed without conducting proper enquiry by examining witnesses to prove the charges leveled against the petitioner. The 1st respondent has not complied with the earlier order of this Court dated 07.01.2009 passed in W.P.No.1710 of 2007 directing the 1st respondent to conduct enquiry and pass orders based on the enquiry report. In view of the same, the order of the 1st respondent is invalid and not sustainable. The order of the 1st respondent is set aside and the respondents are directed to reinstate the petitioner into service with continuity of service, attendant benefits and backwages.

6.In the result, the Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Inspector of Panchayats and
District Collector,
Salem District, Salem.

2.The Block Development Officer,
Konganapuram Panchayat Union,
Konganapuram, Salem District.

3.The President,
Samuthram Panchayat,
Samuthram, Salem District.

+lcc to Mr.S.Girija, Advocate, S.R.No. 55816

+lcc to the Special Government Pleader, S.R.No. 55961

W.P.No.1152 of 2012

NR(CO)

GN(09/08/2019)