

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.6349 of 2013

R.Venkatesan

.. Petitioner

Vs.

1. The District Collector,
Dharmapuri District,
Dharmapuri - 5.
2. The Assistant Director,
Rural Development and Panchayat Department,
Dharmapuri District,
Dharmapuri - 5
3. The Commissioner /
The Block Development Officer,
Dharmapuri Panchayat Union,
Dharmapuri, Dharmapuri District.
4. The President,
Mookanur Panchayat,
Mookanur, Dharmapuri Taluk and District.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for a Writ of certiorarified Mandamus to call for the orders of impugned order passed by the fourth respondent in reference Nil dated 10.08.2011 and quash the same and consequently, direct the respondents to reinstate me as Panchayat Assistant of 4th respondent Panchayat with continuity of service and with full back wages and other attendant benefits.

For Petitioner : Mr.R.Jothimanian
For Respondents: Mrs.A.Shrijayanthi
Additional Government Pleader
for R1 to R3
Mr.S.Venkatesh for R4

O R D E R

This writ petition has been filed challenging the order of the 4th respondent dated 10.08.2011 and for a consequential direction to the respondents to reinstate the

petitioner as Panchayat Assistant with continuity of service and with full back wages and other attendant benefits.

2. The case of the petitioner is that the petitioner was working as a Panchayat Assistant. A criminal case was instituted against the petitioner in Crime No.506 of 2010 for an offence under Section 147, 341, 294(b) 323, 324 of IPC, on the file of Mathikonpalayam Police Station.

3. The Petitioner was placed under suspension by the President of Mookanur Panchayat by an order dated 12.10.2010 and in the said order, the petitioner was directed to hand over all the Registers of Panchayat which includes cheque books and cash collected from the public such as all the cash taxes, incomes to the clerk, etc., The petitioner states that he has handed over all the documents. However, a notice was issued to the petitioner on 14.12.2010, whereby, the petitioner had once again directed to hand over all documents. The petitioner was also directed to appear in person on 24.12.2010 along with all documents belonging to Panchayat Board. It was also stated that in case of failure to produce the documents on the date of enquiry, it would be assumed that the petitioner had nothing to say, the charges will be framed and the enquiry will also be initiated.

4. Subsequently, another notice was issued to the petitioner on 03.05.2011, asking the petitioner to hand over the documents and appear for an enquiry on 12.05.2011. The petitioner was ultimately terminated from service by an order dated 10.08.2011. Challenging the said termination order, the petitioner filed the instant writ petition. This Court by an order dated 07.07.2017 allowed the writ petition on the ground that the 4th respondent/ the President of Mookanur Panchayat is not the Disciplinary authority and was therefore not competent to initiate disciplinary action against the petitioner. Paragraph No.5 of the said order reads as thus :-

5. In view of the submission made by the learned counsel for the parties, this Court is of the view that the order of termination dated 10.08.2011 is liable to be set aside and therefore, the same is set aside. The respondents are directed to reinstate the petitioner into service with all consequential benefits within a period of two weeks from the date of receipt of a copy of this order.

5. The above said order was challenged by the Panchayat before the Hon'ble Division Bench of this Court in W.A.No.1400 of 2017. The Division Bench of this Court after considering the judgement of the learned Single Judge held that the 4th

respondent was not competent authority to initiate proceedings against the petitioner and however, allowed the Appeal and remanded the matter back to the learned Single Judge to consider all the contentions to be raised by the respective parties and pass orders on merits.

6. This matter is coming on this day on remand.

7. The learned counsel for the petitioner would vehemently contented that under Section 102 of the Tamil Nadu Panchayat Act, 1994, the 4th respondent is not a competent authority to initiate disciplinary proceedings. He would also state that he has returned all the documents back and that while accepting those documents, there was an endorsement on the part of the Panchayat and only certain documents which are left to be produced by the petitioner. The learned counsel further submit that there is no proper charge memo given to the petitioner. He would therefore state that the entire charge is vague and deserves to be set aside. The learned counsel would further submit that since it is a case of termination, an enquiry as contemplated under the Panchayat Act should have been conducted and only after a proper enquiry could the termination order be passed.

8. On the other hand, the learned counsel for the respondent would state that there is nothing to support the order of termination. He would further state that notices dated 14.12.2010, 03.05.2011 and 04.07.2011 categorically brings out the documents which had not been produced by the petitioner. Despite being requested more than three occasions, the petitioner has not complied with the notice and he did not appear on the date, when he was asked to appear. The respondent would further state that the petitioner is facing grave charges on defalcation of money and therefore, the order of termination does not required to be set aside.

9. Heard the learned counsel appearing for the parties on either side.

10. A perusal of the above mentioned facts would show that a charge memo has not been issued to the petitioner. Enquiry Officer has not been appointed and a proper enquiry as contemplated under the Act has not been conducted. In the absence of any of the procedure being followed, the order of termination should be set aside. The petitioner has been suspended from service on 10.12.2013 itself. More than 9 years have passed, the respondents are therefore directed to conduct an enquiry in accordance with the procedure prescribed under the Tamil Nadu Panchayat Secretaries (Conditions of Service) Rules, 2013 conferred the powers under Section 102(1) of the Tamil Nadu

Panchayat Act, 1994. The proceedings must be initiated by a competent authority. The proceedings and enquiry shall be conducted in accordance with the above said rules. The entire exercise shall be completed within a period of six weeks from the date of receipt of copy of this order.

11. This Writ petition is allowed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1. The District Collector,
Dharmapuri District,
Dharmapuri - 5.
 2. The Assistant Director,
Rural Development and Panchayat Department,
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Dharmauri - 5
 3. The Commissioner /
The Block Development Officer,
Dharmapuri Panchayat Union,
Dharmapuri, Dharmapuri District.
 4. The President, Mookanur Panchayat,
Mookanur, Dharmapuri Taluk and District.
- +1 CC to Mr.Jothiraman, Advocate sr 87960.
+1 CC to Govt. Pleader sr 88660.

W.P.No.6349 of 2013

MG(CO)
SP(21/11/2019)