



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

WEB COPY

W.P(MD)No.1191 of 2013

K.Indhirani

.. Petitioner

Vs.

1.The District Collector,
Ramanathapuram District,
Ramanathapuram.

2.The Assistant Director (Panchayats),
Ramanathapuram District,
Ramanathapuram.

3.The President,
Keela Paruthiur Panchayat,
Paramakudi Union,
Ramanathapuram District.

4.K.Sivasakthi

5.Amirthavalli

.. Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 3rd respondent in his proceedings dated nil and consequently direct the 3rd respondent to reinstate the petitioner forthwith with all attendant benefits within a stipulated time.

For petitioner : Mr.H.Mohammed Imran
for M/s.Ajmal Associates

For respondents 1 & 2 : Mr.S.Dhayalan,
Government Advocate

For respondents 3 to 5 : No appearance

ORDER

This petition has been filed by the petitioner challenging the order dismissing her from service and for a consequential direction to the respondents to reinstate her service with all service and monetary benefits.



2. The learned counsel for the petitioner submitted that she was appointed as Panchayat Clerk in the 3rd respondent Panchayat on 01.07.2006 by the erstwhile President. Due to personal enmity between the erstwhile President and new President, the new President prevented the petitioner from discharging her duties as Clerk in the 3rd respondent Panchayat. The petitioner had preferred a representation to the 3rd respondent in that regard. As there was no response to the same, she had filed W.P.(MD).No.2644 of 2007 seeking a direction to the 3rd respondent to reinstate her in service with all attendant benefits. Pending the said writ petition, the petitioner was issued with termination order dated 15.11.2006. As the termination order was passed without issuing any charge memo and without conducting any enquiry, the petitioner had filed another writ petition in W.P.(MD).No.5849 of 2007 challenging the said order. Both the writ petitions were allowed by this Court on 15.11.2006, by which the termination order was set aside and the 3rd respondent was directed to consider the case of reinstatement of the petitioner, in the light of the judgment reported in **2005(4) CTC 7 (Secretary, Vallalar Gurugulam Higher Secondary School Vs. Vadaloor, Cudaloor District)** and the third respondent was also given liberty to take disciplinary proceedings in accordance with law. As the petitioner was not reinstated in service, she had filed a contempt petition in Cont.P.(MD).No.484 of 2012. But, the contempt petition was dismissed on the ground that an order of termination dated 17.09.2012 had been passed holding that he has not replied to the charge memos dated 18.12.2010 and 28.02.2011.

3. The learned counsel for the petitioner would further submit that no such notices were served to the petitioner, except one cover which was containing the order of this Court in the writ petition alone. Even assuming without admitting that those notices were served on the petitioner, that alone would not be sufficient to impose the major punishment of dismissal. The 3rd respondent has passed the impugned order without conducting any enquiry. It is incumbent on the part of the 3rd respondent to frame specific charges, to conduct enquiry by placing oral and documentary evidence and to allow the petitioner to repudiate the same. But, without following the above procedure, the third respondent has passed the impugned order and hence, the same may be set aside and the petitioner may be reinstated with all service and monetary benefits.

4. The learned Government Advocate appearing for the respondents 1 and 2 would submit that though the petitioner has been given an opportunity to give her explanation for the charges levelled against her in the charge memos dated 18.12.2010 and 28.02.2011, she has not given any reply, even after receipt of the same and hence, the third respondent terminated her from service. Hence, the impugned order need not be interfered with. Thus, he prayed to dismiss this writ petition.



5. Heard the learned counsel for the petitioner as well as the learned Government Advocate appearing for the respondents 1 and 2. There is no representation on behalf of the respondents 3 to 5.

6. A perusal of the record shows that in the earlier round of litigation, the termination order passed earlier was set aside and the third respondent was directed to consider the case of the petitioner for reinstatement in the light of **Vallalar Gurugulam Higher Secondary School** case, cited supra, and given liberty to initiate disciplinary proceedings against the petitioner.

7. According to the 3rd respondent, based on the said order, the charge memo dated 18.12.2010 has been issued to the petitioner alleging eight charges against the petitioner and as the petitioner had not given any reply within 15 days time, on 28.02.2011 once again the very same charge memo has been issued to the petitioner. After receipt of those memos, the petitioner did not give any reply and hence, the termination order has been passed. According to the petitioner, she did not receive any such notices from the third respondent and she had received only a copy of the order made in the earlier writ petitions. Admittedly, the respondents did not file any counter affidavit. They have also not produced any document in order to substantiate their contentions that the charge memos dated 18.12.2010 and 28.02.2011 had been served to the petitioner, though it is stated to be produced before the Court of contempt.

8. In the charge memos dated 18.12.2010 and 28.02.2011, nearly about eight charges have been framed against the petitioner. As per the charges, the petitioner is alleged to have been not handed over the original documents of the panchayat ie., the resolution passed for her appointment; her original appointment order; Confirmation order of the District Collector in respect of her appointment; Accounts and Bill books relating to the years 2001-2006; and Resolution Note and other documents. It is also alleged that the petitioner had unauthorisedly absented from attending duty from 25.10.2006 and that she has not given any reply to the notices 06.11.2006 and 10.11.2006.

9. Admittedly, the petitioner was appointed only on 01.07.2006. Though very serious allegations have been raised by the third respondent in the charge memos against the petitioner, according to the petitioner, no criminal action had been taken against the petitioner for such withholding of documents. It gives an impression that only in order to harass the petitioner, such allegations have been raised and there is no truth in it. More over, no enquiry has been conducted by the third respondent. In the impugned order, the third respondent did not state as to whether an enquiry officer has been appointed or not and as to whether the charges are proved or not. Merely because no reply has been given by the petitioner, she cannot be terminated. The third respondent has



to follow the procedure contemplated under law. As the third respondent has failed to follow the procedure and as the petitioner has been repeatedly denied employment evading the procedure, this Court is inclined to set aside the impugned order and to reinstate the petitioner in service with service and monetary benefits.

WEB COPY 10. In view of the above, the impugned order passed by the third respondent is set aside and the respondents 1 to 3 are directed to reinstate the petitioner in service with all service and monetary benefits within a period of twelve weeks from the date of receipt of a copy of this order.

11. This writ petition stands disposed of accordingly. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gcg

To

1.The District Collector,
Ramanathapuram District,
Ramanathapuram.

2.The Assistant Director (Panchayats),
Ramanathapuram District,
Ramanathapuram.

+1 CC to M/s.SPL GP (SR-5609[F] dated 11/02/2020)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-5712[F] dated 11/02/2020)

SP:07.05.2020 4P5C

Order made in
W.P (MD)No.1191 of 2013
10.02.2020