



W.P(MD)No.3017 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.10.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.3017 of 2021

P.Soundar

... Petitioner

Vs.

1.The District Collector,
Theni District,
Theni.

2.The President,
Shanmugasundarapuram Panchayat,
Muthusangilipatti,
Rosanapatti Post,
Andipatti Circle,
Theni District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 2nd respondent in connection with the impugned Resolution passed in Item No. 8 of Meeting No.3 dated 12.02.2007 and quash the same as illegal and arbitrary and consequently direct the 1st respondent to reinstate the petitioner in service as Panchayat Assistant/Panchayat Secretary within his Jurisdiction with all service and attendant benefits within the time limit that may be stipulated by this Court.



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For Petitioner : Mr.G.Thalaimutharasu

For Respondents : Mr.A.K.Manikkam,
Spl. Government Pleader.

ORDER

Heard the learned counsel on either side.

2.The writ petitioner was appointed as Panchayat Assistant in the second respondent panchayat in the year 2006. The petitioner would claim that his service was regularized and brought under time scale of pay vide proceedings dated 24.01.2007 issued by the Block Development Officer (Village Panchayat), Andipatti. The petitioner alleges that since a new President was elected and she wanted to bring her relative in the place of the writ petitioner, he was thrown out. The second respondent/panchayat passed a resolution dated 12.02.2007 removing the petitioner from his post. This resolution is put to challenge in this writ petition.

3.When the matter was taken up for hearing, the learned Special Government Pleader produced a copy of the proceedings dated 23.02.2007 issued by the Panchayat President. Even though, the resolution of the panchayat that has been put to challenge, I am inclined to mould the relief and



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hold that the petitioner is challenging the consequential termination order also.

The termination order is dated 23.02.2007 and the case of the writ petitioner is that he has not been served with the same.

4.In any event, the petitioner cannot be held to be guilty of laches. The petitioner has been fighting his battle right from the year 2008 onwards. W.P.(MD)No.10636 of 2008 was filed by him for directing the District Collector to consider his representation. The said writ petition was disposed of on 24.11.2008. He subsequently filed W.P.(MD)No.17472 of 2015 seeking revocation of his suspension. When the matter was taken up for disposal, it was submitted that the petitioner had already been terminated. Thereupon, the said writ petition was dismissed, since nothing further to adjudicate. That is followed by the present writ petition. Since the petitioner has been agitating his rights from the beginning, the case has to be necessarily decided on merits.

5.The only question that calls for consideration is whether due process was followed before terminating the writ petitioner. The learned counsel for the petitioner relied on G.O. (Ms) No.175, Rural Development and Panchayatraj Department, dated 05.12.2006. The said government order clearly states that before terminating the Panchayat Assistant, enquiry must be



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conducted and due opportunity must be given to the petitioner to offer his explanation. In this case, the Panchayat President has issued show cause notice dated 09.02.2007. In the said show cause notice as many as five acts of misconduct has been set out. This is followed by the impugned resolution dated 12.02.2007 whereby the panchayat unanimously resolved to dismiss the writ petitioner from service. The resolution reads that the petitioner has not offered any explanation. This is followed by the impugned order dated 23.02.2007 passed by the Panchayat President. The impugned order dated 23.02.2007 reads that a complaint was given to the District Collector on 19.01.2006 and that show cause notice was issued on 09.02.2007 and that on 15.02.2007, the members of the panchayat informed that since the petitioner had not replied, in the interest of administration, he had been dismissed from service. There is absolutely nothing on record to show that the petitioner was called for enquiry. G.O. (Ms) No.175 dated 05.12.2006 clearly contemplates that personal enquiry must be held. Since the procedure set out in the aforesaid government order has not been complied with, the impugned resolution along with the consequential termination order dated 23.02.2007 passed by the second respondent are clearly illegal and they stand quashed. The writ petition is allowed. The second respondent is directed to reinstate the petitioner without backwages. It appears that in the place of the writ petitioner one Radha was



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appointed and that she is still continuing in service. I am of the view that she need not be disturbed. It appears that there are other vacancies available in Andipatti Panchayat Union in the same grade and the petitioner can as well be accommodated against any of the existing vacancy in the post of Panchayat Secretary. The first respondent will issue proceedings to this effect within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

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Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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