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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.29208 of 2018

and

W.M.P.Nos.34133 and 34137 of 2018

(Through Video Conferencing)

P.Kanagaraj

...Petitioner

Vs

1. The District Collector,
Coimbatore District,
Coimbatore.

2. The Block Development Officer,
Karamadai Panchayat Union,
Karamadai, Coimbatore
District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records pertaining to the proceedings of the second respondent in Na.Ka.No.1911/2017/A1 dated 01.10.2018 and quash the same as illegal, incompetent and ultravires and consequently direct the respondents to reinstate the petitioner in the post of Panchayat Secretary, Chikkadhasampalayam Village Panchayat, Karamadai Union, Coimbatore District.

For Petitioner	:	Mr.R.Singaravelan Senior Counsel for Mr.R.Jayaprakash
For Respondents	:	
For R1	:	Mr.L.S.M.Hasan Fizal Government Advocate
For R2	:	Mr.S.V.Durai Solai Malai

ORDER

The petitioner is governed by the provisions of the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules 2013. The petitioner was issued with a Show Cause Notice dated



31.07.2017 wherein, it was alleged that the petitioner had failed to collect the pending amount for the Taxation Year 2012-2013 and thereafter, another Memorandum dated 09.08.2017 was issued by the second respondent to the petitioner wherein, the petitioner was called upon to show cause as to why an amount of Rs.3,50,000/- wrongly accounted in the expenditure and should not be considered as misappropriation of amount and why action should not be taken against the petitioner by the Department. This was followed by a Suspension Order dated 21.08.2017.

2. The petitioner had sent certain representation and thereafter the Charge Memo dated 02.03.2018 was issued to the petitioner wherein about six different charges were framed against the petitioner. The petitioner appears to have also replied to the above notice. The total amount in the aforesaid charges/proceedings approximately comes to about Rs.14,60,000/-. Meanwhile the petitioner had challenged the Suspension Order dated 21.08.2017 in W.P.No.33361 of 2017. By an order dated 31.05.2018, the writ petition was disposed by directing the respondents to consider the representation dated 24.08.2017 of the petitioner in accordance with law within a period of four weeks.

3. Thereafter, the petitioner had also sent a representation on 08.06.2018 to the first respondent. The first respondent by a communication/order dated 10.07.2018 appointed a Block Development Officer/Special Officer. After the Block Development Officer/Special Officer was appointed, the petitioner was also transferred from Chickadasampalayam Panchayat to Jadayampalayam Panchayat in Karamadai Panchayat Union, Coimbatore District.

4. The second respondent has now passed the impugned order dated 01.10.2018 which reads as under:-

"It was accounted that Thiru.P.Kanagaraj presently working as Panchayat Secretary, Jadayampalayam and Ex.Panchayat Secretary, Chickadasamapalayam Panchayat has committed irregularities in panchayat revenue and missappropriated total amount of Rs.2,52,66,415/- (Rupees Two Crores Fifty Two Lakhs Sixty Six Thousand Four Hundred and Fifteen only). It is hereby ordered that, for the above said reasons and in the interest of management, with effect from 30.09.2018 afternoon, he was relieved from the services of Jadayampalayam Panchayat Secretary."

Barring the above, the impugned order merely refers to various communications/orders numbering 23 in numbers.



5. It is challenged on the ground that the order has been passed without issuance of proper Charge Memo or Show Cause Notice. The impugned order was challenged mainly on the ground that the order has been passed by the person who is incompetent to pass such order and without issuance of proper Charge Memo or Show Cause Notice or an enquiry by the Enquiry Officer.

6. Appearing on behalf of the petitioner, learned senior counsel for the petitioner submits that though under the provisions of the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules 2013, the procedure for conducting disciplinary proceedings is absent, the procedure prescribed under the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 has to be followed.

7. Learned Senior Counsel for the petitioner further submits that in any disciplinary proceedings, enquiry reply and an opportunity is sine qua non before order of punishment whether by way of dismissal from service (removal from service) or by imposition of any other punitive punishment has to be after following the Principles of Natural Justice.

8. In this case, it is submitted that not only the impugned order is cryptic and there is no semblance of any reasonings also proceeds without any initial of disciplinary proceedings for confirming that the petitioner had indulged in alleged irregularity of Rs.2,52,66,415/-.

9. Learned senior counsel further submits that it is not clear on what basis the aforesaid amount has been arrived by the respondents and whether the petitioner has removed from service or not. It merely states that with effect from 30.09.2018, the petitioner was relieved from service of Jadayampalayam Panchayat Secretary.

10. Appearing on behalf of the respondents, learned Government Advocate for the first respondent submits that though the impugned order is cryptic, the order is sustainable on the ground of the fact that the petitioner as a Secretary of the Panchayat had committed service irregularities and had not only misappropriated the amount but also manipulated the amount and thereby caused heavy loss to the said Panchayat Union. He therefore submits that even if the case is remitted back no useful purpose of the service as the punishment which has been imposed in the impugned order by removal of service with effect from 30.09.2018 is to be justified in the light of the overwhelming fraud noted by the respondents.



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11. Heard the learned senior counsel for the petitioner and the learned Government Advocate for the first respondent and the learned counsel for the second respondent. I have perused the Show Cause Notice, Memorandum dated 09.08.2017, 02.03.2018 and the order of the first respondent.

12. The impugned order passed by the second respondent is clearly without any Notice or Charge Memo to show cause as why the petitioner should not be dismissed from service. It merely states that the petitioner misappropriated total amount of Rs.2,52,66,415/- and therefore, the petitioner relieved from service with effect from 30.09.2018. Though the provisions of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 is not incorporated under the provisions of the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules 2013, nevertheless, the procedure prescribed under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 for imposing major penalty ought to have been applied by the respondents.

13. Considering the fact that the entire proceedings is vitiated on account of failure on the part of the respondents to issue appropriate notice before passing the impugned order, this Court is of the view that the impugned order passed by the second respondent is liable to be quashed with liberty to the respondents to issue appropriate Notice and Charge Memo to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. During the period, the petitioner shall be treated as having been placed under suspension from the date of the impugned order dated 01.10.2018.

14. The respondents shall endeavour to complete the disciplinary proceedings in respect of which purported action was taken in the impugned order and in the pending proceedings that were initiated in 2017 and 2018 within a period of twelve months from the date of receipt of a copy of this order. Since the allegations against the petitioner are serious in nature, the petitioner shall continued to be under suspension and the fact that the petitioner as an employee of the second respondent, thereafter shall be subject to the final outcome of the disciplinary proceedings.

15. The respondents are directed to pay subsistence allowances to the petitioner in terms of Rule 17 of the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules 2013. The respondents shall release the arrears of the subsistence allowances for the period starting from 2018 within a period of three months from the date receipt of a copy of this order. Going Forward, the respondents shall start to pay the



subsistence allowances month-on-month basis till the date of completion of the disciplinary proceedings.

16. This Writ Petition stands disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

arb/nst

To

1. The District Collector,
Coimbatore District,
Coimbatore.
2. The Block Development Officer,
Karamadai Panchayat Union,
Karamadai,
Coimbatore District.

+1CC to Mr.R.Jayaprakash, Advocate, Sr.No.45968
+1CC to Government Pleader, Sr.No.46188

W.P.No.29208 of 2018
and
W.M.P.Nos.34133 and 34137 of 2018

KK (CO)
K.RK. (22.09.2021)