



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE **D.KRISHNAKUMAR**

W.P.(MD)No.3377 of 2016

and

W.M.P.(MD)Nos.2972 & 2973 of 2016

Gunasekaran, S/o.R.K.Sithannan

... Petitioner

Vs.

1.The Inspector of Panchayats-cum-
The District Collector,
Theni District.

2.P.A. To District Collector,
Theni District,
Theni.

3.The President,
Rengasamuthiram Village Panchayat,
Andipatti Taluk,
Theni District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the proceedings of the third respondent in Na.Ka.No.1/2012/Rengasamuthiram, dated 11.04.2012 and the proceedings of the first respondent in Na.Ka.No.2528/2015/Vu.Va 6, dated 18.12.2015, quash the same and consequently, direct the respondents herein to reinstate the petitioner into service with all back wages and monetary benefits.

For Petitioner : Mr.C.Jegannathan
for M/s.Veera Associates

For R1 & R2 : Mr.Aayiram K.Selvakumar
Additional Government Pleader

For R3 : No Appearance

ORDER

This Writ Petition has been filed seeking to quash the proceedings of the third respondent in Na.Ka.No.1/2012/Rengasamuthiram, dated 11.04.2012 and the proceedings of the first respondent in Na.Ka.No.2528/2015/Vu.Va 6, dated 18.12.2015 and consequently, direct the respondents herein to reinstate the petitioner into service with all back wages and monetary benefits.



2. According to the petitioner, he was appointed as a Clerk in the third respondent Village Panchayat on 26.08.2001 on the basis of a resolution passed by the third respondent Panchayat. Subsequently, during the year 2007, his services were regularized and his post has been re-designated as Panchayat Secretary. Thereafter, on 21.09.2011, the petitioner was suspended by the first respondent on the ground that he was not maintaining Account Form No.30 and submitting the same to the authorities and on other grounds. On 27.09.2011, the petitioner has given a detailed explanation to the third respondent herein explaining all the defects and rectified the same. In furtherance of the above suspension, on 21.02.2012, a case in Crime No.36 of 2012 for the offences under Sections 408 and 420 IPC has also been registered against the petitioner, alleging that he has collected Rs.22,000/- towards house tax from Padmaramasamy School and has not deposited the same with the Panchayat. Based on the same, the third respondent issued a notice vide his proceedings dated 21.03.2012 alleging that the petitioner was not properly maintaining the accounts and also misappropriated the funds of the Panchayat and called for explanation from him. The third respondent has also issued another proceedings dated 11.04.2012, terminating the services of the petitioner and the same was not served on the petitioner and without serving any notice, the said order has been passed. Hence, the petitioner filed an appeal before the first respondent on 29.07.2013 and has also given representations on 28.09.2015 and 15.10.2015. Thereafter, the first respondent, vide his proceedings dated 18.12.2015, rejected the petitioner's request. Since the respondents gave assurance that if the petitioner refunds the amount with interest, he would be reinstated, the petitioner has paid the alleged misappropriation of Rs.22,000/- along with interest, amounting to Rs.55,000/- to the third respondent. The similarly placed persons like the petitioner have been reinstated in service by the first respondent after deposit of such funds with interest by them. But, the petitioner's case was not considered by the respondents. Hence, the present Writ Petition.

3. According to the learned counsel appearing for the petitioner, the petitioner's service was regularized by the Panchayat Department, but no material has been placed before this Court. However, the learned counsel appearing for the petitioner submitted that even assuming for the sake of argument, if the petitioner was working as a Part-Time employee, the decision of this Court in **R.Palanivel Vs. Commissioner, Gingee Panchayat Union, Villupuram District and another** reported in **2008 (5) MLJ 1284** is squarely applicable to the case on hand and it has been held that if serious charges of misappropriation has been levelled against an employee, he cannot be terminated without conducting a detailed enquiry giving him sufficient opportunity of hearing and



therefore, the learned counsel prayed for allowing this Writ Petition.

4.The learned Additional Government Pleader appearing for the respondents 1 and 2 submitted that the respondent Panchayat has passed the impugned order terminating the petitioner's service mainly on the ground of misappropriation of funds and therefore, he prayed dismissal of this Writ Petition.

5.Perusal of the impugned order shows that the same has been passed without providing an opportunity to the petitioner. Considering the above said decision of this Court in **R.Palanivel Vs. Commissioner, Gingee Panchayat Union** [supra], wherein it has been held that when serious charges of misappropriation has been levelled against the employee, he cannot simply be terminated without holding a regular departmental enquiry. In the said case, it has been further held that the order of termination passed without holding such enquiry would be in violation of principles of natural justice.

6.Therefore, the proceedings of the third respondent in Na.Ka.No.1/2012/Rengasamuthiram, dated 11.04.2012 and the proceedings of the first respondent in Na.Ka.No.2528/2015/Vu.Va 6, dated 18.12.2015, are set aside and the Writ Petition is allowed. No costs. It is open to the authority concerned to take action afresh in accordance with law and pass appropriate orders as expeditiously as possible, if so advised. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

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To

- 1.The Inspector of Panchayats-cum-
The District Collector,Theni District.
- 2.The P.A. To District Collector,
Theni District, Theni.
- 3.The President,
Rengasamuthiram Village Panchayat,
Andipatti Taluk, Theni District.

+1CC TO M/S.VEERA ASSOCIATES , ADVOCATE, SR.NO.71828

+1CC TO M/S.SPECIAL GOVERNMENT PLEADER SR.NO.71789