



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 26.04.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.14347 of 2014

WEB COPY

B.Muthu

... Petitioner

vs.

1.The President,
Naduvakurichi Minor Panchayat,
Melaneelithanallur Panchayat Union,
Sankarankoil Taluk,
Tirunelveli District.

2.The Block Development Officer (Village Panchayats),
Melaneelithanallur Panchayat Union,
Melaneelithanallur.
Sankarankoil Taluk,
Tirunelveli District.

3. The District Collector,
Tirunelveli District at
The Collector Office,
Kokkirakulam Tirunelveli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records and quash the order passed by the third respondent in the second appeal vide Na.Ka.No.Gnu.12/24462/2012 dated 10.06.2014, confirming the orders passed by the second respondent in the first appeal vide Aa.3/1658/2013 dated 07.02.2013, and the order of termination passed by the first respondent vide his proceeding No.Na.Ka.No.2/2013 dated 24.06.2013, and direct the respondents to reinstate the petitioner in the post of Panchayat Secretary with all Arrears of Salary and attendant benefits due thereon.

For Petitioner : Mr.S.Ramesh alias Ramiah

For Respondents : Mr.S.Kameswaran,
Government Advocate (Civil Side)

ORDER

This Writ Petition is filed challenging the impugned orders dated 10.06.2014, 07.02.2013 and 24.06.2013 with a consequent,



prayer to reinstate the petitioner in the post of Panchayat Secretary with all arrears of salary and attendant benefits.

2. The petitioner was originally appointed in the post of Panchayat Assistant (renamed as Panchayat Secretary) and he joined the service on 02.12.1996. The petitioner has completed more than 16 years of service. The contention of the petitioner is that throughout his service, he was discriminated and ill-treated on the basis of his caste. Right from the date of assuming office as the President of Panchayat by one Mrs. Shanmugathai, the Panchayat affairs have been conducted by her husband totally in an autocratic way. All the records to be maintained in the Panchayat are kept with the President and free access to the records and the accounts are not allowed. The President and her husband, in order to appoint some other person of their choice, were giving trouble to the petitioner by alleging false allegations and charges against the petitioner. The petitioner received a notice on 19.06.2012 from the President, calling for the explanation relating to his absence at the office, when the BDO has visited. Also, it was alleged that the petitioner has not maintained the records and has not remitted some amounts. The petitioner has submitted his explanation to the President in person. However, the first respondent suppressing the same stated that the petitioner has not submitted any explanation and the President has issued the charge memo dated 17.06.2012 and threatened to take action under G.O.Ms.No.175 dated 05.12.2006. The petitioner has submitted his explanation to the charge memo to the President. Suppressing these facts, a resolution was moved against the petitioner in the Panchayat and thereafter on 20.07.2012, the respondents promised the petitioner to take back for the service if the petitioner has given a letter to do works properly in future. The contention of the petitioner is that the respondents forced the petitioner to give a letter on 07.12.2012. But against their promise, the petitioner still continues under suspension and the respondents have not paid any subsistence allowance for the period of suspension. The petitioner has submitted a representation to the District Collector on 24.12.2012. No action was taken on the representation of the petitioner nor the respondents have given any subsistence allowance. In the meanwhile, the petitioner has received a notice, directing to appear for enquiry on 10.06.2013 and the petitioner was present before the President on 10.06.2013, but no enquiry was conducted and the petitioner was directed to leave the enquiry premises. But, by suppressing the presence of the petitioner, projecting as if the petitioner has absented for the enquiry held on 10.06.2013, the President has passed an order of termination against the petitioner vide proceedings Na.Ka.No.2 of 2013 dated 24.06.2013.

3. Based on G.O.Ms.No.175, the petitioner has filed first appeal to the Block Development Officer, who is the first appellate



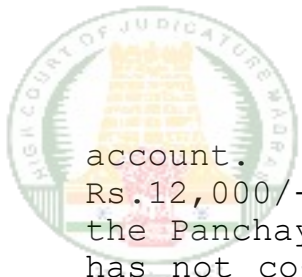
authority and the first appellate authority has perused the records and took note of the reply to the charges vide order dated 29.07.2013 has appointed one of the Deputy Block Development Officer to investigate into the charges and submit a report. Such investigation order was not served on the petitioner and the petitioner is not aware of the such investigation and all these investigations were done behind the back of the petitioner and within two days, the Investigation Officer has submitted a report to the first appellate authority and the report was adverse to the petitioner and the said report was not served on the petitioner at all. Aggrieved over the order passed by the first appellate authority, the petitioner has preferred second appeal before the District Collector. However, the second respondent has failed to consider the claims of the petitioner and without appreciating the facts, has passed the order dated 10.06.2014, confirming the order of termination.

4. The contention of the petitioner is that he has not committed any irregularities or malpractices. All the irregularities are committed by the President of the Panchayat. The petitioner was victimized and the petitioner is the only breadwinner of the family and the petitioner's wife and his two children are suffering because of the order of termination. Left with no other option, this Writ Petition has been filed.

5. When this case was taken up of hearing this Court directed the petitioner to issue notice to the respondent. Since there were specific allegations made against the then Panchayat President and her husband, this Court has directed the petitioner to serve private notice on the then President. Accordingly, notice was served upon the then President on 14.04.2022 and inspite of such notice, the then President has not appeared before this Court.

6. The then President Shanmugathai had filed a counter affidavit dated 04.02.2016, stating that the petitioner has indulged in many irregularities including non-maintenance of Panchayat records, not reporting for the duty, misappropriation of taxes and public funds, non-cooperation in execution of Panchayat duties and disobedient to Panchayat Members.

7. The allegation against the petitioner is that the records and accounts pertaining to Mahatma Gandhi National Rural Employment Scheme for the year 2012-2013 was not properly maintained by the writ petitioner. The writ petitioner has not attended for duty on most of the working days, as a result, many records and accounts are not maintained. The writ petitioner has allegedly issued house tax receipts without carbon paper to three persons, who had paid the house tax dues. The writ petitioner has misappropriated the above sums and deliberately avoided to deposit it to the Panchayat



account. The writ petitioner has misappropriated a sum of Rs.12,000/- which amount was received from the tenders called for by the Panchayat for carrying out the maintenance works. The petitioner has not co-operated with the Panchayat Officials in distribution of wages to workers. For the above allegations, the second respondent had informed the writ petitioner that either he or the Deputy Block Development Officer would inspect the Panchayat in order to prove all the allegations. After 15 days, the Deputy Block Development Officer had visited the Panchayat on 23.05.2012. But the Panchayat office was under lock and key. The inspecting officer namely Deputy Block Development Officer tried to contact the petitioner over mobile phone and he was waiting for sometime. Since the petitioner has not turned up, he recorded the above fact in the inspection report and submitted the report to the second respondent on 28.05.2012. Therefore, the second respondent has issued the show cause notice on 03.07.2012, but the petitioner has not submitted any explanation. Thereafter, based on the resolution No.2 on 03.07.2012, the petitioner was placed under suspension. Thereafter, the domestic enquiry was conducted and in the enquiry it is held all the allegations were proved. The petitioner was given sufficient opportunity to give his explanation. Though the petitioner has not submitted his explanation and has not co-operated with the enquiry officer, final order was passed, wherein the petitioner was terminated from his service.

8. Heard Mr.S.Ramesh Alias Ramiah, learned Counsel appearing for the petitioner and Mr.S.Kameswaran, learned Government Advocate (Civil Side) appearing for the respondents.

9. The contention of the petitioner is that the show cause notice was issued alleging certain irregularities, for which enquiry was conducted. In the appellate order, the appellate authority has introduced entirely a new case, which was not shown in the show cause notice at all. The petitioner has submitted that there is deviation from the original allegations shown in the show cause notice and prayed to allow the writ petition.

10. The next contention putforth by the petitioner is that the first respondent with the intention to appoint his own person has initiated the proceedings, also has suppressed the explanation and the reply submitted by the petitioner. Moreover, the first respondent was present in the enquiry and intimidated the enquiry officer, hence contended the enquiry officer has conducted the enquiry with bias. Therefore this Court is of the considered opinion that the disciplinary proceedings are vitiated with bias and also there is violative of principles of natural justice.

11. The respondents have directed the Deputy Block Development Officer, Melaneeithanallur to investigate without any authority and



the same is vitiated since the same was investigated behind the back of the petitioner. If there is any adverse report submitted against the petitioner, the respondents ought to have directed the petitioner to submit explanation for the alleged adverse report. The respondents have not called for any explanation from the petitioner and the investigation was done behind the back of the petitioner. This Court is of the considered opinion that if any report is relied on by the respondents, then the petitioner is entitled to get a copy of the same. Since in the present case the respondents failed to serve a copy of the report, therefore the order of termination is liable to be set aside.

12. The allegation against the petitioner is that the petitioner has misappropriated the amount, but the explanation given by the petitioner is that he has already deposited the amount to the first respondent. The first respondent has not denied such allegations in the counter submitted before this Court. Therefore, this Court left with no option, is of the considered opinion that the allegation of misappropriation is not proved.

13. For the observations stated supra, this Court is inclined to set aside the impugned order of termination and modify the punishment. Therefore, the impugned order is set aside and the punishment of termination is modified as stoppage of increments for a period of 3 years without cumulative effect. The petitioner was dismissed from his service from 24.06.2013, which was confirmed by the District Collector on 10.06.2014. The petitioner was not in service from the order of the termination i.e. from 24.06.2013. Hence, this Court directs the respondents to reinstate the petitioner. As far as the backwages are concerned generally this Court denies backwages on the principle of "No work No pay". Since this Court has set aside the order of termination and based on the nature of the case this Court is of the considered opinion that the petitioner is entitled to 50% of backwages. The respondents are directed to pay 50% of backwages within a period of eight weeks from the date of receipt of the copy of this order.

14. With the above directions, this Writ Petition stands disposed of.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

CSM



To

1.The President,
Naduvakurichi Minor Panchayat,
Melaneelithanallur Panchayat Union,
Sankarankoil Taluk,
Tirunelveli District.

2.The Block Development Officer (village panchayats),
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3. The District Collector,
Tirunelveli District at
The Collector Office,
Kokkirakulam Tirunelveli.

+1 CC to M/s.S. RAMESH @ RAMIAH, Advocate (SR-21230[F] dated
26/04/2022)

W.P. (MD) No.14347 of 2014
26.04.2022

RK/05.07.2022 : 6P/5C