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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE S. VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE R. VIJAYAKUMAR

W.A.No. 2735 of 2021 and
C.M.P. No 17926 of 2021

The Inspector of Panchayats and
District Collector,
Salem District, Salem

..Appellant/Respondent-1

Vs.

1. S. Arichandran
2. The Block Development Officer,
Konganapuram Panchayat Officer,
Konganapuram, Salem District.
3. The President,
Samuthram Panchayat,
Samuthram, Salem District.

....Respondents

Prayer: Writ Appeal filed under Clause 15 of Letter Patent Act, to set aside the order dated 02.07.2019 passed in W.P.No.1152 of 2012 and allow the Writ Appeal.

Prayer in WP.No.1152/12: To issue a writ of certiorarified mandamus calling for the records connected under the Na.Ka.No.6967/4/A5, dated 11/06/2009, quash the same of also direct the respondent to reinstate the petitioner with continuity of service, backwages & other attendant benefits.

For Appellant : Mr.R. Neelakandan
Additional Advocate General
Assisted by Mr.K.Tippusultan,
Government Advocate

For Respondents : Mr.S.N. Ravichandran for R1



J U D G M E N T

S.VAIDYANATHAN, J.,

AND

R.VIJAYAKUMAR, J.,

The Writ Appeal is directed against the order dated 02.07.2019 passed by this Court in W.P.No.1152 of 2012 in allowing the Writ Petition filed by the First Respondent.

2. The Writ Petitioner/First Respondent was a Panchayat Assistant and is said to have involved in misappropriation of funds pertaining to Samuthram Panchayat in connivance with the erstwhile Panchayat President of the said Panchayat. For the misappropriation committed by the President, the Writ Petitioner had nexus for connivance, for which he was charge sheeted and punished by an order dated 25.09.2006, which was the subject matter of W.P.No.1710 of 2007. This Court, by an order dated 07.01.2009 allowed the Writ Petition by quashing the order of dismissal and remanded the matter for fresh disposal. For the sake of convenience, the operative portion of the said order is extracted hereunder:

7. Admittedly, in respect of the charge memorandum, though the petitioner denied the allegations against him, no enquiry whatsoever was held as required under law. On this ground alone, in my consider opinion, the impugned order of dismissal is liable to be quashed. In respect of the jurisdiction of the Inspector of panchayats to issue charge memorandum. I am of the view that since there is an allegation of collusion with the president as against the petitioner, to initiate action against the panchayat Clerk, the District Collector has got jurisdiction to initiate disciplinary proceedings,

8. In view of the above, without expressing any opinion in respect of the other grounds raised in the Writ Petition, the Writ Petition is allowed, the impugned order of dismissal is quashed and the matter is remitted back to the file of the District Collector, the first respondent herein for fresh disposal in accordance with law. The



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first respondent is directed appoint a competent Enquiry Officer to hold necessary enquiry into the charges and to submit a report after affording sufficient opportunity to the Petitioner. On getting such report, the first respondent is directed to pass appropriate final order in this matter. In any event, the entire exercise shall be completed by the first respondent within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

3. On remand, enquiry has been conducted after affording an opportunity to the Writ Petitioner to defend in the enquiry. Even though the enquiry was conducted in detail, without calling for comments on the enquiry officer's report, the order dated 11.06.2009 impugned in the Writ Petition in W.P.No.1152 of 2012 came to be passed.

4. According to the Writ Petitioner, he has not committed any mis conduct and that he has acted as per the instruction of the superior and that he was not given an opportunity to put forth his comments on the report of the Enquiry Officer. It is further stated that the order impugned in the Writ Petitions was a non speaking order and in the said order the authority has extracted the Charge Memo and the explanation of the parties concerned and thereafter, in one sentence passed an order confirming the order of dismissal of the Writ Petitioner from service. The learned Single Judge vide order dated 02.07.2019 has rightly interfered with the order impugned in the Writ Petition and held that opportunity was not given to the Writ Petitioner and the Enquiry Officer's report was not furnished to him and hence directed reinstatement of the Writ Petitioner into service with continuity of service attendant benefits and backwages.

5. For the sake of convenience, the relevant portion of the order dated 02.07.2019 is extracted hereunder:

"5. From the impugned order of the 1st Respondent, it is seen that the enquiry officer has given his report holding that the charges leveled against



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the Petitioner was proved only based on the explanation given by the Petitioner. No witness was examined before the Enquiry Officer and Petitioner was not given any opportunity to prove that the charges leveled against him are false. Further, the 1st Respondent after receipt of report of the Enquiry Officer did not issue second show cause notice to the Petitioner enclosing copy of the report calling upon the Petitioner to submit his reply. From the impugned order, it is seen that the 1st Respondent has extracted the report of the Enquiry Officer and without giving any reason for accepting the finding of the Enquiry Officer, in one line has held that "all the charges leveled against the Petitioner seems to be proved". The impugned order is not a speaking order and the same has been passed without conducting proper enquiry by examining witnesses to prove the charges leveled against the Petitioner. The 1st Respondent has not complied with the earlier order of this Court dated 07.01.2009 passed in W.P.No. 1710 of 2007 directing the 1st Respondent to conduct enquiry and pass orders based on the enquiry report. In view of the same, the order of the 1st Respondent is set aside and the respondents are directed to reinstate the Petitioner into service with continuity of service attendant benefits and backwages.

6. Aggrieved by the said order, the present Appeal has been preferred by the Appellant/First Respondent.

7. The learned Additional Advocate General appearing for the Appellant contended that the opportunity was given to the employee and as the charges are serious in nature, District collector has passed an order, which is impugned in the Writ Petition and in case this Court presumes that no opportunity was given to the Writ Petitioner on the Enquiry Officer's report, this Court may remand the matter to conduct the proceeding from the stage, where the defect is found and permit the Appellant



herein to pass fresh orders based on the report that may be submitted and no prejudice is going to be caused to the employee, as he was already without employment from 2007 and that the Appellant will take decision within the period of two months from the date of receipt of the order.

8. In reply, the learned counsel appearing for the First Respondent/Writ Petitioner has submitted that the surcharge proceedings have been initiated by an order dated 23.09.2016 and the entire liability has been foisted on the erstwhile President of the Samuthram Panchayat and he has also paid entire amount of Rs.2,27,101/- and that being the case, there is no need to remand the matter. He therefore submitted that the Writ Petitioner has not acted independently in the alleged transactions and that there is no connivance at all.

9. Heard both sides. Perused the records.

10. Before apprising the facts, we feel it appropriate to extract the order dated 11.06.2009, impugned in the Writ Petition as under:

"மேற்படி விசாரணை அலுவலர் சமர்ப்பித்துள்ள அறிக்கை என்னால் முழுமையாகவும் தன்னிச்சையாகவும் பரிசீலனை செய்யப்பட்டது. பரிசீலனையில், ஏற்கனவே பணிநீக்கம் செய்யப்பட்ட முன்னாள் ஊராட்சி எழுத்தர் திரு.எஸ்.அரிச்சந்திரன் என்பவர் மீது முன்னர் ஏற்படுத்தப்பட்ட குற்றச்சாட்டுகள் அனைத்தும் நிரூபனமானதாக தெரியவருகின்ற காரணத்தினால் இவரை ஏற்கெனவே நிரந்தர பணி நீக்கம் செய்யப்பட்டதை உறுதி செய்து தற்போது உத்தரவிடுகின்றேன்,

The enquiry officer's report perused by the in detail and independently.

On perusal all the charges leveled against the suspension panchayat clerk Thiru.A.Arighandran is found proved and hence I confirm the earlier order of removal him from service."

11. The facts narrated supra are not in dispute. Admittedly, the comments on the Enquiry Officer's report have not been called for as the report itself has not been served on the Writ Petitioner. It is true that if there is any defect in the enquiry, the matter has got to be remanded and the proceedings shall be commenced from that stage. That principle may not be applicable to the facts of this case. In the earlier round of



litigation, this Court has interfered with the order and remand the matter for fresh disposal as early as in the year of 2009. This Court cannot every time interfere with the order and remand the matter directing the authority to pass fresh orders. More so, the surcharge proceedings have been initiated and the entire amount mentioned supra has already paid by the erstwhile President of the Samuthram Panchayat and that the order passed on 25.09.2006 has been set aside, which means that the order is nonest in the eye of law. In the order impugned in the Writ Petition, the Authority confirmed the earlier order of removal from service, especially, when there was no order of dismissal in existence at all and hence, the question of confirmation does not rise. That apart, the learned Single Judge by an order dated 07.01.2009 directed the authorities to pass an order afresh following the principles of Natural Justice. On the aforesaid grounds the order cannot be retrospectively passed in the light of the order on 07.01.2009 that enquiry report has not been furnished to the Writ Petitioner and no fresh comments called for. Further, as the entire amount has been paid by the erstwhile President, who is solely responsible for the financial loss, we find that there is no reason to interfere with the order of the learned Single Judge.

12. In such view of the matter, this Writ Appeal is dismissed. We expect the Appellant to reinstate the First Respondent/Writ Petitioner into service and pay the arrears payable to him within a period of four (4) months of the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Digit)

// True Copy //

Sub Assistant Registrar

arr/shk

To

1. The Block Development Officer,
Konganapuram Panchayat Officer,
Konganapuram, Salem District.
2. The President,
Samuthram Panchayat,
Samuthram, Salem District.



3.The Inspector of Panchayat & District Collector,
Salem District, Salem.

+1cc to Mr.S.N.Ravichandran, Advocate SR.No.56123

W.A.No. 2735 of 2021

SVI (CO)
CB(21/01/2022)