



WEB COPY

W.P.(MD) No.13856 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD) No.13856 of 2020

and

W.M.P (MD) No.11497 of 2020

P.Durairaj

...Petitioner

Vs.

1.The District Collector cum Chairman,
District Rural Development Agency,
Collectorate,
Sivagangai, Sivaganga District.

2.The Project Director/Joint Director,
Sivaganga District Rural Development Agency,
Collectorate,
Sivagangai, Sivaganga District.

3.Thiru.S.Vadiel,
Project Director /Joint Director,
Sivaganga District Rural Development Agency,
Collectorate, Sivagangai,
Sivaganga District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned order passed by the second respondent in his proceedings DA11/414/2016 dated 23.07.2020 and quash the same and consequently, direct the respondents to re-instate the petitioner in service with full back wages and other consequential service benefits in the post of Block Coordinator, Singampunari Block, Sivagangai District.

For Petitioner : Mr.M.Saravanakumar

For R-1 and R-2 : Mr.S.Dhayalan
Government Advocate

O R D E R

The petitioner herein was retained by the first respondent as a Block Coordinator at Singampunari Block, Sivagangai District, on constructual basis for a period of one year, which could be extensible by the second respondent for a further period of three years. Though the petitioner was appointed in the year 2006 and



the terms of his appointment empowered the third respondent to extend him only for a period of three years, the petitioner was retained as a Block Coordinator for more than 17 years and ultimately, terminated from service on 23.07.2020, by the second respondent through the impugned order based on the certain charges. Challenging the said order, the present writ petition has been filed.

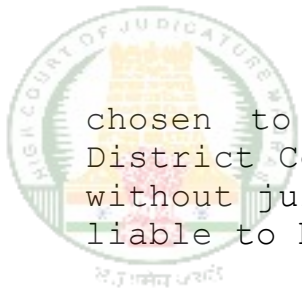
2.The learned counsel for the petitioner challenges the impugned order of termination on two grounds, namely, violation of principles of natural justice and incompetence of the second respondent for having passed the impugned order.

3.Insofar as the violation of principles of natural justice is concerned, it is seen that though petitioner herein was retained on contractual basis on consolidated payment, he was continued to hold the post of Block Coordinator for about 17 years, eventhough his term of absorbtion was only for a period of one year, extendable by three years. As such, it could be seen that the respondent had treated the petitioner as that of a permanent employee. In this background, the principles of natural justice would require that the petitioner could have been given an opportunity to putforth his objections before the impugned order of termination was passed.

4.The learned Government Advocate for the respondents 1 and 2 submitted that the petitioner herein was served with two show cause notices on 07.01.2019 and 23.03.2019, prior to the impugned order, to which, the petitioner had not submitted his reply and therefore, they were constrained to terminate him.

5.Per contra, the learned counsel for the petitioner would submit that insofar as the deficiencies noted in the impugned order is concerned, he had been periodically giving his explanation to the second respondents, which could be treated as an explanation. He would further submit that if an opportunity is given to him, he would submit a detailed explanation to the charges levelled against him in the impugned order. However, this Court is of the view that since the petitioner was retained for about 17 years, proper mode of termination should have been adopted by extending the principles of natural justice to the petitioner, the impugned order could be satisfied on this ground.

6.Insofar as the second ground raised by the petitioner is concerned, it is the District Collector of Sivaganga, who had appointed the petitioner as a Block Coordinator and it is settled principal of law that the termination order should also be passed by the appointing authority or any other authority above him. In this case, the second respondent, who is the Project Director, had



chosen to terminate the petitioner, who was appointed by the District Collector and such an action can clearly be termed as one without jurisdiction. On this ground also, the impugned order is liable to be set aside.

7. Nevertheless, the charges noted in the termination order seems to be serious in nature. Hence, if the second respondent is granted liberty to proceed against the petitioner, if they choose to do so, by calling upon for the explanation from the petitioner and consideration of the same through proper enquiry, the ends of justice could be secured.

8. In the light of the above observations, the impugned order in DA11/414/2016, dated 23.07.2020, passed by the second respondent is set aside and the second respondent is directed to re-absorb the petitioner back. However, the respondents are at liberty to proceed against the petitioner, if they choose to do so, by issuing a show cause notice calling for the explanation to the charges, if any, and on receipt of such explanation, the petitioner would be entitled to submit his explanation within a time stipulated in the show cause notice and any decision thereafter should be taken only after conduct of due and proper enquiry. It is made clear that, in case, the petitioner does not co-operate in any of the procedure as stated above, the respondents are at liberty to take a final call without reference to the observation made in this order.

9. Accordingly, this writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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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.

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



To

1.The District Collector cum Chairman,
District Rural Development Agency,
Collectorate,
Sivagangai, Sivaganga District.

2.The Project Director/Joint Director,
Sivaganga District Rural Development Agency,
Collectorate,
Sivagangai, Sivaganga District.

+1 CC to Mr.M.SARAVANA KUMAR, Advocate (SR-4080[F] dated
09/02/2021)

+1 CC to SGP (SR-4251[F] dated 10/02/2021)

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