



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.10.2021

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P.(MD)No.14475 of 2014

M.Selvi

... Petitioner

vs.

1.The Executive Officer,
Sundarapandiyam Town Panchayat,
Virudhunagar District.

2.V.Ganesan

... 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 pertaining to the impugned order of removal from service passed by the first respondent in Na.Ka.No.138/11 dated 07.08.2014, served on the petitioner on 28.08.2014, to quash the same and consequently to direct the respondents to reinstate the petitioner in service in the post of Sanitary Worker, Sundarapandiyam Town Panchayat with back wages, continuity of service and all other attendant benefits.

For Petitioner

:Mr.A.Rahul

For R-1

:Mr.Veeravel Pandian

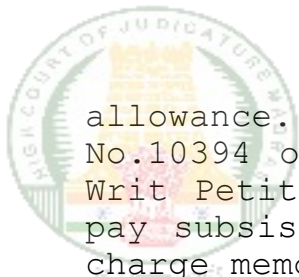
for J.Gunaseelan Muthiah

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order of removing the petitioner from service passed by the first respondent, dated 07.08.2014 and to direct the respondents to reinstate the petitioner in service in the post of Sanitary Worker with back wages.

2.Heard Mr.A.Rahul, learned Counsel appearing for the petitioner and Mr.Mr.Veeravel Pandian, learned Counsel appearing for the first respondent.

3.The petitioner was appointed as a Sweeper/Sanitary Worker on 27.04.2007 in Mamsapuram Town Panchayat and it is stated by the petitioner that her appointment was through Employment Exchange. While in service, the petitioner was placed under suspension by the first respondent by order, dated 15.04.2011. It was stated in the order of suspension that the petitioner was unauthorizedly absent from duty from 05.03.2011 till the date of suspension and that an enquiry into grave charges is contemplated against the petitioner and it appears that the petitioner made several representations to revoke the order of suspension and to pay the petitioner subsistence



allowance. The petitioner filed a Writ Petition earlier in W.P.(MD) No.10394 of 2013 challenging the order of suspension and the said Writ Petition was disposed of by directing the first respondent to pay subsistence allowance till the completion of enquiry. Later a charge memo was issued to the petitioner on 10.07.2013.

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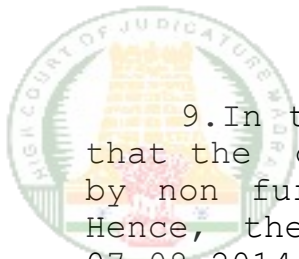
4.It is stated by the petitioner that the first respondent signed the charge memo only on 10.03.2014. After receiving the charge memo on 20.03.2014, it is stated by the petitioner that she submitted a representation to pay subsistence allowance. It is admitted by the petitioner that an Enquiry Officer was appointed. From the impugned order, it is seen that the Enquiry Officer was appointed and he submitted his report, dated 06.08.2014. Based on the Enquiry Officer's report, it is seen that the first respondent passed the impugned order, dated 07.08.2014 removing the petitioner from service. As against the order of dismissal, the petitioner has come forward with the present Writ Petition.

5.The learned Counsel for the petitioner submitted that even though the Enquiry Officer drew the report on 06.08.2014, it is seen that the order of dismissal is dated 07.08.2014. He further submitted that it is impossible between 06.08.2014 and 07.08.2014 to give sufficient opportunity to the petitioner to submit her explanation to the enquiry report. Since it is mandatory that the Disciplinary Authority should serve a copy of the enquiry report, the learned Counsel for the petitioner submitted that the impugned order is liable to be quashed on the short ground of violation of principles of natural justice.

6.The learned Counsel appearing for the first respondent submitted that the petitioner has committed several delinquencies for which the petitioner is liable to be terminated.

7.Except the statements making serious allegations against the petitioner, there is no record to hold that the charges against the petitioner are true. Be that as it may, the Enquiry Officer submitted a report just one day prior to the order of removal. If it is mandatory that the report of Enquiry Officer should be furnished to the petitioner and an opportunity should be given to the delinquent before passing the order of dismissal, the impugned order cannot be sustained.

8.The learned Counsel appearing for the petitioner relied upon the judgment of the Honourable Supreme Court in the case of **Managing Director, E.C.I.L., Hyderabad vs B.Karunakar** reported in **1994 Supp (2) SCC 391**, wherein, the Honourable Supreme Court has held that it is mandatory to serve a copy of the enquiry report to the charged Officer at least from the date of judgment in Ramzan Khan case, dated 20.11.1990. (reported in **(1991) 1 SCC 588**)



9. In the said circumstances, this Court cannot resist but hold that the dismissal order passed by the first respondent is vitiated by non furnishing of Enquiry Officer's report to the petitioner. Hence, the impugned order passed by the first respondent, dated 07.08.2014 is set aside. However, liberty is given to the first respondent to initiate fresh proceedings in accordance with law. The first respondent is directed to reinstate the petitioner into service and confer all monetary benefits to the petitioner. It is stated by the learned Counsel appearing for the petitioner that till 2014, the petitioner was paid subsistence allowance and thereafter, the impugned order was passed dismissing the petitioner from service. Since the order of termination is now set aside, the petitioner is entitled to regularization of the period of suspension as the petitioner was kept away from work not on her fault but on the basis of proceedings, which was concluded by the impugned order which is quashed by this order. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

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Sub Assistant Registrar(CS)

tmg/cmr

TO

The Executive Officer,
Sundarapandiyam Town Panchayat,
Virudhunagar District.

+1 CC to M/s.A.RAHUL, Advocate (SR-32319[F] dated 22/10/2021)

W.P. (MD) No.14475 of 2014
21.10.2021

SRK(CO)
KB(10.11.2021) 3P 3C