

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :19.11.2019
CORAM
THE HON'BLE MR.JUSTICE M.DHANDAPANI
W.P.No.32489 of 2019
&
W.M.P.Nos.32817 & 32818 of 2019

V.Dhanasekaran

.. Petitioner

Vs.

1.The District Collector
Panchayat Union
Villupuram District

2.The Assistant Director, Panchayat
Kallakurichi
Villupuram District

3.Tmt R.Rathanamala

... 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 of the 1st respondent in connection with the impugned show cause notice issued by him in Na.Ka.No.Pa.Aa.4/1853/2018 dt 29.10.19 and the enquiry report of the 2nd respondent dt 18.10.19 and quash the same and direct the respondent to conduct a fresh oral enquiry in accordance with the principles of natural justice.

For Petitioner : Mr.R.Venkatramani
Senior Counsel
for Mr.M.Muthappan

For Respondents : Ms.M.Lalitha
Government Advocate

O R D E R

The prayer sought for in the Writ Petition is to call for the records of the 1st respondent in connection with the impugned show cause notice issued by him in Na.Ka.No.Pa.Aa.4/1853/2018 dated 29.10.2019 and the enquiry report of the 2nd respondent dated 18.10.2019 and quash the same and direct the respondent to conduct a fresh oral enquiry in accordance with the principles of natural justice.

2. By consent of both the parties the Writ Petition has been taken up for final disposal at the admission stage itself.

3. The case of the petitioner is that he was appointed in the service of the respondent as a Junior Assistant in the year 1994 on compassionate grounds. Prior to the employment the petitioner has married one Tamilselvi and they were living together. In the year 1997, the said Tamilselvi went to her parent's house and has failed to return home and thereafter her whereabouts were not known. Accordingly, the petitioner lodged a Police complaint and has received a report stating that she could not be traced out. In the year 2004, the petitioner in order to take care of his aged mother, married one Bharathi and got two children. In the year 2005, the petitioner was promoted as Assistant and further promoted as Deputy Block Development Officer in the year 2010. In the meanwhile, the said Tamilselvi made a complaint against the petitioner and the petitioner was proceeded with departmental enquiry under Rule 17(b) of the Tamilnadu Civil Servants (Discipline and Appeal) Rules, by the 1st respondent containing eight charges.

4. On 06.09.2018, the 1st respondent placed the petitioner under suspension. Challenging the said suspension order, the petitioner filed Writ Petition in W.P.No.34842 of 2018. This Court by its order issued direction to the respondent to review the suspension order. However, no action was taken and therefore the petitioner has filed Contempt Petition and the same is pending before this Court. Thereafter, the 2nd respondent was appointed as an Enquiry Officer to conduct an oral enquiry against the petitioner and the Enquiry Officer in his proceedings dated 22.11.2018 directed the petitioner to appear appear for an oral enquiry on 28.11.2018 in his office situate at Kallakurichi. As directed the petitioner appeared on the said date and submitted an explanation for the charges and the same was recorded by the Enquiry Officer.

5. The petitioner was once again asked to appear for an enquiry on 07.12.2018 at Kallakurichi along with his wife Bharathi. On the said date, the complainant Tamilselvi also appeared and submitted a statement. She has also produced documents to show that the petitioner and the said Tamilselvi were separated by mutual divorce and the copy of the proceedings is pending before the Family Court for the separation through Court of law. On 29.10.2019, the 1st respondent issued an impugned show cause notice to the petitioner stating that the Enquiry Officer in his enquiry report has held that the charges against the petitioner had been proved. On 02.11.2019, the

petitioner sent a reply to the 1st respondent stating that without furnishing the copy of enquiry report, the impugned show cause notice has been issued and also requested the 1st respondent to send a copy of the enquiry report. On 07.11.2019, the 1st respondent issued the said Enquiry Report to the petitioner. On 08.11.2019, the 1st respondent issued a memo for personal appearance to the petitioner stating that the petitioner has not submitted his explanation to the impugned show cause notice and was asked to present before the 1st respondent on 12.11.2019. However, the petitioner has filed the Writ Petition before this Court against the impugned show cause notice.

6. Mr.R.Venkatramani, learned Senior counsel appearing for the petitioner would submit that immediately after the Enquiry, the Disciplinary Authorities has to furnish the copy of the Enquiry Report to the petitioner to enable him to give further explanation for the Disciplinary Authorities to pass appropriate orders. He would further submit that the petitioner has received the Enquiry Report at a later point of time that too only after the representation to the 1st respondent. However, the petitioner was not allowed to give an explanation and without receiving the explanation from the petitioner, the 1st respondent calling for the personal hearing of the petitioner is unsustainable one.

7. Heard the counsel and perused the records.

8. It is seen that the petitioner was issued with the impugned show cause notice on 29.10.2019. However, the Enquiry Report was issued to the petitioner only on 07.11.2019 that too on request of the petitioner. Further, the petitioner was not given any time to give an explanation on the Enquiry Report and without giving time, he was asked to appear before the 1st respondent for Personal appearance.

9. Considering the facts and circumstances of the case, I hereby permit the petitioner to make an explanation on the Enquiry Report dated 18.10.2019 to the Disciplinary Authorities within a period of two weeks from the date of receipt of a copy of this order, thereafter the Disciplinary Authorities shall consider the same and pass final orders within a period of twelve weeks.

10. With the above directions the Writ Petition is disposed of. Consequently, connected Miscellaneous Petitions are also closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

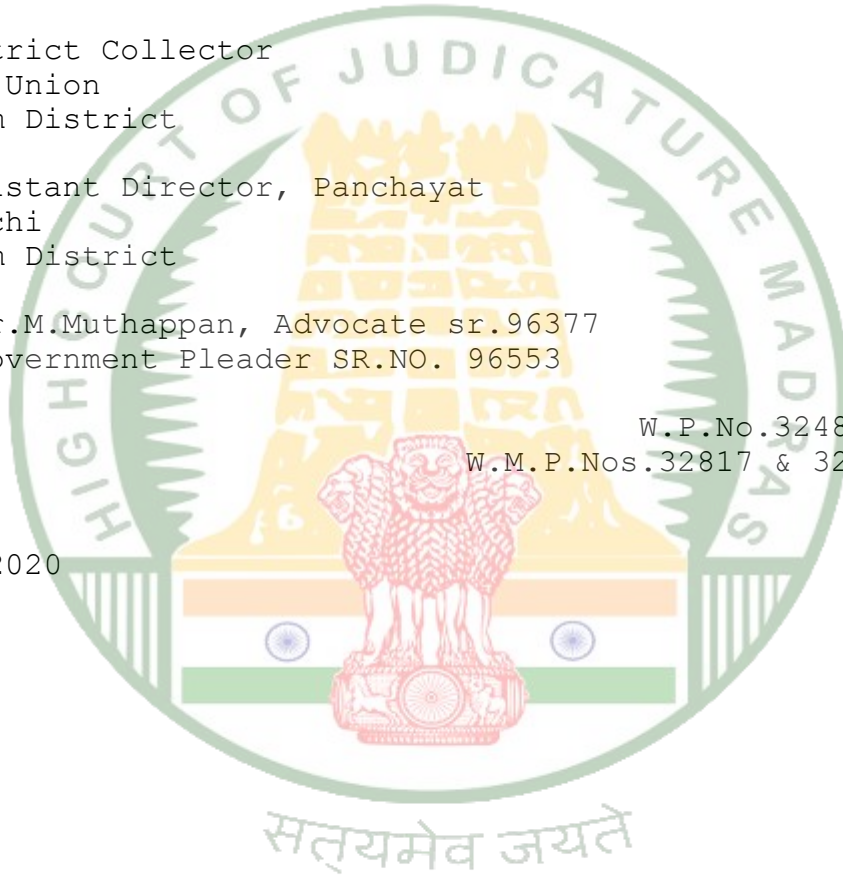
1.The District Collector
Panchayat Union
Villupuram District

2.The Assistant Director, Panchayat
Kallakurichi
Villupuram District

+1cc to Mr.M.Muthappan, Advocate sr.96377
+1cc to Government Pleader SR.NO. 96553

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rsv(co)
nr 28/01/2020



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