



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.09.2020**

CORAM

THE HON'BLE MR.JUSTICE **R.SURESH KUMAR**

W.P.(MD)No.11822 of 2020

and

W.M.P(MD).No.10230 of 2020

P.Vetrivel

... Petitioner

t-Vs-

1.The District Collector,  
Kanniyakumari District.

2.The Assistant Director (Panchayat),  
Kanniyakumari District.

3.The Block Development Officer,  
Thuckkalay Panchayat Union,  
(Special Officer Nullivilai Panchayat)  
Kanniyakumari District.

4.The President,  
Nullivilai Panchayat,  
Thuckkalay Panchayat Union,  
Kanniyakumari District.

...Respondents

Prayer: Writ Petitions are filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the third respondent in his proceedings in Se.Mu.No.A8/5701/2012, dated 12.09.2019 and quash the same and consequently direct the respondents to reinstate the petitioner by implementing the proceedings issued by the first respondent in Na.Ka.No.336/2008/P5, dated 14.12.2015 and consequential proceedings issued by the third respondent in Na.Ka.No.A8/1475/2015(-1) dated 16.12.2015.

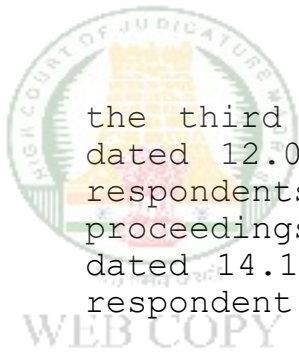
For Petitioner : Mr.V.Panneer Selvam

For Respondents: Mr.S.Dhayalan

Government Advocate

**ORDER**

Prayer sought for herein is for a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by  
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the third respondent in his proceedings in Se.Mu.No.A8/5701/2012, dated 12.09.2019 and quash the same and consequently, direct the respondents to reinstate the petitioner by implementing the proceedings issued by the first respondent in Na.Ka.No.336/2008/P5, dated 14.12.2015 and consequential proceedings issued by the third respondent in Na.Ka.No.A8/1475/2015(-1) dated 16.12.2015.

2.Heard Mr.V.Panneer Selvam, learned counsel appearing for the petitioner and Mr.S.Dhayalan, learned Government Advocate appearing for the respondents.

3.By consent of both the learned counsel appearing for the parties, this writ petition is taken up for final disposal at the admission stage itself.

4.The petitioner was appointed as Waterman at the fourth respondent Panchayat sometime in 1997 and his service was regularised with effect from 2015, thereafter, in view of the criminal case, where there had been a charge against him for the alleged offences punishable under Sections 147 and 323 of IPC, a criminal case was conducted, ultimately, the Criminal Court has convicted the petitioner on both counts i.e., under Sections 147 as well as 323 IPC. As against which, the petitioner preferred an appeal. In the appeal, the conviction made against him for the offence punishable under Section 141 was set aside. However, the punishment awarded against the petitioner for the offence punishable under Section 323 is concerned, the said punishment was confirmed. However, only a fine of Rs.500/- alone was imposed, no imprisonment has been ordered by the Appellate Court.

5.In view of the said development taken place against the petitioner in the Criminal Court, which ended in the imposition of fine of Rs.500/- for the offence committed by the petitioner under Section 323 IPC, the petitioner was placed under suspension on 30.06.2019 and thereafter, on 22.07.2019, he was placed with a charge memo, for which, explanation called for and the petitioner also on 08.08.2019 has given an explanation. However, without considering the explanation, according to the petitioner, in proper prospective, the third respondent, who was the Special Officer in-charge of the fourth respondent Panchayat at that time, has passed the impugned order on 12.09.2019, whereby, imposing the punishment of removal of service against the petitioner, as against which, the present writ petition has been filed.

6.The learned counsel appearing for the petitioner would submit that, insofar as the imposition of fine of Rs.500/- is concerned, when the reply was given by the petitioner, it has been specifically mentioned by the petitioner as per the law laid down by the Hon'ble Apex Court reported in **1999 SCC (4) 17 (PAWAN KUMAR Vs., STATE OF HARYANA AND ANOTHER)**, the imposition of fine upto Rs.2000/- or so, on a summary/ ordinary conviction shall not be treated as conviction



at all for any purpose and all the more for entry into and retention in Government service.

7. In view of such analogy as per the principle laid down by the Hon'ble Apex Court in the said case, since the petitioner has only been imposed a fine of Rs.500/-, the same cannot stand in the way against the petitioner for his retention in service. Despite the said reply was given by the petitioner, the third respondent, without having considered the same in proper prospective, has passed the present impugned order, whereby a major punishment of removal of service has been imposed against the petitioner. Hence, the learned counsel for the petitioner would submit that, the impugned order requires to be interfered by this Court.

8. The learned Government Advocate appearing for the respondents would submit that, since the petitioner admittedly has been convicted by the trial Court for two offences and when he filed an appeal, in the appeal also, atleast in respect of offence punishable under Section 323 of IPC, his conviction has been confirmed and merely because only a fine of Rs.500/- was imposed against him, it cannot be construed as if that was not at all the conviction and therefore, the petitioner has been set free to seek for reinstatement, after revoking his suspension and no disciplinary action can be proceeded against him.

9. The learned Government Advocate would also submit that, independently, charge memo has been served on the petitioner and based on the reply given by him, since the very charge memo itself is based on the conviction faced by the petitioner, for which, the petitioner since has not given any satisfactory reply, the third respondent, who is the disciplinary authority, has taken a decision to inflict maximum punishment of removal of service and therefore, the said order does not required any interference.

10. I have considered the said submissions made by both parties and perused the materials placed before this Court.

11. As has been rightly pointed out by the learned counsel appearing for the petitioner, now the issue is only as to whether the imposition of fine of Rs.500/- against the petitioner, ofcourse an appeal against the conviction made against him by the trial Court in a criminal case, where for the offence punishable under Section 323 IPC, such an imposition of fine of Rs.500/- was made and the said fine would amount to be construed as a conviction, for the purpose of taking drastic action against the petitioner for imposing the major punishment of removal of service or not. In order to dealt the said question, further, the learned counsel has relied upon the decision of the Hon'ble Apex Court, as referred to above, where upto Rs.2000/- if fine is imposed, the same shall not be treated as conviction for the purpose of retention or otherwise of service.



12. Here in the case, it is only a sum of Rs.500/- as fine. No doubt, it is a punishment. However, whether the punishment would have such an intensity, which warrants the major punishment of removal of service of a Government employee, if we look at from that angle, this Court feels that, such an imposition of fine for any offices, that too only for a sum of Rs.500/- would not take away the right of the petitioner to be retained in the service and if such kind of major punishment of removal of service is permitted to be implemented even for such a small offences or imposition of small fine, then lot more employees at this nature who in day-to-day life very often would face or confront the situation like this, which would be resulted in payment of fine and that will lead to the drastic action of loosing their job itself. Such an extreme proposition as adopted by the respondents, especially, the third respondent through the impugned order, in the considered opinion of this Court, may not be justifiable and therefore, on that ground, this Court is inclined to quash the impugned order.

13. In that view of the matter, the impugned order is quashed and the matter is remitted back to the respondents, especially, the fourth respondent, who is the competent authority as of now to decide the punishment to be awarded against the petitioner on the disciplinary proceedings and accordingly, let him take a decision on merits and in accordance with law taking into account the aforesaid discussion and observations made in this order. The needful, as indicated above, shall be undertaken by the fourth respondent on such remand within a period of six(6) weeks from the date of receipt of a copy of this order.

14. With the above directions, this writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

rmk

**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 District Collector,  
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- 4.The President,  
Nullivilai Panchayat,  
Thuckkalay Panchayat Union,  
Kanniyakumari District.

+1 CC to SGP ( SR-17261[F] dated 17/09/2020 )

W.P. (MD) No.11822 of 2020

16.09.2020

CK(CO)

NR (10/12/2020) 5P : 6C