



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P. (MD) .No.15566 of 2013

and

M.P (MD) Nos.1 and 2 of 2013

WEB COPY

P.Venkateswaran

... Petitioner

Vs.

1.The Inspector of Panchayat,
District Collector,
Theni District.

2.The Block Development Officer,
(Village Panchayat)
Chinnamanur Panchayat Union,
Uthamapalayam Taluk,
Theni District.

3.The President,
Seepalakkottai Panchayat,
Chinnamanur Union,
Uthamapalayam Taluk,
Theni District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of dismissal from service dated 10.09.2012 passed by the 3rd respondent and quash the same and consequently direct the respondents herein to reinstate the petitioner in service with all backwages and attendant benefits within a reasonable time.

For Petitioner : Mr.K.Anandan
For R1 : Mr.M.Lingadurai
Government Advocate
For R2 & R3 : No appearance

ORDER

This Writ Petition is filed for issuance of a writ of Certiorarified Mandamus to quash the impugned order dated 10.09.2012 passed by the third respondent and to direct the respondents to reinstate the petitioner in service with all backwages and attendant benefits within a reasonable time.

2.The petitioner was appointed as Assistant in the third respondent panchayat by the resolution dated 28.10.2008. The



appointment of the petitioner was also approved by the second respondent by order dated 29.12.2008. Later, on the allegation that the petitioner misappropriated the funds of the panchayat, he was placed under suspension on 21.06.2012. It is the case of the petitioner in the affidavit filed in support of this petition that no charge was framed and no charge memo was issued to the petitioner before enquiry. It is the further case of the petitioner that without conducting any enquiry and without even serving a copy of the order of dismissal, the third respondent has dismissed the petitioner from service. It is also stated that even the order of dismissal impugned in the present writ petition was obtained by the petitioner's wife under Right to Information Act, after dismissal. It is also submitted that the impugned order of dismissal is arbitrary, illegal and unjust. Though the petitioner denied the charges levelled against him in the affidavit filed in support of this petition, the facts stated by the respondents in the counter affidavit are relevant. As a matter of fact, the third respondent viz., the President of Panchayat, Theni, filed a counter affidavit in October 2013. It is seen that the then learned counsel for the petitioner had received a copy of the counter affidavit on 17.04.2014. Similarly, the second respondent viz., the Block Development Officer, Theni, filed a counter affidavit in October 2013 and the same was also received by the learned counsel for the petitioner on 21.02.2014. Despite the service of counter affidavit of the learned counsel for the petitioner, no reply has been filed and hence, this Court is of the view that the petitioner has nothing to deny the averments made in the counter affidavit independently filed by the second and third respondents.

3. In the counter affidavit of the second respondent, paragraph Nos.4 and 6 are relevant, which are extracted hereunder:

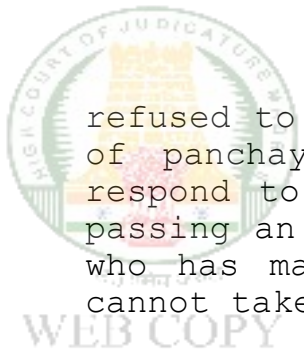
"4. It is submitted that consequent upon the inspection report of the Assistant Director (Panchayat) Theni, the District Collector, Theni, in Roc.No.18680/2012/Q4, dated 21.06.2012 has directed the Block Development Officer (VP) Chinnamanur to take initiatives to place the petitioner under suspension and to take criminal action against the petitioner through the police. Keeping in view of the larger interest of the panchayat, the petitioner was placed under suspension with effect from 21.06.2012 and panchayat resolution to this effect was passed vide resolution No.117/6.7.12. Following this, the Block Development Officer (VP), Chinnamanur has lodged a complaint against the petitioner with the Police Station, Odaipatti on 22.06.2012 and the FIR has been filed against the petitioner under Section 465, 471, 409 of IPC on 22.06.12 vide FIR No.51/2012. On the basis of the FIR filed against the petitioner, a



criminal case is pending with the Hon'ble Judicial Magistrate Court at Uthamapalayam, Theni District in C.C.No.No.284 of 2013. Subsequently, the President, Village Panchayat, Seepalakottai has sent a notice dated 13.07.2012 listing out 8 No. of charges against the petitioner and called for his explanation in writing within 15 days from the date of receipt of the notice and also sought his personal appearance on 02.08.2012 at Seepalakottai Panchayat office. The said notice was sent through one Thiru.R.Aiyar, OHT Operator, Seepalakottai, Panchayat office and Thiru.R.Aiyar has stated by his letter dated 16.07.2012 that the petitioner had refused to receive the notice. As an alternative, the said notice of the Seepalakottai Panchayat President was served through the Village Administrative Officer, Seepalakottai on 17.07.2012 by way of affixing the same on the residential house door of the petitioner. The certificate to this effect has been obtained in this regard from the Village Administrative Officer, Seepalakottai. The petitioner had neither submitted his explanation to the charges framed nor appeared before the President for personal hearing. Thus, the petitioner has not exhausted the remedies available to him even though adequate chances have been given to him.

6.It is submitted that the petitioner in his letter dated 03.11.2012 addressed to the Block Development Officer (VP) Chinnamanur has stated that he has remitted Rs.79,284/- being the amount said to have been misappropriated as per the inspection report of the Assistant Director (Panchayats), Theni, on 23.06.2012 and as such, the petitioner himself has admitted the irregularities committed by him and for that he had begged the pardon and requested reinstatement. Hence, the petitioner is having no Substantive right for his prayer before this Court."

4.In the counter affidavit of the third respondent it is stated that the serious irregularities and misappropriation of funds had been committed by the petitioner. It is stated that the petitioner had misappropriated a sum of Rs.63,591/- collected by way of tax and other revenues due to the panchayat. Since the petitioner has not remitted the amount collected from the public into the panchayat account, the petitioner is charged for misappropriation. It is also stated that the petitioner has caused loss to the panchayat to the tune of Rs.13,625/- by misappropriating the said amount without making payment for books and forms, which are not even purchased by the panchayat. The allegations against the petitioner are serious. When the petitioner



refused to receive notice, notice was then served through the staff of panchayat by way of affixture. When the petitioner did not respond to the charges, the third respondent cannot be blamed for passing an order in the absence of any explanation. The petitioner, who has made an attempt to circumvent the whole enquiry process, cannot take advantage of his own conduct to plead innocence.

5.Since it is stated in the counter affidavit that the petitioner has remitted a sum of Rs.79,284/- being the amount said to have been misappropriated as per the report of the Assistant Director(Panchayats), Theni, it should be taken that the petitioner himself has admitted the irregularities committed by him. Merely by begging pardon, the petitioner cannot seek reinstatement once again. The respondents have rightly imposed the punishment of dismissal.

6.Under Section 106 of the Tamil Nadu Panchayat Act, 1994, the Executive Authority of the panchayat is empowered to remove or dismiss any officer or servant in the services of Village Panchayat or Panchayat Union as the case may be. Since the impugned order in the present case is issued by the third respondent, who is the competent authority, this Court finds no reason to interfere with as it is explained by the counter affidavit that the dismissal of the petitioner was after following due process. In the absence of any explanation to the charges and the petitioner himself has admitted his guilt, this Court is not inclined to interfere with the order of punishment.

7.For the reasons stated above, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS II)

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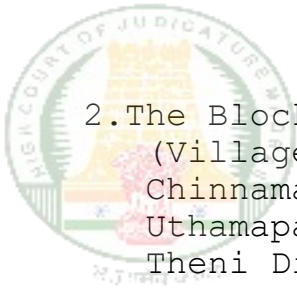
Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Inspector of Panchayat,
District Collector,
Theni District.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Block Development Officer,
(Village Panchayat)
Chinnamanur Panchayat Union,
Uthamapalayam Taluk,
Theni District.

3.The President,
Seepalakkottai Panchayat,
Chinnamanur Union,
Uthamapalayam Taluk,
Theni District.

+1 CC to M/s.The Special Government Pleader (SR-25789[F] dated
10/08/2021)

W.P. (MD) .No.15566 of 2013

and

M.P (MD) Nos.1 and 2 of 2013

09.08.2021

RS (26.08.2021) 5P 5C