

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 19.02.2021
CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

Writ Petition No.29628 of 2012
and M.P.No.1 of 2012

K.Thiruvalluvan

... Petitioner

-Vs-

1.The District Collector
Cuddalore District.

2.Block Development Officer
Mangalore Panchayat Union
Mangalore, Cuddalore District.

3.President
Arasangudi Village Panchayat
Mangalore Panchayat Union
Cuddalore District.

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the third respondent in his proceedings Na.Ka.No.1/2012 dated 19.04.2012 and quash the same, and direct the respondents to reinstate the petitioner in service as Panchayat Secretary in the 3rd respondent Panchayat and confer all the consequential benefits.

For Petitioner : Mr.T.Sellapandian
for M/s.C.S.Associates

For Respondents : Mrs.K.Bhuvaneswari
Additional Government Pleader - for RR 1&2

Mr.A.G.Rajan - for R3

WEB COPY

O R D E R

The prayer sought for herein is to call the records pertaining to the order passed by the third respondent in his proceedings Na.Ka.No.1/2012 dated 19.04.2012 and quash the same, and direct the respondents to reinstate the petitioner in service as Panchayat Secretary in the 3rd respondent Panchayat and confer all the consequential benefits.

2. That the petitioner was appointed as Part Time Village Clerk, which post subsequently has been re-designated as Full Time Panchayat Secretary in the year 2013.

3. Pursuant to the petitioner's appointment on 15.09.2006 at the third respondent Village Panchayat, the petitioner has been working as Village Panchayat Clerk and he had been looking after all the clerical and secretarial activities of that village. While so, in the year 2012, ie., in the month of March and April 2012, cheques were issued by the third respondent President on the following dates 17.03.2012, 03.04.2012, 03.04.2012 and again on 03.04.2012 for withdrawal of money from the Bank for the purpose of disbursing the salary to the employees who had been engaged in Mahatma Gandhi Rural Employment Scheme. Accordingly, the money had been withdrawn by the petitioner on the following dates, 29.03.2012, 07.04.2012, 07.04.2012 and 07.04.2012.

4. After drawing the amounts from the Bank for the purpose of disbursing the same to the employees, due to some alleged misunderstanding between the third respondent and the employees, the amount could not be disbursed. Therefore, on his instructions, according to the petitioner, the amount already withdrawn from the Bank has been again re-deposited on 09.12.2012 itself.

5. In this context, a show cause notice was issued by the third respondent to the petitioner on 10.04.2012 signed on 16.04.2012, which was served on the petitioner on 17.04.2012 seeking show cause within two days.

6. On receipt of the said show cause notice on 17.04.2012, the petitioner had asked for some reasonable time to respond. However, without giving such reasonable time, which is allowable for the petitioner to respond, it seems that on 19.04.2012, the third respondent Panchayat passed a resolution deciding to remove the petitioner from service and pursuant which, on the same day ie., 19.04.2012, the impugned order has been issued, whereby the petitioner has been removed from service. Challenging the same, the present writ petition has been filed.

7. Heard Mr.T.Sellapandian, learned counsel for the petitioner, who would submit that insofar as the merits of the show cause notice is concerned, he was able to point out that there were four cheques which were encashed as directed by the third respondent, one cheque dated 17.03.2012 was encashed on 29.03.2012, and other three cheques dated 03.04.2012 were encashed on 07.04.2012. Since in between 03.04.2012 and 07.04.2012, intervening Saturday and Sundays were there, after drawing money from the bank, when the petitioner was ready to disburse the amount, the third respondent had not allowed the petitioner to disburse the same in view of some dispute

between the petitioner and the employees. Since the petitioner did not want to retain the money, prudently re-deposited the amount in the Bank on 19.12.2012 itself with a view to withdraw the same whenever the third respondent wants to withdraw the same.

8. Learned counsel for the petitioner would further submit that, retaining money at the hands of the petitioner without any authorisation does not arise. Moreover, it is not the case, where the petitioner has misappropriated the money for his personal gain. Despite the same, the said charge has been made in the show cause notice. The same had to be properly met by giving a detailed reply. Therefore, breathing time was sought for by the petitioner. Even that was not given to the petitioner and the third respondent Panchayat hastily passed the resolution within 48 hours ie., on 19.04.2012 and on the very same day the third respondent rushed to pass the impugned order, removing the petitioner from the post and therefore the principles of natural justice have been violated in the case of the petitioner.

9. In this context, the learned counsel for the petitioner has also brought to the notice of this Court the relevant Government Order, which governs the service conditions of the employees like the petitioner. G.O.No.175, Rural Development and Panchayat Department dated 05.12.2006 has been relied upon by the learned counsel for the petitioner, who has taken this Court to Clause 5 of the G.O., which reads thus,

"கிராம ஊராட்சியின் நிர்வாகத்தில், ஊராட்சி உதவியாளர் துறையின், விதிமுறைகளை மீறல், ஒழுங்கீனம், கவனக்குறைவு, தகுதியின்மை, கடமை தவறுதல், தவறான நடவடிக்கைகள் போன்றவற்றில் ஈடுபட்டால் அந்த ஊராட்சி உதவியாளரை கண்டனம், அபராதம், ஊதிய உயர்வு, அல்லது பணி உயர்வை நிறுத்தி வைத்தல் அல்லது மூப்புப் பட்டியலில் தரம் இறக்குதல், அல்லது கீழ்நிலைப் பணியிடத்தில் வைத்தல் அல்லது காலமுறை ஊதியத்தில் கீழ்நிலையில் வைத்தல், தற்காலிக பணிநீக்கம் செய்தல், பணியிலிருந்து நீக்குதல் அல்லது பணிவிலக்கம் செய்யலாம். இருப்பினும் அதற்கு முன்பாக அந்த ஊராட்சி உதவியாளரை நேரடி விசாரணைக்கு அழைப்பது உட்பட அவர் தனது விளக்கத்தை அளிக்க அவருக்கு போதிய வாய்ப்பு, அளிக்கப்பட்டிருக்க வேண்டும்.

10. By relying upon the above clause, the learned counsel for the petitioner would submit that, no such opportunity was given and only 48 hours time pursuant to the show cause notice was given. No personal enquiry was conducted and therefore there is blatant violation of the principles of natural justice.

11. Learned counsel for the petitioner would further submit that, in W.A.No.1782 of 2011 dated 31.08.2012, in the matter of "S.Boopathi -Vs- The District Collector and Others", where exactly similar situation was confronted by the Division

" 4. We have carefully considered the submissions. The grievance of the appellant is that the President of the Panchayat has no authority to pass the order impugned in the writ petition. Since we are inclined to consider the other grievance, we are inclined to go into the said question. A perusal of the order impugned in the writ petition shows that the appellant was removed from service on the grounds that he was negligent while performing his work, he attended office after consuming liquor, he did not collect the taxes and did not account for the same. In our opinion, these are all allegations which are required to be established in a detailed enquiry. Admittedly, no enquiry was conducted after issuance of charge memo. From paragraph-4 of the counter affidavit filed by the fourth respondent, it is seen that before taking disciplinary action, the appellant was issued with a notice dated 6.7.2009 requiring him to appear for enquiry at 11.00 am on 16.07.2009. It is also stated that the said notice was despatched by certificate of posting. But there is nothing to indicate that the said notice was served on the appellant. Even assuming that it has been served, by issuance of such a notice, it cannot be said that the charges have been established on a detailed enquiry. The fact remains that before imposing the major penalty, the appellant had not been issued with any charge memo. The further fact is that the earlier suspension order passed against the appellant was also revoked by the Block Development Officer vide proceedings dated 9.11.2009 and he was directed to be reinstated into service. In our opinion, in the absence of any enquiry to prove the charges against the appellant, the reasons adduced in the order impugned in the writ petition would amount to cause stigma on the appellant. The enquiry is necessary before removal. In the absence of such enquiry, the order impugned in the writ petition cannot be sustained."

12. By relying upon the aforesaid decision of the Division Bench, the learned counsel for the petitioner would contend that, assuming that if there is any violation noticed on the part of the Village Assistant / Clerk / Secretary like the petitioner, based on the same, charge memo should have been issued, following which an enquiry shall be conducted. Without following this procedure as established under law, if summarily the case is disposed of by the Village President concerned, who is the executive authority as well as disciplinary authority, that too awarding maximum punishment

of removal of service, that is bad in law, as in the absence of such enquiry being conducted, the order of the disciplinary authority removing the employee, cannot be sustained.

13. Therefore, the learned counsel for the petitioner, relying upon the provisions of the relevant Government Order as well as the Division Bench judgment cited supra would contend that, if these propositions are applied in the present case, the impugned order does not stand in the legal scrutiny. Therefore, he seeks the indulgence of this Court.

14. Heard the learned Standing Counsel for the third respondent and the learned Additional Government Pleader for the first respondent.

15. Insofar as the issue raised in this writ petition is concerned, the first and second respondents do not have any role, as they have not passed any order against the petitioner and the third respondent, being the immediate employer as well as the disciplinary authority, has only passed the impugned order, of course, on the basis of the resolution passed by the third respondent Panchayat.

16. Learned counsel for the third respondent would submit that, in view of the delay caused by the petitioner in disbursing the salary, even though he had withdrawn the amount from the Bank pursuant to the cheques issued by the third respondent, there has been misunderstanding between the employees and the third respondent and it had brought disrespect to the third respondent. Therefore, in order to rectify the same, when the petitioner was called for giving explanation by issuance of show cause notice dated 10.04.2012, the petitioner having received the same on 17.04.2012 has not chosen to give a reply within the two days time allowed to the petitioner. Therefore, the third respondent Panchayat having no other option, has passed a resolution on 19.04.2012 to remove the petitioner from service. Only pursuant to the resolution passed by the third respondent Panchayat, the third respondent has issued the impugned order of removal of service on 19.04.2012. Therefore, in this case all the procedures which ought to have been followed, had been followed and therefore it cannot be said that, without following the procedure established under law the impugned order has been passed. Therefore, the same is sustainable and accordingly the writ petition is liable to be rejected, he contended.

17. I have considered the rival submissions made by the learned counsel on either side and have perused the materials placed on record.

18. First of all, if we look at the import of the show cause notice dated 10.04.2012 signed on 16.04.2012 and served on 17.04.2012, three out of four cheques were dated 03.04.2012 and thereafter weekend ie., Saturday and Sunday intervened.

Therefore, on 07.04.2012, the petitioner had withdrawn the money and when he was ready to disburse the same, it is the definite case of the petitioner that, due to misunderstanding between the third respondent and the employees, who were supposed to be paid the wages, the petitioner was not permitted to disburse that amount. Therefore, having waited for 24 hours, he decided to re-deposit the amount in the bank as he did not want to retain the amount unauthorisedly. Therefore, immediately on 09.04.2012 he had re-deposited the amount in the bank and this has been admitted by the third respondent in the show cause notice dated 10.04.2012 itself.

19. Therefore, the question of any misappropriation on the part of the petitioner in this case does not arise. When there is no misappropriation or unlawful retainment of the Panchayat money at the hands of the petitioner, prima facie there could be no violation on the part of the petitioner of any rules and regulations in this regard.

20. Nevertheless, the third respondent issued the show cause notice only on the ground that, the non-disbursement of the salary to the employees has brought some embarrassment to the third respondent. Even assuming that, it has brought some embarrassment to the third respondent, for which the show notice was issued, only two days time was given by the third respondent in the show cause notice. Normally, if these kind of show cause notices are issued against the employee, the bare minimum time of one week at least should have been given. However, only two days time was given to respond to the show cause notice. That itself shows the intention of the third respondent to take some drastic action against the petitioner out of nothing.

21. Further, even though the petitioner claimed some reasonable time to respond, that time was not given. Within 24 hours ie., on 19.04.2012 it seems that the third respondent Panchayat passed a resolution and on the very same day, the third respondent rushed to issue the impugned order dated 19.04.2012 removing the petitioner from service,

22. It is to be noted herein that, if we look at the import of the show cause notice dated 10.04.2012 and the hastiness shown by the third respondent in passing the impugned order dated 19.04.2012, it is clearly established that, the third respondent had intentionally passed this proceedings only to remove the petitioner for the reasons best known to him. Therefore, definitely the reason cited in the show cause notice cannot be the reason for inflicting such a major punishment of removal of service against the petitioner. Moreover, as has been rightly pointed out by the learned counsel for the petitioner, under the relevant Government Order ie., G.O.No.175, Clause 5 makes it clear that, if at all disciplinary proceedings has to be initiated, enquiry shall be conducted on the basis of the definite charge memo. Nothing

has been followed in this case, as no charge memo has been issued, no enquiry has been conducted. Therefore, it is a clear violation of the relevant G.O., in this regard. That apart, as has been rightly pointed out by the learned counsel for the petitioner, law is well settled that, whenever an order of penalty or punishment is awarded against the employee on the basis of any charge, certainly it is a penalty or it is an order attached with stigma. Here in the case in hand, maximum penalty of removal of service has been inflicted. Therefore, such action of termination or removal cannot be considered to be an order of 'termination simplicitor' but it attached stigma on the employee.

23. When that being the position, as held by the Division Bench in the aforesaid judgment in similar circumstances, there should have been a charge memo followed by enquiry. In the absence of both, the action taken by the third respondent, which culminated in the order of removal of service against the petitioner is per se illegal. Therefore, the said order cannot be sustained in the eye of law.

24. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order.

That the impugned order is quashed. It is needless to mention that, in view of the quashment of the impugned order, the consequential service benefits to which the petitioner is entitled to, shall be extended to the petitioner. In this regard, if any reinstatement is given, with regard to the backwages, it is for the third respondent to take a decision in consultation with the petitioner. However, this Court feels that, since the third respondent is only a Village Panchayat, such kind of huge money by way of backwages may not be required to be claimed by the petitioner and a pragmatic approach can be taken by both sides in arriving at the claim of backwages for the period from the date of removal till the date of reinstatement.

25. With the above observations, this writ petition is ordered. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The District Collector
Cuddalore District.

2.Block Development Officer
Mangalore Panchayat Union
Mangalore, Cuddalore District.

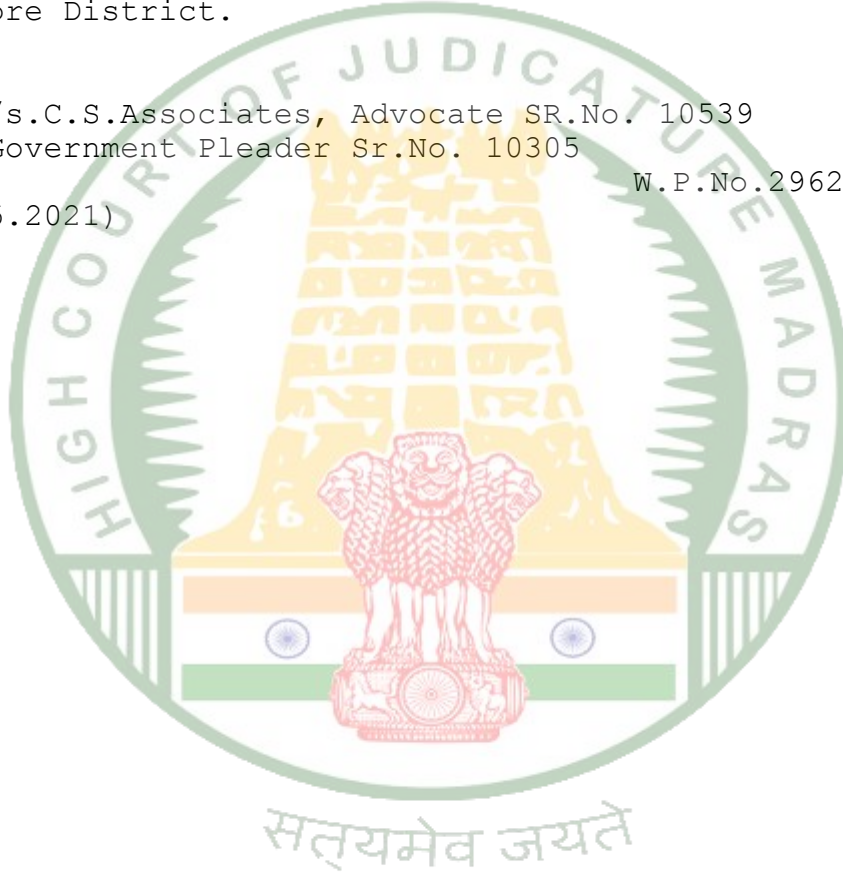
3.President
Arasangudi Village Panchayat
Mangalore Panchayat Union
Cuddalore District.

+1cc to M/s.C.S.Associates, Advocate SR.No. 10539

+1 cc to Government Pleader Sr.No. 10305

W.P.No.29628 of 2012

A.SK(18.05.2021)



WEB COPY