

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.10.2019

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No. 28957 of 2019

&

W.M.P.Nos.28707 & 28709 of 2019

K.Kumar

..Petitioner

vs

1.The District Collector,
Salem.

2.Block Development Officer,
Omalur Panchayat Union,
Omalur,
Salem District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Proceedings Na.Ka.No.2733/2019/Thi.1 dated 20.08.2019 on the file of the 2nd respondent and quash the same, consequently direct the respondents to reinstate the petitioner from the date of suspension with all attended benefits.

For Petitioner : Mr.Neelakandan
for Mr.C.Mahendran

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

O R D E R

The prayer sought for in this Writ Petition is to call for the records pertaining to the impugned order in Proceedings Na.Ka.No.2733/2019/Thi.1 dated 20.08.2019 on the file of the 2nd respondent and quash the same, consequently direct the respondents to reinstate the petitioner from the date of suspension with all attended benefits.

2. The case of the petitioner is that he was working as Village Panchayat Secretary in M.Chettypatty Village Panchayat. The 2nd respondent on 29.07.2019, transferred the petitioner on administrative reasons and posted in Puliampatty Village Panchayat. On 16.08.2019, a complaint was made against the petitioner by the Zonal Deputy Block Development Officer, Omalur, before the law enforcing agency as if the petitioner had sold Old Steel materials, unused LED bulb-clamps, Pipes and other materials without the prior permission of the concerned officials. Immediately, thereafter, the petitioner was arrested and detained in Judicial custody. Subsequently, the 2nd respondent, the Block Development Officer, Omalur, vide proceedings dated 20.08.2019, placed the petitioner under suspension. As against the said suspension order, the petitioner is before this Court.

3. Mr.Neelakandan, learned counsel appearing on behalf of Mr.C.Mahendran, learned counsel for the petitioner would submit that as per the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules, 2013, the petitioner is a Secretary and the Competent Authority to pass suspension order is Personal Assistant to the District Collector. However, instead of Personal Assistant to the District Collector, the Block Development Officer passed the suspension order, is unsustainable one. In support of his contentions, he would rely upon the Order passed by this Court in W.P.No.19413 of 2019 dated 19.08.2019. The relevant portion of the order would read as follows:

"4.This Court is unable to countenance such arguments advanced on behalf of the respondent for the simple reason that the rule position is otherwise, denoting that the competent authority in respect of the petitioner to exercise the power of suspension, is Personal Assistant (Development) to the Collector, whereas, the respondent who passed the impugned order of suspension, being Block Development Officer, is not competent authority. However, the learned learned Additional Government Pleader appearing for the respondent would submit subsequently, the appointing authority has been modified by way instructions dated 21.03.2018 substituting the other official in the place of Personal Assistant (Development) to the Collector and thereby, the respondent/Block Development Officer (Village Panchayat) is also the competent authority, who can pass suspension order. A statutory provision as contained in the Rules cannot be altered or amended by passing any executive orders by the Government in substituting the respondent herein in the place of Personal Assistant

(Development) to the Collector. The authority who is empowered to pass suspension order in respect to the post held by the petitioner as per the Rules alone is competent to pass the order of suspension and no other authority can be empowered unless the Rules are amended. Therefore, this Court is of the considered view that the impugned order of suspension suffers from want of jurisdiction and the same is liable to be interfered with."

It is categorically held that the Block Development Officer have no power to suspend the petitioner without amending the Rules and the only person competent to pass suspension order is Personal Assistant to the District Collector. Accordingly, the learned counsel for the petitioner prayed this Court to allow the Writ Petition.

4. Mr.R.S.Selvam, learned Government Advocate appearing for the respondents would submit that the Rule referred to by the learned counsel for the petitioner is stayed by this Court and the same is not in force. Hence he sought for the dismissal of the Writ Petition.

5. Heard the counsel on either sides and perused the records.

6. Though the Rule has been stayed, the Block Development Officer has no power to pass the order of suspension without amending the Rule or passing any Government Order thereof. The Competent Authority to pass suspension order is Personal Assistant to the District Collector. Hence, the order suspending the petitioner passed by the Block Development Officer, Omalur dated 20.08.2019, is without any legal basis and is liable to set aside, accordingly the same is set aside. However, this order will not stand in the way of the Competent Authority to take suitable action against the petitioner in accordance with law.

7. The Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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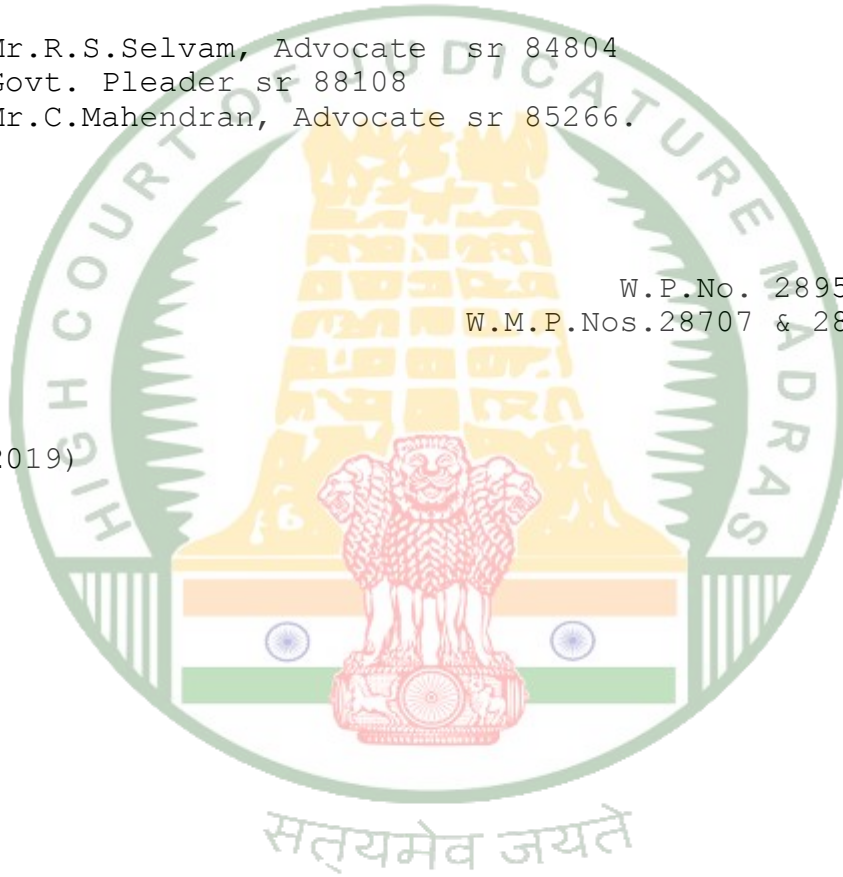
1.The District Collector,
Salem.

2.Block Development Officer,
Omalur Panchayat Union,
Omalulr,
Salem District.

+1 CC to Mr.R.S.Selvam, Advocate sr 84804
+1 CC to Govt. Pleader sr 88108
+1 CC to Mr.C.Mahendran, Advocate sr 85266.

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SVI (CO)
SP(22/11/2019)



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