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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P. No.16570 of 2009

Mr.S.Gandhiraj

... Petitioner

Vs.

- 1.The Commissioner,  
Perunthurai Panchayat Union.
- 2.The District Collector,  
Office of the District Collectorate,  
Erode.
- 3.The Secretary to Government,  
Rural Development Department,  
Secretariat, Fort St. George,  
Chennai.

... Respondents

Prayer:

Writ petition filed under Section 226 of the Constitution of India seeking to issue a Writ of Certiorarified Mandamus to call for the records in Na.Ka.No.5469/2003/aa2 dated 30.08.2004 passed by the first respondent and in Na.Ka.No.72972/2004/page 1, dated 12.04.2005 passed by the Second Respondent and in Letter No.20170/e5/2006-1 dated 20.11.2006 passed by the third respondent quash the same, and direct the respondents to reinstate the petitioner in service with all consequential benefits and with continuity of service.

For petitioner : Mrs.Y.Kavitha for  
M/s.Giridhar & Sai

For respondents : Mr.T.Arunkumar,  
Additional Government Pleader  
for R1  
Mr.P.Ananda Kumar,  
Government Advocate  
for R2 & R3



## ORDER

The petitioner while working as Assistant at Singanallure Panchayat Union, was transferred to Vijayapuri Panchayat Union on 01.09.2002. On 28.01.2004, the Deputy Block Development Officer conducted an Audit in Vijayapuri Panchayat Union Office and submitted his auditing report pointing out certain irregularities in the accounts of the Vijayapuri Panchayat. Subsequently, based on the audit report, the 1<sup>st</sup> respondent has passed an order of suspension on 31.03.2004 and served charge sheet dated 26.04.2004, alleging 6 charges against the petitioner. The petitioner had given an explanation on 14.05.2004, refusing the charges. Not satisfied with the petitioner's explanation, the 1<sup>st</sup> respondent appointed an Enquiry Officer. The Enquiry Officer directed the petitioner to appear for enquiry on 06.07.2004 vide enquiry notice dated 18.06.2004.

2. On 06.07.2004, the petitioner appeared before the Enquiry Officer and made his oral submission. Without giving any proper opportunity to cross examine the witnesses relied on by the respondents and without furnishing any documents to the petitioner, the Enquiry Officer concluded his enquiry and submitted detailed enquiry report dated 08.07.2004 to the first respondent by holding that charges levelled against petitioner nos.1 to 6 were proved except charge 2 alone not proved.

3. The Block Development Officer has issued a show cause notice dated 22.07.2004 along with enquiry report dated 06.07.2004 to the petitioner. The petitioner submitted detailed explanation pointing out the defects in the enquiry vide letter dated 29.07.2004. Without considering the said explanation, the first respondent had passed the impugned order dated 30.08.2004 by imposing punishment of removal from service.

4. Against which, the petitioner preferred an Appeal before the Appellate Authority/2<sup>nd</sup> respondent. The said appeal was dismissed by the 2<sup>nd</sup> respondent on 12.04.2005. Thereafter, the petitioner filed Review Petition before the third respondent and the same was also rejected by the third respondent on 20.11.2006. Hence, the petitioner filed the present writ petition before this Court.

5. According to the learned counsel for the petitioner, the Enquiry Officer did not provide sufficient opportunity to defend his case effectively at the time of hearing. The charge memo served to the petitioner did not contain the list of witnesses and the documents. The enquiry officer directed the petitioner to appear for enquiry on 06.07.2004. The petitioner appeared before the Enquiry Officer and had given his explanation. During the enquiry proceedings, the Enquiry Officer enquired the



president and one private contractor.

6. The allegation of the petitioner is that neither the aforesaid list of witnesses and documents relied on by the Enquiry Officer were furnished to the petitioner, nor an opportunity to cross-examine the witnesses was given. Further, the petitioner had given explanation in response to show cause notice dated 29.07.2004. The first respondent without considering his explanation, imposed the punishment as against the petitioner and the same is extensive. Therefore, this Court has to interfere the said punishment and the said order passed by the 1<sup>st</sup> respondent is liable to be quashed.

7. Mr.T.Arunkumar, learned Additional Government Pleader appearing in this matter is directed to get instructions from the first respondent. Based on the instructions from the 1<sup>st</sup> respondent, learned Government Advocate submitted that there is an inordinate delay in filing the present writ petition which is an after thought. According to the learned Additional Government Pleader, there is no delay on the part of the respondents. The petitioner has preferred the writ petition before this Court after four years of passing the final order.

8. Learned counsel for the 1<sup>st</sup> respondent submitted that the Block Development Officer is the competent authority to audit the Village Panchayat accounts. As per the Rules and procedures, the audit was conducted on 28.01.2004 by the Deputy Block Development Officer, grave misappropriations were found by him and submitted his audit report.

9. Based on the audit report, for the loss caused to the Panchayat, the petitioner was instructed to submit his explanation in writing. A complaint was also filed against the petitioner in Police Station to recover the loss amount of Rs.1,55,006/- from the petitioner. He remitted the loss amount into the village Panchayat Account on 09.03.2004. The charges were levelled against the petitioner in R.O.C. No.5469/2003/B2 dated 26.04.2004 by the first respondent and the charge memo was served on 04.05.2004. The petitioner submitted his explanation on 14.05.2004 denying all the allegations and requested to return back the amount of Rs.1,55,066/-, which was remitted before the Police.

10. The Enquiry Officer conducted a detailed enquiry and submitted his report before the first respondent and based on the said report, a show cause notice has been served on the petitioner on 27.07.2004 and he has submitted his explanation on 29.07.2004 in writing. The writ petitioner denied all the charges and the findings of the Enquiry Officer. After following the due procedures, the first respondent has passed



the order in Roc.No.5469/2003/B2 dated 30.08.2004, dismissing the petitioner from the Village Panchayat Service. The petitioner preferred an Appeal before the appellate authority/2<sup>nd</sup> respondent, which was dismissed. Thereafter, he has filed a Review before the third respondent and the same was also rejected by the third respondent. Challenging the aforesaid, the present writ petition has been filed.

11. According to the learned counsel for the respondents the Review Petition filed by the petitioner before the third respondent was disposed on 20.11.2006. Hence there is an inordinate delay in filing the present writ petition. Therefore all these grounds raised by the petitioner is an after thought. Therefore, this writ petition is liable to be dismissed.

12. Heard the rival submissions of both the parties and perused the materials available on record.

13. During the audit conducted by the Block Development Officer, it was found that there was loss sustained due to the lapses on the part of the petitioner. Therefore, the first respondent placed the petitioner under suspension on 31.03.2004, for the misappropriation of the panchayat amount. The petitioner was called for explanation on 26.04.2004 and the petitioner submitted his explanation on 14.05.2004. The first respondent appointed an Enquiry Officer on 10.06.2004 and the Enquiry Officer has conducted enquiry. The Enquiry Officer asked the petitioner to appear for enquiry on 06.07.2004. The said copy of the notice was received by the petitioner on 18.06.2004.

14. The writ petitioner appeared for enquiry on 06.07.2004. On the same day, the Enquiry Officer recorded the oral statement of the petitioner and list of witnesses were examined and documents were marked. Based on the statement of witnesses, documents as well as the oral statement of the petitioner, the enquiry report was submitted to the first respondent on 08.07.2004. Pursuant to that, the first respondent served the show cause notice as to why the petitioner should not be imposed the punishment on 22.07.2004.

15. On receipt of the said notice, the petitioner submitted the detailed explanation on 29.07.2004 pointing out that the Enquiry Officer violated the principles of natural justice by not furnishing the list of witnesses, copy of the documents and no opportunity was given to the petitioner to cross examine the witnesses and moreover either requests made by the petitioner was not considered by the Enquiry Officer. He also specifically denied that the allegation of the forgery as levelled in the charges and therefore on this ground, the said Enquiry Officer's report is unfounded and may not be clear upon



३.५ प्रत्येक अर्थी

18. Learned counsel for the petitioner also relying upon the decisions reported in (2008) 8 SCC 236 in the case of State of Uthranjal & others Vs. Khark Singh, would submit that the departmental enquiry should not be an empty formality. In an enquiry the employer/department should take steps first to lead Evidence against the delinquent charged and give an opportunity to him to cross examine witness of the employer, (ii) AIR 1978 SC 1277 in the case of Nand Kishore Prasad Vs. The State of Bihar & Others -- Suspicion cannot be allowed to take the place of proof and Domestic Tribunal must base its conclusion on some evidence and not mere suspicion, (iii) AIR 1972 SC 330 in the case of M/s.Bareilly Electricity supply Co. Ltd., Vs. The Workmen & Others -- though Evidence Act is not applicable to the Industrial tribunals that does not mean that where issues are seriously contested and have to be established and proved the requirements relating to proof can be dispensed with and (iv) (1999) 7 SCC 739 in the case of Yoginath D.Bagde Vs. State of



Maharashtra & another-- the findings of the Enquiry Officer are perverse, then Courts can interfere against the punishment order. Thus the Court can be interfered against the said punishment order, on considering the facts,.

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19. The writ petitioner has pointed out several lapses on the part of the Enquiry Officer. According to the petitioner, the documents were not furnished and no opportunity granted for cross examination of the witnesses and also attributed the allegations against the Enquiry Officer. On 06.07.2004, the Enquiry Officer has conducted the enquiry, witnesses were examined and documents were marked and without giving the opportunity to the petitioner for cross examination, a report was submitted on the next day 08.07.2004. The said fact was also not appreciated by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents to interfere the impugned punishment order. Therefore, according to them, the Enquiry Officer arrived at a conclusion holding that the charges were proved and he strongly recommended severe punishment for dismissal from service. Therefore, the first respondent has to adopt the procedure of giving an opportunity and following the principles of natural justice.

20. In view of the aforesaid lapses on the part of the respondents for providing an opportunity to the petitioner and violations of principles of natural justice by imposing the major punishment, this Court has no hesitation to interfere with the impugned order and the impugned order is quashed and remitted back to the first respondent to conduct a fresh enquiry based on the aforesaid report, the first respondent has to take a final decision in accordance with law. In light of the above observation, the impugned order is quashed and the writ petition is allowed with liberty to the first respondent to proceed with the enquiry.

21. The said exercise shall be completed within a period of four (4) months from the date of receipt of copy of the order. In the event of any delay in concluding the said proceeding within the stipulated time, the first respondent is directed to reinstate the petitioner without reference to further orders from the Court, till passing the final orders.

22. The petitioner shall also co-operate with the enquiry, if not cooperating for enquiry, he is not entitled for the reinstatement of service, after the aforesaid stipulated period. The learned counsel for the petitioner also undertakes that the petitioner will co-operate for the enquiry within the aforesaid period.



23. In fine, Impugned Order passed by the respondents is quashed and consequently, writ petition is allowed with the above directions. No order as to costs.

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Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rkp

To

1. The Commissioner,  
Perunthurai Panchayat Union.
2. The District Collector,  
Office of the District Collectorate,  
Erode.
3. The Secretary to Government,  
Rural Development Department,  
Secretariat, Fort St. George,  
Chennai.

+1cc to the Spacial Government Pleader, S.R.No.69606

W.P. No.16570 of 2009

SKM(CO)  
CT 01/04/2022