

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.14337 of 2011
and M.P.No.1 of 2011

C.Rajeshkannan

... Petitioner

Vs.

The District Collector/
Inspector of Panchayat
Namakkal District
Namakkal.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus calling for entire records relating to the impugned order passed by the respondent in his proceedings in Na.Ka.No.Thi.1/10865/2011, dated 31.05.2011, quash the same and consequently direct the respondent to reinstate the petitioner into service with all back wages and other benefits.

For Petitioner : Mr.C.Prakasam

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

सत्यमेव जयते
O R D E R

Writ Petition is filed for issuance of a writ of Certiorarified Mandamus calling for entire records relating to the impugned order passed by the respondent in his proceedings in Na.Ka.No.Thi.1/10865/2011, dated 31.05.2011, quash the same and consequently direct the respondent to reinstate the petitioner into service with all back wages and other benefits.

2.According to the petitioner, he was appointed as Panchayat Clerk in Sikkanaickenpalayam Panchayat on 01.11.1997. On 13.04.2009, he was suspended from service for certain alleged misappropriation of funds. A charge memo dated 29.06.2009 containing four charges was issued to the petitioner by the

respondent. The petitioner submitted his explanation. According to the petitioner, he did not misappropriate the funds of the Panchayat. The President of the Panchayat handed over certain cheques duly signed by the President and Vice President, instructed the petitioner to encash the cheques and hand over the cash to the President. The President threatened the petitioner that if he fails to comply with her instruction, she will dismiss the petitioner from service. In such circumstances, the petitioner encashed the cheque duly signed by the President and Vice President and handed over the cash to the President. The President was removed from the post of President for misappropriation of funds and subsequently, she paid entire amounts to the Panchayat. According to the petitioner, he has not misappropriated any amount and he acted as per the instructions of the President. The respondent, who is the 2nd Appellate Authority without considering the materials on record and without conducting domestic enquiry, dismissed the petitioner from service and hence, the petitioner has come out with the present writ petition.

3.The learned counsel appearing for the petitioner contended that the respondent is the 2nd Appellate Authority and without conducting any domestic enquiry and without properly considering the explanation submitted by the petitioner, based on the special report of the Block Development Officer, passed the impugned order of dismissal. The respondent has violated the principles of natural justice as the respondent has not examined any witness and has not given any opportunity to the petitioner to cross-examine the witness to prove his case and prayed for quashing the impugned order of dismissal and allowing the writ petition.

4.The respondent filed counter affidavit. The learned Government Advocate appearing for the respondent contended that no doubt, it is true that the Village Assistant has to act as per the instructions of the President of the Panchayat. When there is a doubt about the activities of the President, the petitioner ought to have immediately informed the higher-ups. The petitioner failed to inform the higher-ups the irregularities committed by the President. The petitioner was suspended for such irregularities, enquiry was conducted and the petitioner was dismissed from service. There is no irregularities in the impugned order of termination. The Panchayat President admitted the misappropriation and paid the amount, both the President as well as the petitioner admitted the irregularities and prayed for dismissal of the writ petition.

5. Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondent and perused the materials available on record.

6. From the materials available on record, it is seen that charge memo dated 29.06.2009 was issued to the petitioner alleging that he has misappropriated the funds of the Panchayat independently without any authority. The petitioner in his explanation has submitted that he has encashed the cheque handed over by the President duly signed by the President as well as Vice President and handed over the cash to the President. He acted as per the instructions of the President and has not misappropriated any amount. The respondent, who is the Appellate Authority, has not conducted any domestic enquiry and no witness was examined to substantiate the charges that without any authority to withdraw the money, the petitioner has misappropriated the same. The respondent has considered the charges, explanation submitted by the petitioner and the alleged special report of the Block Development Officer, passed the impugned order. When the respondent relied on the special report given by the Block Development Officer, he ought to have given an opportunity to the petitioner to cross-examine the Block Development Officer to prove that he has not misappropriated the funds. The respondent has passed the impugned order of dismissal without conducting any domestic enquiry and the contention of the learned counsel for the petitioner that the principles of natural justice were violated, when the impugned order was passed, has considerable force and is acceptable.

7. For the above reason, the impugned order of the respondent is set aside and the writ petition stands allowed as prayed for. It is open to the authority to conduct domestic enquiry to prove the charges levelled against the petitioner by examining the witnesses and by giving opportunity to the petitioner to put forth his case and to cross-examine the witnesses of the authority. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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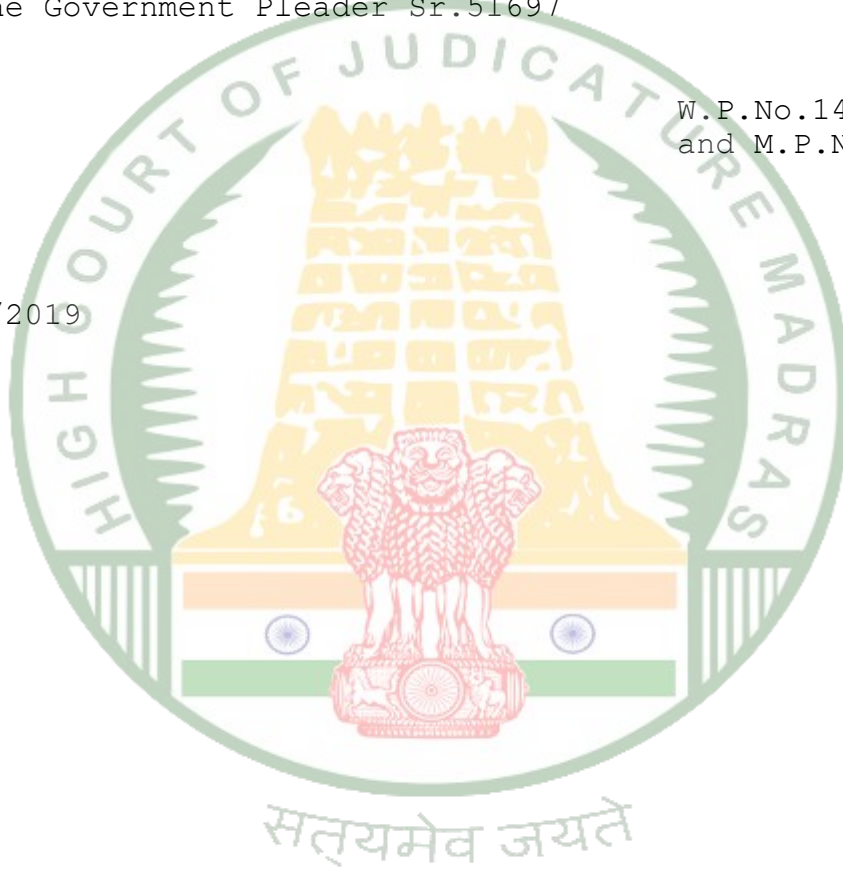
To

The District Collector/
Inspector of Panchayat
Namakkal District
Namakkal.

+lcc to Mr.C.Prakasam, Advocate Sr.51597
+lcc to the Government Pleader Sr.51697

W.P.No.14337 of 2011
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