

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2021

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

Writ Petition No.17648 of 2007

R.Saravanan

... Petitioner

-Vs-

The Executive Officer
Buvanagiri Town Panchayat
Buvanagiri.

.... Respondent

Prayer : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records of the respondent herein in Na.Ka.No.A1/122/2007 dated 28.02.2007 and quash the same.

For Petitioner : No appearance

For Respondents : Mr.M.Loganathan
Standing Counsel

ORDER

The prayer sought for herein is to call for the records of the respondent herein in Na.Ka.No.A1/122/2007 dated 28.02.2007 and quash the same.

2. The petitioner was working as Night Watchman at the respondent Town Panchayat viz., Buvanagiri Town Panchayat. While so, for four years continuously he was absent unauthorisedly without any effort being taken to apply for leave. After four years, one fine morning ie., on 26.02.2007 it seems that, he has given a request that he should be taken back for the job. On receipt of the said request made by the petitioner, the respondent Town Panchayat has issued a notice dated 28.02.2007 to the petitioner stating that, since he has been unauthorisedly absent for four years and more, action to be

taken against him and therefore in this regard he was directed to appear before the second respondent on 05.03.2007 at 04.00 P.M. If he does not appear on that day, action would be taken to remove him from service. Only the said notice dated 28.02.2007 issued by the respondent is under challenge in this writ petition.

3. When the case is taken up for hearing, there is no representation for the petitioner. However, since the writ petition is pending for more than 13 years, this Court decided to take up the matter and decide it based on available records.

4. Heard the learned Standing Counsel appearing for the respondent Town Panchayat, who would submit that, the petitioner was continuously absent for four years without any authorisation and after four years he made a request for reinstatement / take him back to the job. The present notice, which is impugned herein, has been issued directing him to appear before the respondent to give explanation and therefore the same cannot be challenged. Hence, the impugned notice is sustainable and accordingly the writ petition is liable to be dismissed, he contended.

5. As has been rightly pointed out by the learned Standing Counsel appearing for the respondent, for the unauthorised absence of more than four years, certainly action has to be taken against the petitioner and therefore in this context, a notice alone has been given through the impugned communication dated 28.02.2007, wherein the petitioner was directed to appear before the respondent on 05.03.2007. The reason for issuing such notice is, before taking a final decision with regard to the removal from service for the petitioner's unauthorised absence for four years, a final opportunity has to be given to him to get his explanation and only for such purpose, the notice which is impugned herein, has been issued. Therefore, the same need not be challenged. Instead, the petitioner could have appeared before the respondent. However, he had chosen to challenge the said notice and this Court feels that, the challenge is totally unjustifiable and accordingly this writ petition fails and the same is dismissed. No costs.

6. However, in view of the long pendency of the writ petition, if no final orders are passed, it is open to the petitioner to appear before the respondent at any time within four weeks from the date of receipt of a copy of this order and give his explanation to the satisfaction of the respondent and

if he appears and gives his explanation, the same shall be considered on merits by the respondent within a period of four weeks thereafter. It is also made clear that if he does not appear before the respondent, it shall be presumed that the petitioner is not interested in pursuing the matter and accordingly final orders / disciplinary action against the petitioner shall be taken by the respondent.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

KST
To

The Executive Officer,
Buvanagiri Town Panchayat,
Buvanagiri.

+1cc to Mr.M.Loganathan, Advocate Sr.5075

W.P.No.17648 of 2007

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