



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.11.2022

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THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.8283 of 2020 & 12859 of 2021

and

W.M.P(MD)No.7679 of 2020

in WP(MD)No.8283 of 2020 : -

M.Radhakrishnan

... Petitioner

v.

- 1.The District Collector cum
Inspector of Panchayats,
Theni District.
- 2.P.A to Collector,
Theni District.
- 3.The Block Development Officer,
Andipatti Village Panchayat Office,
Andipatti, Theni District.
- 4.The President,
Anuppapatti Village Panchayat,
Bodidasanpatti Post,
Andipatti Taluk, Theni District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records pertaining to the impugned charge memo issued by the third respondent dated 18.05.2020 and quash the same.



For Petitioner : Mr.Sricharan Rangarajan
for Mr.N.Sathiswaran

For Respondents : Mr.J.K.Jayaseelan,
Government Advocate for R1 & R2

Mr.B.Saravanan,
Additional Government Pleader
for R3 & R4

in WP(MD)No.12859 of 2021 : -

M.Radhakrishnan

... Petitioner

v.

1.The District Collector, Theni District.

2.The Block Development Officer (V.P)
Andipatti Village Panchayat Office,
Andipatti, Theni District.

4.The President, Anuppapatti Village Panchayat,
Bodidasanpatti Post,
Andipatti Taluk, Theni District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the entire records relating to the impugned proceedings in Na.Ka.No.1741/2012/B1 dated 16.04.2021 rejecting the revocation of suspension issued by the second respondent and quash the same as illegal and consequently to direct the respondents to reinstate the petitioner in service forthwith with all service benefits.

For Petitioner : Mr.Sricharan Rangarajan
for Mr.N.Sathiswaran



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For Respondents : Mr.J.K.Jayaseelan,
Government Advocate for R1

Mr.B.Saravanan,
Additional Government Pleader For R2 & R3

COMMON ORDER

Heard the learned counsel on either side.

2.The petitioner herein was appointed as panchayat Clerk in May 2001. He became panchayat Secretary in due course. He was suspended from service on 02.07.2012. He was later terminated vide order dated 30.05.2013. Questioning the same, the petitioner filed WP(MD)No.3488 of 2014. The said writ petition was allowed by me on 23.01.2018 since the termination order was passed without holding an enquiry. I had merely applied the decision reported in **(2008) 5 MLJ 1284 (R.Palanivel vs. Commissioner, Gingee Panchayat Union, Villupuram District and another)**. Thereafter, the Block Development Officer, Andipatti appointed one Vinothkumar, Dy.BDO (Accounts) as the enquiry officer. The enquiry officer sent one more communication in October, 2019 calling upon the petitioner to offer his explanation. Incidentally, charge memo itself came to be issued only in May 2020. I could not understand as to how the enquiry officer was appointed even before the issuance of the charge memo. In these writ petitions, the relief sought for by the petitioner are two fold :



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"a.To quash the charge memo dated 18.05.2020

b.Seeking reinstatement on account of prolonged suspension."

3.The respondents have filed a counter affidavit and the learned Additional Government Pleader for the respondents took me through their contents. The learned Additional Government Pleader submitted that the allegations made against the petitioner are fairly serious. The petitioner is alleged to have misappropriated substantial sum of money out of the panchayat funds. He also would submit that only following the remand order passed by this Court, the proceedings were revived and that no interference is called for.

4.I carefully considered the rival contentions and went through the materials on record. Let me consider the first contention advanced as regards the validity of the charge memo. It is well settled that charge memo can be issued by an authority having jurisdiction to issue the same. The petitioner is holding the post of panchayat Secretary. Under 2013 Rules issued vide G.O Ms.No.72 Rural Development and Panchayat Raj Department dated 09.07.2013, the BDO will be the competent authority. But then, this G.O was stayed in WP(MD)No.16884 of 2013 on 19.04.2017. Even though there was a modification of the said order subsequently, the fact remains that the stay



issued in respect of the rules continues to hold the field. In fact, that is why the government itself is proposing to issue new rules in the place of 2013 rules. Once it is noted that the 2013 rules have been stayed, the logical consequence is that the position that prevailed earlier will spring back to life. Therefore, as per G.O Ms.No.175 dated 05.12.2006 the competent authority to take disciplinary action against the panchayat Secretary is the panchayat President. The BDO has been designated as the appellate authority. The present proceedings have been issued only by the BDO and not panchayat President.

5.Let me test the contention of the respondents that the impugned order is in consonance with the order passed by me in WP(MD)No.3488 of 2014. The said writ petition was allowed in the following terms :

“5.Following the said decision, this Court quashes the impugned order. The matter is remitted to the file of the concerned Special Officer, Block Development, Theni. It is open to the competent authority to take action afresh in accordance with law.”

I had clearly stated that it is open to the competent authority to take action afresh in accordance with law. Hence, the competent authority in the present context can only mean that the panchayat president and not the BDO. I



hold that the charge memo issued by the BDO is without jurisdiction. It is quashed. However, it is open to the competent authority to take action afresh in accordance with law. The petitioner is under suspension for a period of ten years. This is truly a case of prolonged suspension. The authorities could have expedited the matter by strictly complying with the principles of natural justice. The authorities did not do so. The petitioner cannot be faulted for the long delay. Since I come to the conclusion that the suspension imposed on the petitioner is prolonged, he has to be necessarily given relief. The Hon'ble Supreme Court observed in more than one case that suspension acquires a punitive color when it is prolonged. I direct the respondents to reinstate the petitioner in service. Such an order will be issued within a period of five weeks from the date of receipt of copy of this order.

6.The writ petitions are allowed. No costs. Connected miscellaneous petition is closed.

16.11.2022

Index : Yes / No
Internet : Yes/ No
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To

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Inspector of Panchayats, Theni District.
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G.R.SWAMINATHAN, J.

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