IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2022

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.35125 of 2012
&
M.P.No.1 of 2012 & W.M.P.No.6317 of 2016

N.Perumal ... Petitioner

Vs

1.The District Collector/Inspector Of Panchayat,
Salem District, Salem.

2.The District Revenue Officer,
Salem, Salem District.

3.The Assistant Director of Panchayat (Audit)
Collectorate, Salem.

4.The Tahsildar,
Gangavalli Taluk, Gangavalli,
Salem District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order passed by the 1st respondent in his proceedings Na.Ka.No.1558/2008/A4,dated 12.12.2012 and quash the same and consequently direct the 1st respondent to entertain the Appeal and dispose the same on merits and in accordance with law.

For Petitioner : Ms.Hemalatha
For Respondents : Mr.C.Jayaprakash
Government Advocate

O R D E R

Heard Ms.R.Hemalatha, learned counsel for the petitioner and Mr.C.Jayaprakash, learned Government Advocate for the respondents.

2. The petitioner had been elected as the president of

Puliyankurichi Village Panchayat for the period 2001-2006. Based on certain allegations and complaints made as against him, proceedings have been initiated under Section 205 of the Tamil Nadu Panchayat Act removing him from the post of Panchayat President.

3. Writ Petition No.31455 of 2004 had been filed challenging the aforesaid order of removal, which was disposed on 10.11.2009 on the ground that nothing survives in the matter, seeing as the term of the post had itself elapsed by then.

4. The fourth respondent, Tahsildar, Gangavalli Taluk had initiated proceedings of surcharge on the basis that the petitioner had expended a sum of Rs.3,62,994/- without maintenance of proper accounts. Proceedings were concluded on 25.09.2006 imposing surcharge for misappropriation of funds.

5. We are now concerned with the merits or otherwise of impugned order dated 12.12.2012 rejecting the representation of the petitioner challenging order dated 25.09.2006, on the ground that the representation is barred by limitation.

6. The Tamil Nadu Panchayats (Surcharge, Disallowance and Charge) Rules, 2000 contains a self-contained procedure for challenging orders of surcharge. Rule 5 provides for an appeal as against the order levying surcharge, disallowance or charges and the same is extracted below:

> 5. Appeal against the surcharge, disallowance or charge.- (1) Any person aggrieved by the disallowance, surcharge or charge made, may, within thirty days from the date of the receipt of service of the decision of the auditor, appeal to the Inspector, or any officer authorised by the Government in this behalf to set aside such disallowance, surcharge or charge and the Inspector or such officer, after taking such evidence as is necessary, may confirm, modify or remit such disallowance, surcharge or charge:
>
> Provided that the Inspector or any officer authorised by the Government, may admit an appeal after the expiry of the time specified in this sub-rule, but within sixty days if the appellant satisfies the Inspector or such officer that he has sufficient cause for not preferring the appeal within the specified time:
>
> Provided further that during the pendency of the appeal made under rule, the certificate of disallowance, surcharge or charge, as the case may be, shall not be enforced.

(2) Against the order of the Inspector or officer authorised by Government in this behalf under sub-rule (1), a second appeal shall lie to the Government within thirty days from the date of receipt of such order. The Government may take into account all the fact presented by the appellant and facts of the case and pass such order as they deem fit and proper. Against the order of the Government, an appeal shall lie to the High Court within thirty days from the date of receipt of such order.

(3) Where an appeal is made to the High Court under sub-rule (2), the auditor shall be the sole respondent thereto and the applicant shall not be entitled to make either the Inspector or any officer authorised by the Government or any other person or Government as a party to the proceedings.

7. Thus the order levying surcharge dated 25.09.2006 ought to have been appealed against before the Inspector or any other officer authorised, within 30 days from date of receipt thereof, extendable to 60 days in terms of the proviso, if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within the period of 30 days.

8. In the present case, the petitioner has merely filed a representation, that too after six years from date of the order and there is no explanation forthcoming for the intervening delay. In any event, the Scheme of the Rules do not provide for condonation in excess of 60 days and thus there is no infirmity in the order rejecting the representation/request of the petitioner.

9. Thus the impugned order is sustained and the Writ Petition dismissed. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

sl

To

1. The District Collector/Inspector Of Panchayat,
   Salem District, Salem.

2. The District Revenue Officer,
   Salem, Salem District.

3. The Assistant Director of Panchayat (Audit)
   Collectorate, Salem.

4. The Tahsildar,
   Gangavalli Taluk, Gangavalli,
   Salem District.

+1cc to Mr.C.PRAKASAM, Advocate, S.R.No.24462
+1cc to the Government Pleader, S.R.No.24570

W.P.No.35125 of 2012
& M.P.No.1 of 2012 and
W.M.P.No.6317 of 2016

MT(CO)
CT 28/04/2022