



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:12.02.2021

CORAM:

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

W.P. (MD)No.21561 of 2016

and

W.M.P. (MD) .Nos.15417 and 15418 of 2016

M.Malmurugan

... Petitioner

Vs.

1.The District Collector cum
Inspector of Panchayat,
Tuticorin District,
Tuticorin.

2.The Commissioner,
Tuticorin Corporation,
Tuticorin.

3.The Block Development Officer,
Tuticorin,
Tuticorin District.

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the third respondent in the proceedings in 3/3614/2011, dated 12.10.2011 and to quash the same as illegal.

For Petitioner	: Mr.J.Ashok
For R1 & R3	: Mr.A.Karthik
	Government Advocate
For R2	: Mr.S.Saji Bino
	Standing counsel

O R D E R

This writ petition has been filed challenging the impugned order passed by the third respondent in his proceedings in 3/3614/2011, dated 12.10.2011 and to quash the same.

2. The case of the petitioner is that the petitioner was appointed as Panchayat Clerk (Full Time), on 27.08.2007, as per the Resolution No.2 of Meelavittam Village Panchayat. However, all of a sudden, the third respondent placed the petitioner under suspension, without issuing any show cause notice, as per G.O.(Ms.).No.176 (Rural Development and Local Administration Department), dated 05.12.2006, on the ground that the petitioner not properly maintained the cash book, expense vouchers and related documents



were not submitted before the third respondent. Challenging the same, the present writ petition has been filed.

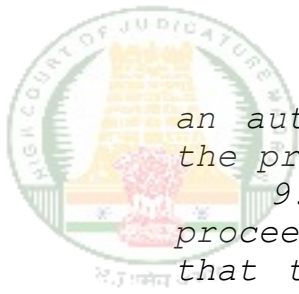
3. The learned counsel appearing for the petitioner would submit that though the Meelavittam Village Panchayat merged with the Tuticorin Corporation and the service records of the petitioner also sent to Tuticorin Corporation, till date no charge memo was issued against the petitioner. Further, the Block Development Officer / the third respondent is not the competent person and as per Section 84 of the Tamil Nadu Panchayats Act, 1994, the Village Panchayat President is the Executive Authority to take a disciplinary action against the petitioner. In support of his contentions, the learned counsel for the petitioner has relied on a decision of this Court reported in **(2007) 6 MLJ 1314 (P.Rajendran vs. the District Collector and others)**.

4. Per contra, the learned Government Advocate appearing for the respondents 1 and 3 would submit that as per the Scheme, the superior authority or lower authority can take a disciplinary action. However, the major punishment can be imposed only by the competent authority.

5. Heard the learned counsel for the petitioner, learned Government Advocate appearing for the respondents 1 and 3 and perused the materials available on record.

6. The facts in the present case are not in dispute. Admittedly, the third respondent placed the petitioner under suspension on 12.10.2014. Though the petitioner claimed that the suspension order is contrary to G.O.(Ms.)No.175, dated 05.12.2006, the third respondent is the superior authority. The core issue arises for consideration in this writ petition is whether the third respondent have jurisdiction to take a disciplinary action against the petitioner. The Hon'ble Apex Court, in the case of **the Inspector General of Police and another vs. Thavasiappan** reported in **(1996) 2 SCC 145**, has held as follows:

"8.The learned counsel also drew our attention to *P.V.Srinivasa Sastry v. Comptroller and Auditor General* wherein this Court in the context of Article 311(1) has held that in absence of a rule any superior authority who can be held to be the controlling authority can initiate a departmental proceeding and that initiation of a departmental proceeding per se does not visit the officer concerned with any evil consequences. *Transport Commr. v. A.Radha Krishna Moorthy* was next relied upon. Therein also this Court has held that initiation of disciplinary enquiry can be by an officer subordinate to the appointing authority. These decisions fully support the contention of the learned counsel for the appellants that initiation of a departmental proceeding and conducting an enquiry can be by



an authority other than the authority competent to impose the proposed penalty.

9. As to who shall initiate and conduct a disciplinary proceeding, the Rules are silent. Rule 2-A which provides that the Governor or any other authority empowered by him may institute disciplinary proceedings is an enabling provision. From the way it is worded it is not possible to infer that the rule making authority intended to take away the power of otherwise competent authorities, like the appointing authority, disciplinary authority or controlling authority and confine it to the authorities mentioned in Rule 2 A only. Moreover, it is difficult to appreciate how this provision can be helpful in deciding whether the charge should be framed and the enquiry should be held by that authority only which is competent to impose the penalties mentioned in Rule 3(b)(i). An act of instituting a disciplinary proceeding is quite different from conducting an enquiry. Rule 3(b)(i) provides how an enquiry should be held in a case where it is proposed to impose on a member of the service any of the penalties specified in clauses (d), (h), (i) and (j) of Rule 2. It lays down the different steps that have to be taken in the course of the enquiry proceeding. This rule is completely silent as regards the person who should perform those acts except that the report of the enquiry has to be prepared by the authority holding the enquiry. Rule 3(b)(i) itself contemplates that the enquiry officer may not be the authority competent to impose the penalties referred to therein and that becomes apparent from the second para of that sub rule. If it was intended by the rule making authority that the disciplinary authority should itself frame the charge and hold the enquiry then it would not have provided that a report of the enquiry shall be prepared by the authority holding the enquiry whether or not such authority is competent to impose the penalty. Generally speaking, it is not necessary that the charges should be framed by the authority competent to award the proposed penalty or that the enquiry should be conducted by such authority. We do not find anything in the rules which would induce us to read in Rule 3(b)(i) such a requirement. In our opinion, the view taken by the Tribunal that in a case falling under Rule 3(b) the charge memo should be issued by the disciplinary authority empowered to impose the penalties referred to therein and if the charge memo is issued by any lower authority then only that penalty can be imposed which that lower authority is competent to award, is clearly erroneous. We, therefore, allow this appeal. The order passed by the Tribunal is set aside and the case is remitted back to the Tribunal to consider the other contentions which were raised before it and to dispose of



the case in accordance with law".

7. A perusal of the above decision makes it clear that the superior authority can initiate the disciplinary proceedings. However, the punishment can be imposed only by the competent authority. In the present case, it appears that the petitioner was placed under suspension on 12.10.2011. However, till date no charge memo was issued against him

8. In view of the above, this Court directs the first respondent to conclude the disciplinary proceedings, if any pending against the petitioner and pass necessary orders, considering the fact that the petitioner was placed under suspension in the year 2011. The said exercise shall be completed within a period of six months from the date of receipt of a copy of this order.

9. With the above direction, this Writ Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(Writs)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

akv

To

1.The District Collector cum
Inspector of Panchayat,
Tuticorin District,
Tuticorin.

2.The Commissioner,
Tuticorin Corporation,
Tuticorin.

3.The Block Development Officer,
Tuticorin,
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+1 CC to M/s.GP (SR-5100[F] dated 15/02/2021)

W.P. (MD)No.21561 of 2016

12.02.2021

MJ(CO)

TR(26.03.2021) 4P 5C