



W.P.(MD)No.16997 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 26.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.16997 of 2020
and
W.M.P(MD).No.14212 of 2020

M.Elangovan

Vs

... Petitioner

1.The District Collector,
Sivagangai District,
Sivagangai.

2.XXXXX

3.The Personal Assistant (Development)
to the District Collector,
Sivagangai District, Sivagangai.

4.The Block Development Officer,
(Village Panchayats),
Sakkottai, Sivagangai District.

5.The Enquiry Officer,
Joint Director/Project Director,
Tamil Nadu State Rural Livelihood Mission,
District Mission Management Unit,
Sivagangai, Sivagangai District.

6.Pandiarajan

... Respondents

(R2 is deleted as per order of this Court dated 26.10.2022)



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the first respondent in Na.Ka.R2/2409/2020, dated 02.11.2020 and the impugned enquiry notice issued by the fifth respondent in Na.Ka.No.A1/3270/2020 dated 09.11.2020 and quash the same.

For Petitioner : Mr.M.Saravanan

For Respondents : Mr.A.K.Manikkam (For R1&R3 to R5)
Special Government Pleader
R2-deleted

ORDER

Heard the learned counsel on either side.

2.The writ petitioner was working as Panchayat Secretary of Sankarapuram Panchayat in Sivagangai District. Vide order dated 09.04.2020, the petitioner was transferred to Sengathangudi Panchayat. The petitioner complied with the transfer order and reported for duty in the transferred place. He has questioned the transfer order only to the extent that it caused stigma on him. Thereafter, the District Collector, Sivagangai, issued an order dated 22.04.2020 suspending the petitioner from service. That was followed by a charge memo dated 09.06.2020. These orders are challenged in this writ petition primarily on the ground of want of jurisdiction.



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3.The petitioner's counsel reiterated all the contentions set out in the affidavit filed in support of this writ petition and called upon this Court to allow this writ petition as prayed for.

4.The respondents have filed counter affidavit and the learned Special Government Pleader took me through its contents. The primary contention of the learned Special Government Pleader is that during the relevant time, there was some uncertainty as regards who was the President of the Panchayat. The election held for electing the Panchayat President had got mired in controversy. In these circumstances, the Vice President of Sankarapuram Panchayat was called upon to resume to discharge the function of the President. In these circumstances, the District Collector had chosen to pass the impugned order. The power of the District Collector cannot be questioned. The learned Special Government Pleader reminded this Court that the District Collector is the Inspector of Panchayats and Under Section 106 of the Tamil Nadu Panchayats Act, 1994, he is very much competent to suspend the writ petitioner from service. In this regard, he relied on the decision of this Court reported in *2011 3 MLJ 630 (C.Shaju Vs., District Collector, Coimbatore District, Coimbatore and another)*. He called this Court to dismiss the writ petition.



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5.I carefully considered the rival contentions and went through the materials on record.

6.I must straight away acknowledge that the decision reported in ***2011 3 MLJ 630 (C.Shaju Vs., District Collector, Coimbatore District, Coimbatore and another)*** supports the proposition canvassed by the learned Special Government Pleader. It is however interesting to note that in the said decision, this Court had upheld the power of the District Collector to suspend the Panchayat Secretary and it is also interesting to note that the editor had incorporated the following note:

“Query :

Whether District Collector has jurisdiction to pass an order of suspension in view of the provisions of Section 106 of the Tamil Nadu Panchayats Act?

.....

Ratio Decidendi

The District Collector has jurisdiction to pass an order of suspension against panchayat employee pending formulation of charges or enquiry into acts of misconduct committed by them.

Editor Note

But see, Surjit Ghosh v. UCB and others, (1995) 2 SCC 474 - Appellate authority exercising power vested with the original authority. ”



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7.The Government of Tamil Nadu had issued Tamil Nadu Village Panchayat Secretaries Conditions of Service Rules, 2013 vide G.O.Ms.No.72, Rural Development and Panchayat Raj, dated 09.07.2013. But the validity of the said Rule came to be questioned in W.P(MD).No.16884 of 2013. A learned Judge of this Court had granted interim stay. The said order was subsequently modified on 19.04.2017. It was directed that the interim order of stay originally granted would apply only to those persons who obtained interim order and shall not be construed in favour of any other person. After careful reading of the interim order originally granted and subsequently modified, I am more than satisfied that the service Rules issued under the aforesaid government order have been stayed in *toto*. The modification only means that if there is no president holding the office, the Special Officer appointed in his place would be competent to appoint Servants/Panchayat Secretaries. In the case on hand, no doubt that there was some controversy as to who is actually the Panchayat president. I proceed on the premise that 2013 Rules have been stayed. The resultant effect is that the earlier rules issued vide G.O.Ms.No.175, dated 05.12.2010 will spring back to life. Under 2006 Rules, the Panchayat President was the appointing authority in respect of Panchayat Secretaries. The Block Development Officer was the appellate authority.



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The District Collector/Inspector of Panchayat was the second appellate authority. Under 2013 Rules, the P.A to the District Collector was the appointing authority, while the District Collector is the appellate authority. Thus, under both the Rules the District Collector is figuring only as an appellate authority and not as the original authority. In these circumstances, the judgment of the Hon'ble Apex Court reported in **(1995) 2 SCC 474 (Surjit Ghosh vs. Chairman and Managing Director, United Commercial Bank and Ors.)** will come into play.

The Hon'ble Apex Court held as follows:

“....It is true that when an authority higher than the disciplinary authority itself imposes the punishment, the order of punishment suffers from no illegality when no appeal is provided to such authority.

However, when an appeal is provided to the higher authority concerned against the order of the disciplinary authority or of a lower authority and the higher authority passes an order of punishment, the employee concerned is deprived of the remedy of appeal which is a substantive right given to him by the Rules/Regulations. An employee cannot be deprived of his substantive right. What is further, when there is a provision of appeal against the order of the disciplinary authority and when the appellate or the higher authority against whose order there is no appeal, exercises the powers of the disciplinary authority in a given case, it results in discrimination against the employee concerned.



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This is particularly so when there are no guidelines in the Rules/Regulations as to when the higher authority or the appellate authority should exercise the power of the disciplinary authority.

The higher or appellate authority may choose to exercise the power of the disciplinary authority in some cases while not doing so in other cases. In such cases, the right of the employee depends upon the choice of the higher/appellate authority which patently results in discrimination between an employee and employee. Surely, such a situation cannot savour of legality.

Hence we are of the view that the contention advanced on behalf of the respondent-Bank that when an appellate authority chooses to exercise the power of disciplinary authority, it should be held that there is no right of appeal provided under the Regulations cannot be accepted.”

8.The Hon'ble Apex Court categorically held that if there is a statutory appellate authority, then it is not open to the appellate authority to issue an order of suspension or charge memo in the first instance, because that would lead to depriving the delinquent employee of his substantial right of first appeal. Though the decision reported in **(2011) 3 MLJ 630** supports the contention advanced by the learned Special Government Pleader, respectfully applying the ratio laid down by the Hon'ble Apex Court, I hold that the impugned order of suspension as well as the charge memo issued by the District Collector is without jurisdiction.



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9. That apart, I have to observe that the charges made against the writ petitioner are really not serious. He had already been transferred to another Panchayat. There was absolutely no justification or warrant for even suspending him. The charges also appear to be vague. In any event, there is no justification for continuing the order of suspension. However, though the petitioner had a good case on merits also, I am setting aside the impugned order of suspension and the charge memo primarily on the ground of want of jurisdiction. The order of transfer however need not be disturbed. The stigmatic portions set out there in alone are excised.

10. The Writ Petition is **allowed** accordingly. The petitioner shall be reinstated in service forthwith without any delay. He is entitled to all the attendant monetary benefits and also continuity of service. Even before commencing his arguments, the learned counsel for the petitioner submitted that the second respondent who has been named in person can be deleted from the array of parties. Accordingly, he is deleted from the array of parties. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No

Internet : Yes/No

Rmk



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Note : Registry is directed to carry out the necessary changes.

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G.R.SWAMINATHAN, J.,

Rmk

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