



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A(MD)Nos.639 to 641 of 2011

W.A(MD)No.639 of 2011

The President,
Eswaran Kovil Panchayat,
Annavaasal Panchayat Union,
Pudukkottai District.

... Appellant

Vs.

1.Karuppaiah

2.The Block Development Officer,
(Village Panchayat),
Annavaasal Panchayat Union,
Pudukkottai District.

... Respondents

W.A(MD)No.640 of 2011

Eswaran Kovil Panchayat,
rep. by its President,
Annavaasal Panchayat Union,
Pudukkottai District.

... Appellant

Vs.

Karuppaiah

... Respondent

W.A(MD)No.641 of 2011

1.The President,
Eswaran Kovil Panchayat,
Annavaasal Panchayat Union,
Pudukkottai District.

2.C.Duraisamy,
The President,
Eswaran Kovil Panchayat,
Annavaasal Panchayat Union,
Pudukkottai District.

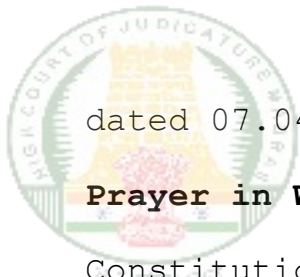
... Appellants

Vs.

Karuppaiah

... Respondent

COMMON PRAYER : Writ Appeals filed under Clause 15 of the Letters Patent praying this Court to set aside the order passed by this Court in W.P(MD)Nos.5177 of 2007, 10696 of 2009 and 7361 of 2007,



dated 07.04.2011, respectively.

Prayer in WP(MD). 5177/ 2007 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the second respondent to assign work to the petitioner and also to pay the salary dues payable to the petitioner in accordance with law

Prayer in WP(MD). 10696/ 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the respondent dated 13/10/2009 and quash the same and consequently reinstating the petitioner with continuity of service with all consequential benefits.

Prayer in WP(MD). 7361/ 2007 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of suspension issued by the 1st respondent in Voo.Ma.A.Aanai No. 1/2007 dated 19/06/2007 and quash the same and consequently reinstating the petitioner with continuity of service with all consequential benefits

In all Writ Appeals

For Appellant in W.A.(MD) Nos.639 & 640 of 2011

and Appellants in W.A.(MD) No.641 of 2011 : Mr.P.Ganapathy
Subramanian

For 1st Respondent in W.A.(MD) No.639 of 2011

and Respondent in W.A.(MD) Nos.640 & 641 of 2011 : Mr.S.Anwar
Sameem,

For 2nd Respondent in W.A.(MD) No.639 of 2011 : Mr.V.Nirmal Kumar,
Government Advocate

COMMON JUDGMENT

R.SUBRAMANIAN, J.

AND

N.SATHISH KUMAR, J.

These three Writ Appeals arise out of W.P(MD)Nos.5177 of 2007, 10696 of 2009 and 7361 of 2007, dated 07.04.2011, respectively.

2. The prayers in the writ petitions are as follows :

PRAYER in W.P.(MD)No.5177 of 2007: Writ petition
filed under Article 226 of the Constitution of India,



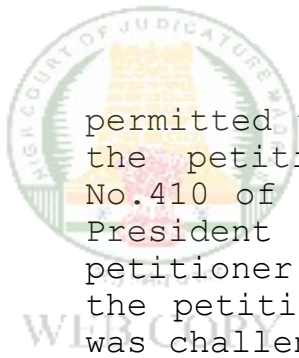
praying to issue a Writ of Mandamus, directing the second respondent to assign work to the petitioner and also to pay the salary dues payable to the petitioner from January 2007 in accordance with law.

PRAYER in W.P.(MD)No.7361 of 2007: Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of suspension issued by the first respondent in Voo.Ma.A.Aanai No.1 of 2007 dated 19.06.2007 and quash the same and consequently reinstating the petitioner with continuity of service with all consequential benefits.

PRAYER in W.P.(MD)No.10696 of 2009: Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the respondent dated 13.10.2009 and quash the same and consequently reinstating the petitioner with continuity of service with all consequential benefits.

3. The petitioner joined the service as a Part-Time Clerk on 06.01.1997 with Eswaran Kovil Panchayat, Annavasal Panchayat Union, Pudukottai District. On 27.12.2006, he was brought on the time scale of pay. Though he was brought on the time scale of pay, according to the petitioner, he was not assigned with any work after January 2007 and salary was also stopped. On 28.03.2007, the President of Eswaran Kovil Panchayat and some Officials of the Panchayat took away the records forcibly from the petitioner. A show-cause notice was issued by the Block Development Officer on 08.05.2007 stating that the petitioner was negligent in discharging the duty and he was not attending Panchayat Union meetings. A reply was sent by the petitioner on 16.05.2007 pointing out that the records have been taken away forcibly on 28.03.2007. In these circumstances, the petitioner filed the first writ petition in W.P. (MD) No.5177 of 2007 on 08.06.2007 seeking assignment of work and also for salary.

4. Subsequently, the President of the Eswaran Kovil Panchayat, by order, dated 19.06.2007 placed the petitioner under suspension. The said suspension order was challenged in W.P(MD) No.7361 of 2007. There was an order of stay of suspension on 25.06.2008. On 10.10.2007, a charge memo was issued to the petitioner making various allegations against him. The petitioner by his letter, dated 22.10.2007 sought for time for submitting the explanation and also sought for documents. Since he was not



permitted to work, despite the suspension order having been stayed, the petitioner had launched contempt proceedings in Cont.P(MD) No.410 of 2008. Subsequently, a show-cause notice was sent by the President of Eswaran Kovil Panchayat on 07.10.2009 seeking the petitioner's explanation and within six days i.e., on 13.10.2009, the petitioner was dismissed from service. The order of dismissal was challenged in W.P.(MD) No.10696 of 2009.

5. All the above three writ petitions and the contempt petition were taken up together.

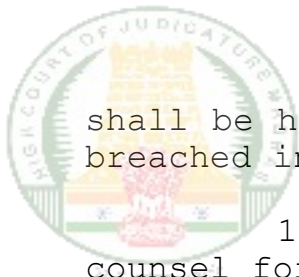
6. The order of dismissal from service was set aside mainly on the ground that there was no enquiry and the petitioner was not afforded a reasonable opportunity to defend the charges levelled against him. This Court also found that the order of suspension was passed with a *malafide* intention. The Writ Court also recorded a finding that the dismissal from service was actuated by *malafides* because the petitioner had filed a contempt petition before this Court.

7. On the above findings, all the three Writ Petitions were allowed with cost of Rs.20,000/- (Rupees Twenty Thousand only). The Contempt Petition was closed, accepting the unconditional apology tendered by the President of the Eswaran Kovil Panchayat.

8. We have heard Mr.P.Ganapathy Subramanian, learned counsel appearing for the appellant-Panchayat, Mr.S.Anwar Sameem, learned counsel appearing for the first respondent in W.A.(MD) No.639 of 2021, respondent in W.A.(MD) Nos.640 & 641 of 2011 and Mr.V.Nirmal Kumar, learned Government Advocate appearing for the second respondent in W.A.(MD) No.639 of 2021.

9. Mr.P.Ganapathy Subramanian, learned counsel appearing for the appellant-Panchayat would vehemently contend that the order of dismissal was passed because the petitioner did not submit an explanation to the show-cause notice. According to him, there was an audit objection for misappropriation of a sum of Rs.50,000/- (Rupees Fifty Thousand only) and the petitioner cannot go scot-free of having mis-appropriated the money to the Panchayat

10. Contending contra, Mr.Anwar Sameem, learned counsel appearing for the first respondent in W.A.(MD) No.639 of 2011 and respondent in W.A.(MD) Nos.640 & 641 of 2011 would submit that the entire proceedings are vitiated because of *malafides*. According to the learned counsel, it could be seen from the narration of events itself that the first respondent has deliberately prevented the petitioner from working, despite the order of suspension having been stayed by this Court. Upon initiation of contempt and upon receipt of notice in the contempt proceedings, the appellant herein had issued a show-cause notice and within 10 days, followed it up with a dismissal order. The fundamental requirement of law that a person



shall be heard before he is inflicted with any punishment, has been breached in the case on hand.

11. We have considered the submissions of the learned counsel for the parties.

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12. We are unable to countenance the submissions of the learned counsel for the appellant. The facts narrated above justify the contention of the learned counsel for the first respondent-employee. While he was working in the Office of the Panchayat as a Clerk, the President had taken away the office records from him. Thereafter, a show-cause notice was issued to him. He had sought for the documents. Without furnishing the documents, he was kept under suspension. The order of suspension was stayed by this Court. Despite an order of stay in force, he was not allowed to work. He launched a contempt proceedings. Thereafter, in order to get over the contempt, the appellant had adopted the route of dismissal from service.

13. We find considerable justification in the contention of the learned counsel for the first respondent that the entire proceedings are vitiated due to *malafides* and lack of opportunity to the petitioner.

14. We, therefore, do not see any reason to interfere with the order of the Writ Court. These three Writ Appeals fail and accordingly, the same are dismissed. No costs.

15. It is now stated that the order of suspension has been revoked, the order of reinstatement has been implemented and the first respondent/writ petitioner is now working in a different Panchayat. These statements are placed on record. In view of the above, the cost imposed by the Writ Court is set aside.

Sd/-

Assistant Registrar (CS-II)

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/ /2022

Sub Assistant Registrar(CS)

rm

To

The Block Development Officer,
(Village Panchayat),
Annavaasal Panchayat Union,
Pudukkottai District.



W.A(MD)Nos.639 to 641 of 2011

+1 CC to M/s.I.IRULLAPPAN, Advocate (SR-14171[F] dated 24/03/2022)

W.A(MD)Nos.639 to 641 of 2011
23.03.2022

KG(CO)
KB(05.04.2022) 6P 3C