



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.06.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P. (MD)No.2919 of 2013

and

M.P (MD)No.1 of 2013

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N.Krishnamoorthy

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary,
Rural Development and Panchayat Raj Department,
Fort St. George,
Chennai - 600 009.

2.The Commissioner,
Rural Development and Panchayat Raj Department,
Panagal Building,
Chennai - 600 015.

3.The District Collector,
Karur District,
Karur.

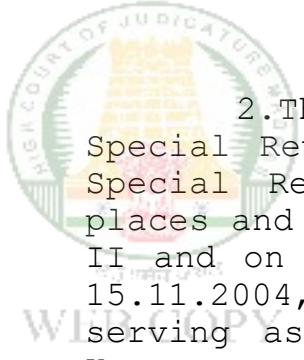
... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the third respondent in his proceedings Na.Ka.PV1/6979/2009 dated 03.07.2012, quash the same and consequently direct the respondents to promote the petitioner to the post of Assistant Director of Panchayat from the day of his immediate junior was promoted.

For Petitioner	: M/s.P.Kalaiyarasi Bharathi
For Respondents	: Mr.J.Gunaseelan Muthaiah
	Additional Government Pleader

ORDER

The petitioner has filed the above Writ Petition to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the third respondent in his proceedings Na.Ka.PV1/6979/2009 dated 03.07.2012 and to quash the same and consequently direct the respondents to promote the petitioner to the post of Assistant Director of Panchayat from the day of his immediate junior was promoted.



2.The case of the petitioner is that he was appointed as a Special Revenue Inspector in Taluk Check Post and he worked as s Special Revenue Inspector, Assistant R.W.O Grade II in various places and on 11.01.1992, he was promoted to the post of R.W.O Grade II and on 09.08.1996, he was promoted as Extension Officer and on 15.11.2004, he was promoted as Block Development Officer and now serving as Block Development Officer in the Collectorate Office, Karur.

3.While the petitioner was working as a Block Development Officer, Thogamalai, the Government issued G.O.Ms.No.91, dated 12.08.2009, by which the Panchayat Assistant Grade I and Grade II, who are doing the same job, were brought into the same scale of pay. The reading of para 3 of the said G.O gave an impression to the petitioner / Block Development Officer that monetary benefits has to be given from 01.01.2007, but in the last para of the said G.O, it is stated that the said G.O came into force on the date of issuance of the above G.O, but the petitioner by oversight understood the G.O wrongly and paid the arrears to the Panchayat Assistants Grade II who were brought to the category of Grade I. While so, on 06.10.2009, the petitioner was placed under suspension. The above said G.O was misread by other Block Development Officers also and arrears were paid to the Panchayat Assistants from 01.01.2007. Pursuant to the same, many of the Block Development Officers were transferred to outside Districts and the petitioner was transferred from Karur to Salem. Subsequent to the same, a charge-memo was issued against the petitioner by the second respondent in his proceedings dated 20.10.2009 and the petitioner gave his reply stating that it was a mistake and also stated that all the amount paid was recovered.

4.It is further stated that similar charges have been issued to the other Block Development Officers also and the persons situated like the petitioner for the same charge, the District Collector has dropped the charges, whereas, the third respondent, by order dated 03.07.2012 postponed the petitioner's increment for a period of six months without cumulative effect. Challenging the same, the petitioner has filed the present Writ Petition.

5.The respondents have the counter affidavit and stated that the Government in G.O.Ms.No.91, dated 12.08.2009 have upgraded the post of Panchayat Assistant Grade II as Panchayat Assistant Grade I with effect from 12.08.2009, but the petitioner has issued irregular orders by upgrading the said retrospectively with effect from 01.01.2007 and this is contrary to the Government Order, which came into effect from 12.08.2009 and this act of the petitioner caused huge financial loss and embarrassment to the Village Panchayats. Hence, the petitioner was placed under suspension vide proceedings dated 06.10.2009 and charges were framed against him. As the charges were proved, after enquiry, a punishment of stoppage of increment for six months without cumulative effect was inflicted on the



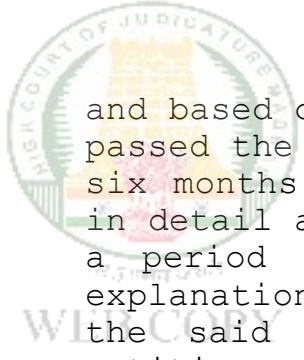
petitioner vide proceedings dated 03.07.2012.

6. In the counter-affidavit it is further stated that the contentions of the petitioner that he misread the Government Order and paid the arrears of pay to the Panchayat Assistants from 01.01.2007 erroneously are not tenable. It is also contended by the petitioner that as the payment of arrears paid erroneously to the Panchayat Assistants were recovered and hence, there is no loss to the Panchayat funds and the same are not acceptable. There is a loss of interest to the Panchayat and the charges framed against the petitioner were proved.

7. It is further stated that due to the pendency of the charge and due to the currency of punishment, the petitioner's name was not included in the panel of Assistant Director. The petitioner has committed grave irregularity of sanctioning irregular pay fixation and arrears of pay to the Panchayat Assistants. Hence, the petitioner was placed under suspension and also transferred to Salem District for administrative reasons. There is no double punishment for the same offence as stated by the petitioner, since the transfer of the petitioner on administrative grounds is not a punishment and the punishment inflicted on the petitioner is just and bonafide and prayed for dismissal of the Writ Petition.

8. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

9. On perusal of the materials available on record, it is seen that the Government in G.O.Ms.No.91, Rural Development and Panchayat Raj Department dated 12.08.2009 have upgraded the post of Panchayat Assistant Grade II as Panchayat Assistant Grade I with effect from 12.08.2009, but the petitioner has issued irregular orders by upgrading the said post retrospectively with effect from 01.01.2007. In the said G.O., it has been specifically mentioned that the said orders will come into effect from 12.08.2009 and the petitioner has erroneously fixed the same retrospectively from 01.01.2007. The petitioner has submitted his explanation stating that he has misread the Government Order due to overburden with work and over sight and mistakenly fixed the same from 01.01.2007 and sought an apology. The petitioner's contention that the payment of arrears paid erroneously to the panchayat assistants were recovered and duly repaid to the Government and no loss to the Government exchequer cannot be acceptable, as the petitioner, who has got the power to sanction the salary, cannot simply blame ignorance of the Government Order wherein specific date has been mentioned and when the same will be come into effect. Even though the same has been recovered and paid back, if not noticed, the same would cause loss to the Panchayat and this careless act of the petitioner cannot be brushed aside. The charges framed against the petitioner was proved during the enquiry



and based on the materials available on record, the authorities have passed the impugned order of punishment of stoppage of increment for six months without cumulative effect. The authority has also dealt in detail and passed the impugned order of stoppage of increment for a period of six months without cumulative effect based on the explanation given by the petitioner and enquiry officer's report. In the said impugned order it has been made clear that if the petitioner is aggrieved by the said order, he is at liberty to file an appeal within a period of 60 days before the Commissioner, Rural Development and Panchayat Raj Department, but the petitioner has not filed any appeal remedy against the said order. When there is an appeal remedy available, the petitioner has not exhausted the same, instead he has annexed the transfer order which has been passed on 12.01.2012 wherein mutual transfer has been given to the petitioner from Salem to Karur, but the petitioner has not challenged the same. On going through the materials available on record, it is clear from G.O.Ms.No.91, Rural Development and Panchayat Raj Department dated 12.08.2009 that the said G.O came into effect only from 12.08.2009 and it does not have any retrospective effect. The persons who are working from 05.12.2006 where given time scale of pay instead of consolidated salary from 01.09.2006 and as per the said G.O, all these Panchayat Assistants Grade II will be upgraded as Panchayat Assistant Grade I with effect from 12.08.2009.

10.The contention of the petitioner that he has misread the Government Order and due to over sight, he has committed the mistake cannot be treated as a right explanation and accordingly, the third respondent has passed the impugned order which is only a minor punishment. Due to the pendency of the charge, the petitioner's name was not included in the panel of Assistant Director of Panchayat and he cannot be given a promotion in the currency of punishment. Sanctioning of amount irregularly by fixing the pay without any valid authority, the petitioner has acted in contrary to the Government Order which would have really caused heavy financial loss to the Panchayat. Even though the amount has been recovered and paid, the punishment awarded is only a stoppage of increment for six months without cumulative effect and this Court is of the view that the impugned order of punishment awarded for the grave mistake committed by the petitioner is reasonable and well-founded. The order of transfer will be an administrative order and this Court cannot interfere with the same. The irregularity committed by the petitioner sanctioning irregular pay fixation and sanctioning arrears which is not in order and the punishment awarded to the petitioner is reasonable and appropriate one. As the petitioner has not exhausted the alternative appeal remedy, the petitioner's claim by filing the Writ Petition is not an acceptable one. When the reasons assigned by the disciplinary authority is a valid one, this Court is of the view that no interference is necessary regarding the punishment awarded.



11. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar

/ /2020

Sub Assistant Registrar(CS)

Note:- In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

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To

1. The Secretary,
Rep. by the State of Tamil Nadu,
Rural Development and Panchayat Raj Department,
Fort St. George,
Chennai - 600 009.
2. The Commissioner,
Rural Development and Panchayat Raj Department,
Panagal Building,
Chennai - 600 015.
3. The District Collector,
Karur District,
Karur.

Order made in
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Dated:
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KK(22.06.2020) 5P 4C