



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated: 05.08.2019

CORAM:

WEB COPY

THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU
and
THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A. (MD) No.344 of 2019

1) The Inspector of Panchayats,
District Collector,
Virudhunagar District,
Virudhunagar.

2) The President,
Kathalampatti Panchayat,
Sattur Panchayat Union,
Virudhunagar District.

... Appellants / Respondents

Vs.

1) D.Kandhasamy

... 1st Respondent / Petitioner

2) A.Paulraj

... 2nd Respondent/
3rd Respondent

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent Act against the order made in W.P.(MD) No.840 of 2009 dated 13.11.2018.

Prayer in WP(MD) . 840/ 2009 :

To issue a writ of certiorarified mandamus, to call for the records of the second respondent in her proceedings Na.Ka.No.1/2007 dated 09.02.2007 and the order of the first respondent in his proceedings Na.Ka.VuE1/932/2007 dated 18.12.2008 and quash the same and direct the respondents to reinstate the petitioner in service with all monetary and service benefits.

For Appellants/	:	Mr.VR.Shanmuganathan,
Respondents	:	Special Government Pleader
For R1	:	Mr.M.Kannan
For R2	:	Mr.Balakarthik

J U D G M E N T

(Judgment of the Court was made by **K.RAVICHANDRABAABU, J.**)

1. This Writ Appeal is directed against the order made in W.P. (MD) No. 840 of 2009 dated 13.11.2018. The Appellants are the Respondents before the Writ Court. The Writ Petition was filed challenging the order of termination, dated 09.02.2007 and the order



made in appeal dated 18.12.2008 dismissing the same. Consequently, the Writ Petitioner sought for a direction to the Respondents to reinstate him in service with all monetary and service benefits.

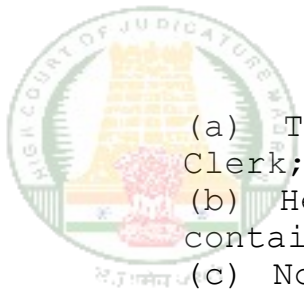
2. We heard Mr.VR.Shanumuganathan, learned Special Government Pleader appearing for the Appellants and the learned counsels appearing for the first and the second respondent.

3. The Writ Petitioner was functioning as a part time Clerk in the second respondent Panchayat. A charge memo was issued against the Writ Petitioner on 08.01.2007 containing 14 charges. He gave an explanation and not being satisfied with those explanations, the order of termination dated 09.02.2007 was passed. Challenging the said order, the Writ Petitioner filed W.P.(MD) No.1266 of 2007. The said writ petition was dismissed on 05.07.2007 only on the reason that the Writ Petitioner has filed the writ petition without availing the alternate remedy of filing an appeal before the Inspector of Panchayat, who is the District Collector. Thereafter, the Writ Petitioner filed an Appeal before the Inspector of Panchayat on 06.08.2007.

4. It is seen that the Writ Petitioner filed W.P.(MD) No.1944 of 2008 seeking for a Mandamus directing the District Collector to consider and pass orders in the Appeal dated 06.08.2007. The said writ petition was disposed of on 03.03.2008 directing the District Collector to dispose of the Appeal within a period of three months. The District Collector passed an order on 08.08.2008 without considering the merits of the appeal filed by the petitioner and however, by observing that the petitioner cannot be reinstated into service. Therefore, the writ petitioner filed one more writ petition before this Court in W.P.(MD) No.8426 of 2008 challenging the said order dated 08.08.2008. This Court by order dated 21.11.2008, set aside the said order dated 8.08.2008 and remitted the matter back to the District Collector to pass appropriate orders on the appeal filed by the Writ Petitioner on 06.08.2007 strictly in accordance with law. Consequently, the District Collector passed an order in the appeal dated 18.12.2008, rejecting the same. Therefore, challenging the original order of punishment, as well as the order passed by the appellant authority, the Writ Petitioner filed the present writ petition W.P.(MD) No.840 of 2009 before this Court.

5. The Writ Court by order dated 13.11.2018, set aside the impugned orders with a direction to the authorities concerned to issue appropriate orders to reinstate the Writ Petitioner in service within a period of two months from the date of receipt of a copy of the said order. Hence, the present writ appeal is filed by the respondents before the writ court.

6. Upon hearing the learned Special Government Pleader for the Appellants and the learned counsel appearing for the first Respondent/ Writ Petitioner, the following undisputed facts and circumstances would emerge.



- (a) The Writ Petitioner was appointed as a part-time Clerk;
- (b) He was issued with a charge memo dated 08.01.2007 containing 14 charges;
- (c) No enquiry was conducted before passing the impugned order of punishment namely dismissal from service; and
- (d) The Appeal preferred by the Writ Petitioner against the said order of punishment was dismissed by the Appellate authority, namely, the Inspector of Panchayat (District Collector) without going into the merits of the charges and giving any reasoning and finding for confirming the order of punishment.

7. It is true that the Writ Petitioner was appointed only as part time employee in the second Appellant Panchayat. However, he was terminated from service based on certain charges levelled against him. If such termination was made based on those charges, certainly, an enquiry ought to have been conducted to find out as to whether those charges are proved or not. In this case, admittedly no such enquiry was conducted. Therefore, apparently the very basic requirement of complying with the principles of natural justice is violated in this case before punishing the Writ Petitioner. Though the Writ Petitioner challenged the said order of punishment before the appellate authority, unfortunately, the said authority simply confirmed the order of punishment without going into the merits of the charges and giving any findings on the same in support of his conclusion for confirming the order of punishment. Therefore, we are of the view that the order of punishment of the original authority as well as that of the appellate authority cannot be sustained in the eye of law.

8. The Writ Court, though is justified in quashing the impugned orders, however, is not correct in directing the authorities to reinstate the Petitioner, without remitting the matter back to the original authority to pass fresh order after conducting enquiry. Therefore, we are convinced to remit the matter back to the original authority. It is stated that now the President of the Panchayat is replaced by the Block Development Officer/ Special Officer of Sattur Panchayat Union. In such event, the matter has to go back to the said authority for conducting the enquiry and for passing fresh order on merits and in accordance with law. Accordingly, this Writ Appeal is allowed, in part, and the portion of the order directing the reinstatement of the petitioner alone is set aside. Consequently, the matter is remitted back to the Block Development Officer/ Special Officer of Sattur Panchayat Union for conducting an enquiry in respect of the charges leveled against the writ petitioner and pass fresh orders thereafter on merits and in accordance with law.

9. The said authority will pass such orders within a period of four weeks from the date of receipt of a copy of this order. Since we remit the matter for conducting fresh enquiry and for passing



fresh orders, we are not expressing any view on the merits of the claim made by the respective parties, in respect of the charges levelled against the Writ Petitioner. The Petitioner is also not entitled for any reinstatement since we have remitted the matter as stated supra. Needless to say that depending upon the outcome of the order to be passed by the original authority, it is open to either parties to workout their remedy accordingly. No costs.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar

+1 CC to M/s.M.PURUSHOTHAMAN, Advocate (SR-79816[F] dated 05/08/2019)

Judgment made in
W.A.(MD)No.344 of 2019
Dated:05.08.2019

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