

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2019

CORAM :

THE HON'BLE MR. JUSTICE N.ANAND VENKATESH

W.P.No.33736 of 2019
and WMP.No.34209 of 2019

D.Abathsagayam

...Petitioner

Vs.

1.The State of Tamilnadu,
Department of Rural Development,
Represented by its Secretary,
St.George Fort, Chennai.

2.The District Collector,
Kanchipuram,
Kanchipuram District.

3.The Block Development Officer,
Kanchipuram Panchayat,
Kanchipuram,
Kanchipuram District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the proceedings of the 2nd respondent pertaining to their letter Na.Ka.No.10794/2019/Pa.Ah2 dated 03.07.2019, quash the same and consequently issue a direction to the 2nd respondent to regularize the suspension period from 28.04.2017 to 28.01.2018 as duty period award costs and thus render justice.

For Petitioner : Mr.S.Makesh

For Respondents : Mrs.K.Bhuvaneswari for RR1 and 2.
Additional Government Pleader.

Mr.N.Srinivasan for R3,
Additional Government Pleader.

O R D E R

This writ petition has been filed challenging the impugned order passed by the second respondent refusing to regularize the suspension period from 28.04.2017 to 28.01.2018 and for consequential relief to regularize the suspension period and pay the benefits.

2.The case of the petitioner is that he was appointed as a Panchayat Clerk at Avalur Panchayat, Kanchipuram Block, Kanchipuram District, in the year 1985. On 28.04.2017, the second respondent kept the petitioner under suspension pending departmental proceedings. At that point of time, the petitioner was working as a Panchayat Secretary at Thamal Panchayat, Kanchipuram Block. When the petitioner was undergoing suspension, the second respondent issued the charge memo on 29.06.2017 and the petitioner also gave his explanation on 10.08.2017. The petitioner was also informed by the second respondent that he is entitled for the subsistence allowance pending enquiry.

3.An enquiry officer was appointed and he also submitted his report to the effect that the charge against the petitioner is not proved and there are no materials to substantiate the fact that the petitioner received any bribe while discharging his duties. The enquiry report was submitted on 05.10.2017 to the second respondent. The second respondent thereafter passed an order on 25.01.2018 directing the petitioner to join duty and warned the petitioner not to indulge in similar activities in future. The petitioner joined the services at Muttavakkam Panchayat. The petitioner attained superannuation on 31.03.2018 and he was relieved from service by the 3rd respondent.

4.The petitioner submitted a representation to the second respondent to treat the suspension period from 28.04.2017 to 28.01.2018 as duty period and regularize the same. The said request made by the petitioner was rejected by the second respondent and the same has now become the subject matter of challenge in the present writ petition.

5.The learned counsel for the petitioner submitted that once the charges are dropped and the petitioner has also been allowed to retire from service, the suspension will have to be regularized and the same has to be taken into consideration for the purpose of calculating the pension. The learned counsel submitted that the petitioner was not punished during the departmental proceedings, and the impugned order passed by the second respondent has virtually resulted in a punishment to the petitioner and the same is illegal and opposed to principles of natural justice. The learned counsel submitted that the second respondent has taken one stray statement made by one of the witness during enquiry to the effect that the petitioner had directed him to pay Rs.50/- to the photographer. The learned counsel submitted that there is absolutely no proof to substantiate this statement and

therefore the impugned order has been passed by the second respondent without any basis and the same requires interference of this Court.

6.The learned Government Pleader appearing on behalf of the third respondent submitted that even though the enquiry report gave a clean chit to the petitioner, there was a statement made by one of the witnesses to the effect that the petitioner had directed him to pay a sum of Rs.50/- to the photographer. The learned counsel further submitted that when the re-joining order was passed by the second respondent, the petitioner was warned not to indulge in similar activities in future. Therefore, the learned counsel submitted that the suspension period cannot be regularized in the case of the petitioner. It was further submitted that the subsistence allowance that is payable to the petitioner was released in part and the petitioner refused to receive the same and the balance amount payable to the petitioner will be paid within a reasonable time by the respondents. The learned counsel submitted that there are no grounds to interfere with the impugned order passed by the second respondent.

7.This Court has carefully considered the submissions made on either side and the materials available on record.

8.It is clear from the facts that has been extracted supra that the petitioner underwent departmental proceedings pursuant to the charge memo issued by the second respondent and an enquiry officer was also appointed and he had found that the charge against the petitioner has not been proved and there are no materials to show that the petitioner was involved in receiving bribes from anyone. After the clean chit in favour of the petitioner, the second respondent had proceeded to pass an order allowing the petitioner to rejoin the services. At the time of rejoining, the petitioner was warned to the effect that he should not involve in similar activities in future. Therefore, at the best it can only be construed as a "Warning" given by the second respondent. This cannot be construed as a punishment given to the petitioner. The petitioner was thereafter permitted to retire from service after he attained superannuation on 31.03.2018.

9.The petitioner had made a representation to the second respondent to regularize the suspension period from 28.04.2017 to 28.01.2018. This was refused by the second respondent on the ground that there were findings of the enquiry officer to the effect that the petitioner had directed the payment of Rs.50/-to the photographer by each of the participant, who was

directed to collect the identity card. Therefore, according to the second respondent, the petitioner was strictly warned and he was asked to rejoin the service by proceedings dated 25.01.2018.

10.The only issue that is required to be considered in this writ petition is as to whether the reason given by the second respondent can be sustained and whether the petitioner can be deprived of his right to get the suspension period regularized. Admittedly in this case, no punishment was awarded against the petitioner except a warning. In view of the same, the suspension period has to be necessarily regularized and the final report of the enquiry officer cannot be put against the petitioner at this stage, more particularly, since the petitioner has not been awarded any punishment. The moment the petitioner was permitted to rejoin the department and he was also permitted to retire, the entire suspension must be regularized and the same must be taken into consideration for the purpose of calculating the pension benefits.

11.In view of the above discussion, the impugned order passed by the second respondent dated 03.07.2019 is hereby set aside. The second respondent is directed to regularize the suspension period from 28.01.2017 to 28.01.2018, consequently, the second respondent is also directed to pay the entire amount that is due and payable to the petitioner towards arrears of subsistence allowance within a period of eight weeks from the date of receipt of copy of this order. The second respondent is also directed to process the pension papers of the petitioner after regularizing the suspension period and pay the pension in accordance with G.O.Ms.314, Finance (Pay Cell) Department, dated 25.10.2017 and also pay the entire arrears of pension to the petitioner. This process shall be completed within a period of eight weeks from the date of receipt of copy of this order.

12.This writ petition is allowed with the above directions. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary,
The State of Tamilnadu,
Department of Rural Development,
St.George Fort, Chennai.

2.The District Collector,
Kanchipuram,
Kanchipuram District.

3.The Block Development Officer,
Kanchipuram Panchayat,
Kanchipuram,
Kanchipuram District.

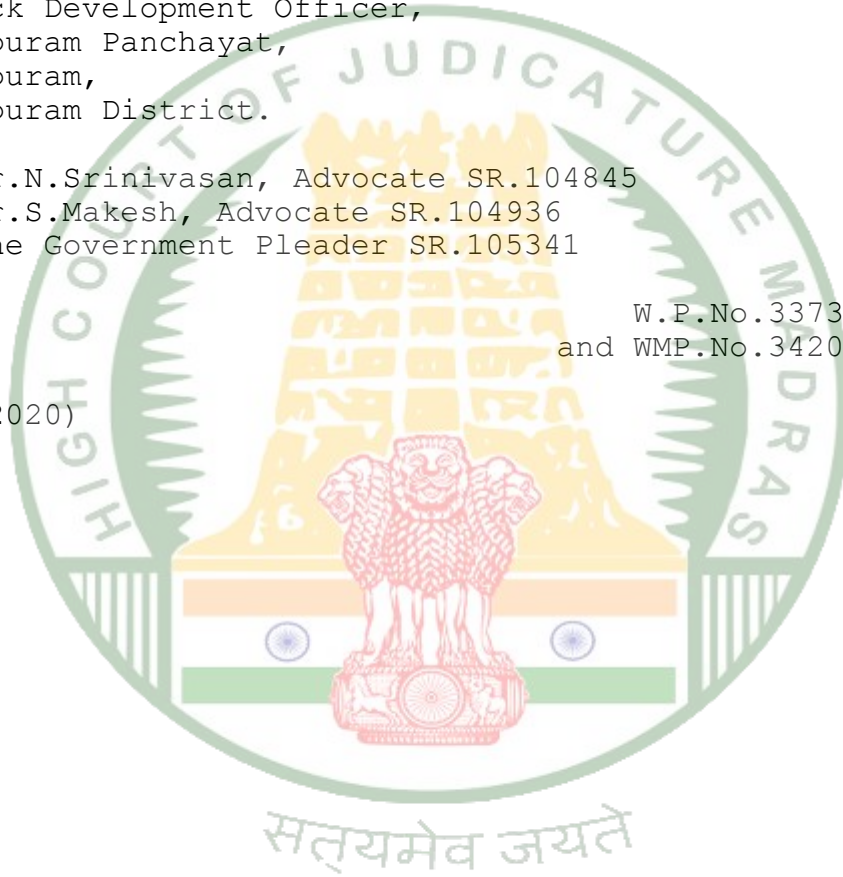
+1cc to Mr.N.Srinivasan, Advocate SR.104845

+1cc to Mr.S.Makesh, Advocate SR.104936

+1cc to the Government Pleader SR.105341

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and WMP.No.34209 of 2019

MP (CO)
CB (29/01/2020)



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