



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.06.2020

CORAM

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THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(M) DNo.15228 of 2012

and

M.P(MD) Nos.1 & 2 of 2012

Kalaimani

... Petitioner

-Vs-

- 1.The District Collector/Inspector of Panchayat,
Office of the District Collector,
Tirunelveli District.
- 2.The Block Development Officer (Village Panchayat),
Kuruvikulam Panchayat Union,
Tirunelveli District.
- 3.The Panchayat President,
Mahendravadi Village Panchayat,
Tirunelveli District.
- 4.Thiru.Rengan,
Panchayat President,
Mahendravadi Village Panchayat,
Tirunelveli District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India praying for a Writ of Certiorarified Mandamus, calling for the records connected with the impugned dismissal order dated 06.05.2012 on the file of the third respondent and quash the same as illegal, consequently directing the respondents Nos.1 to 3 to reinstate the petitioner in service with full back wages with continuity of service in accordance with law within the time stipulated by this Court.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.J.Gunaseelan Muthiah,
1 to 3 Additional Government Pleader



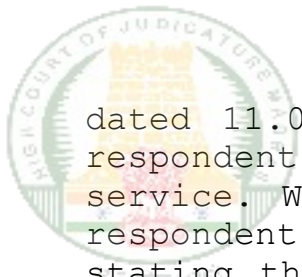
O R D E R

This Writ Petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records connected with the impugned dismissal order dated 06.05.2012 on the file of the third respondent and quash the same as illegal, consequently directing the respondents Nos.1 to 3 to reinstate the petitioner in service with full back wages with continuity of service in accordance with law within the time stipulated by this Court.

2. The case of the petitioner is that he was working as a Panchayat Clerk in the third respondent Panchayat. He was doing all the works entrusted to him without any fail. In the meantime, in the year 2001 in the election held for the local bodies, one Muthulakshmi was elected as Panchayat President of the third respondent Panchayat. After handing over the accounts to the newly elected President, she took charge and assumed office on 25.10.2001. Within two months from the date on which the then Panchayat President assumed Office, with an ulterior motive, as a vindictive measure, she had issued a "show cause notice" calling upon him to give explanation. The said show cause notice was issued on the ground that the petitioner being a Panchayat Clerk did not make proper arrangements for the function held on 25.10.2001 and did not produce the records of the Panchayat to the then President Muthulakshmi.

3. The learned counsel for the petitioner submitted that only after completing all the formalities including surrendering/handing over the account books and all the documents related to the Panchayat, the new President took charge of the office. The petitioner submitted a reply on 03.01.2002. Without issuing charge memo and without conducting any enquiry and affording him any opportunity of hearing, which were mandatory in the eye of law, on 12.02.2002 the third respondent had passed an order dismissing him from the service without valid reason. Challenging the said dismissal order, the petitioner filed a writ petition in W.P.No.13430 of 2002 before the Principal Bench of this Court. On 16.12.2010 when the case was finally heard, considering the facts and circumstances, he was not served with charge memo and no opportunity of hearing was given to him, the Hon'ble High Court had allowed the writ petition and thereby set aside the dismissal order. But, liberty was given to the third respondent to issue an appropriate charge memo, hold an enquiry and to pass appropriate orders after affording sufficient opportunity to him as required under law.

4. He further submitted that after receiving the order copy in W.P.No.13430 of 2002, the petitioner has given a representation



dated 11.01.2011 along with the copy of the order to the third respondent requesting the third respondent to reinstate him in service. Without reinstating the petitioner in service, the third respondent issued impugned charge memo No.1/2010 dated 03.2011 stating that he has committed some irregularities along with then President and Vice President. The petitioner has sent a reply to the third respondent denying all the charges, but no action was taken by the third respondent to reinstate him in service. Thereafter, he filed another writ petition in W.P.No.14985 of 2011 before this Court. When the said case came up for admission, this Court was pleased to pass an order to reinstate him in service. Thereafter, the third respondent reinstated the petitioner in service. On 16.02.2012 he had joined duty. In the meantime, on 17.02.2012 the third respondent sent a letter to the petitioner calling upon him to give reply to the charge memo dated 30.03.2011. He submitted a reply on 15.05.2011 to the fourth respondent.

5. The fourth respondent, who received the reply on 07.03.2012 had summoned him to appear for enquiry and to submit certain documents on 09.03.2012 failing which, action would be initiated against him. He appeared before the fourth respondent and sought further time to submit his statement in writing. Then the same was adjourned to 12.03.2012 for conducting an enquiry. Immediately, he sent the explanation in writing stating that all the documents handed over to the then Panchayat President and enclosing proof for the same under the impression that there would be an Enquiry Officer to conduct the enquiry on 11.03.2012. He also sent a representation to the respondents 1 & 2 requesting them to take necessary action, because the fourth respondent, due to the family dispute, will take vengeance against him and he will not allow him to continue his service.

6. On 12.03.2012, the petitioner appeared for enquiry, the fourth respondent instead of appointing an independent enquiry officer to enquire the charges against him, he himself claiming to be the enquiry officer received the statement in writing, without considering the fact that the entire documents were handed over as early as on 06.11.2001 itself, to the then President. On 13.03.2012 the fourth respondent passed an order and placed him under suspension. Immediately, he approached this Court by filing writ petition in W.P.No.6590 of 2012 seeking to quash the same. Pending writ petition, the third respondent passed the impugned order of dismissal dated 06.05.2012 without any enquiry.

7. The fourth respondent had filed a counter affidavit denying all the averments made in the affidavit and stating that the writ petitioner is the husband of the then President one Mrs.Thanga Amutha, who lost her Presidentship to one Mrs.Muthulakshmi in the



year 2001 election. The petitioner being the husband of the then President used to act as if he is the Village President and also kept all the records of the Panchayat at their home itself. When they were about to leave the Panchayat Office on the occasion of the assuming the Office by Mrs.Muthulakshmi, the writ petitioner has behaved in biased manner showing enmity towards the new Office bearer and also kept absent without any intimation. The petitioner along with his wife (i.e.,) then President managed to get the acknowledgment from the newly elected president Mrs.Muthulakshmi, by returning the office properties like Television sets, chairs, tables and other furniture. Being an uneducated Village President that Mrs.Muthulakshmi has acknowledged the same in an innocent way, but some how on the advise of other she insisted for the Panchayat records like the cheque books, house tax, property tax receipts and other ledgers, which were kept under the custody of the writ petition at his home. The petitioner has not returned the Panchayat's ledger to then President, hence a show cause notice was issued to him, which was challenged by him in W.P.No.13430 of 2007. The same was disposed of by the Principal Bench on 06.12.2010 by granting liberty to the Panchayat to initiate any proceeding against this writ petitioner for his alleged offence under Section 120-B, 406, 408, 467 and 477 by issuing appropriate charge memo, hold an enquiry and to pass appropriate orders of the affording sufficient opportunity to the petitioner.

8. He further submitted that the then Village President one Mr.M.Ganesan has issued an charge memo vide No.1/2010 dated...03.2011, when the petitioner has approached him to reinstate him in the Panchayat. The then President had also enclosed annexures to show the charge framed against the petitioner and also called upon him to give his explanation within 21 days. Aggrieved against the charge-memo, the petitioner has approached this Court by filing a writ petition in W.P.No.14985/2011. This Court directed the Panchayat to reinstate the petitioner in service for the purpose of proceeding against him on the basis of that charge-memo.

9. As per the direction of this Court, the petitioner's wife was reinstated on 13.02.2012 by the fourth respondent. On 17.02.2012 a memo was issued to the petitioner's wife calling him to give her explanation for the charge-memo No.1/2010 within 15 days from the date of receiving this memo, since the writ petitioner has not submitted his explanation for more than a year. For this memo, the writ petitioner has replied evasively that he had already given his explanation to the then President in person and also by post, but not chosen to support his stand by way of adducing any materials of documents to prove his innocence. The communication was sent to the petitioner calling upon him to be



present for an personal enquiry on 09.03.2012 along with all relevant documents he relies on. The petitioner has sought time to present his explanation in writing till 14.03.2012 and his request was considered and the enquiry was postponed to 12.03.2012. The petitioner has submitted his explanation on 12.03.2012 without producing any document to support his explanation.

10. He further submitted that the petitioner has also sent his explanation to the respondents 1 & 2. Since his explanation is an evasive explanation, the writ petitioner was again called upon to produce the relevant documents within two weeks. Since the charge are in grave in nature, the petitioner was kept under suspension for the above said two weeks. Challenging the suspension order, dated 13.03.2012, the petitioner has filed a writ petition in W.P.No.6550 of 2012. Pending writ petition, the respondents has terminated the service of the petitioner by passing the impugned order on 06.05.2012, but the petitioner has suppressed the fact that he has withdrawn the said writ petition on 12.06.2012. Since this Court has not granted any interim relief as prayed for in that writ petition, the respondent has proceeded with the enquiry along with the available records and passed the impugned order.

11. The second respondent Block Development Officer (Village Panchayat) filed counter affidavit admitting certain facts and would submit that an Audit inspection was conducted by the Deputy Block Development Officer (Audit) attached with Kuruvikulam BDO Office, Tirunelveli District in the Mahendravadi Village Panchayat for the records available in the Panchayat office for the periods of 1999-2000, 2000-2001 and from 01.04.2001 to 24.10.2001. As a result, misappropriation of Panchayat fund in a mass effect to the tune of Rs.5,28,088/- was identified. In this regard, the respondent had lodged a criminal complaint as against the Village Panchayat President Tmt.Thanga Amutha and the Vice President T.Mariappan and the Panchayat Clerk K.Kalaimani and the same was taken on file by the Panavadali Chathiram Police Station by registering FIR in Crime No.152 of 2002 for the alleged offences under Sections 120(b), 406, 408, 467 & 477 of IPC and the charge-sheet has been filed before the competent Court and it is pending for trial.

12. The petitioner being the husband of the said Tmt.Thanga Amutha, who had taken away all the records and he did not furnish all the records maintained by him during the previous tenure. At present, it is seen that the petitioner has purposefully dragging the matter without properly co-operating with the proceedings. The petitioner had made his explanation in a evasive manner and his explanation did not incommensurate with the allegations made against him. The petitioner was communicated by the fourth



respondent Panchayat to make his presence for the personal enquiry scheduled to be held on 09.03.2012 and he has submitted his explanation and the copies of the same was forwarded to the first respondent. The impugned order passed by the respondent is legally valid and prayed for dismissal of the writ petition.

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13. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

14. On going through the impugned order passed by the fourth respondent dated 06.05.2012 that even though in the charge-sheet all the averments have been given in a elaborate manner, but in the final order passed by the fourth respondent, the Panchayat President had passed a cryptic order without giving any details such as what is the charge and what is the explanation and finding given by the respondents based on evidence. This order being a cryptic order without any details, hence, another opportunity of hearing has to be given to the petitioner to enable him to produce all the documents and de-novo enquiry to be conducted by the concerned respondent, if any person appointed to do so. Hence an independent enquiry officer has to be appointed. This Court is not inclined to deal with the merits of this case as de-novo enquiry has been ordered.

15. In view of the above, the Deputy Block Development Officer of the said Block is hereby directed to conduct a fresh enquiry after giving an opportunity to the petitioner to produce all the documents and sending notices to all the concerned persons and complete the enquiry within a period of four months from the date of receipt of a copy of this order.

16. With the above directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

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/ /2020

Sub Assistant Registrar(CS)



TO

1.The District Collector/Inspector of Panchayat,
Office of the District Collector,
Tirunelveli District.

2.The Block Development Officer (Village Panchayat),
Kuruvikulam Panchayat Union,
Tirunelveli District.

3.The Panchayat President,
Mahendravadi Village Panchayat,
Tirunelveli District.

+1 CC to M/s.SPL GP (SR-13079[F] dated 04/06/2020)

+1 CC to M/s.DR.R.ALAGUMANI, Advocate (SR-13106[F] dated
05/06/2020)

W.P (M) DNo. 15228 of 2012

03.06.2020

CK(CO)

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