



W.P.(MD)No.16403 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **20.10.2022**

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.16403 of 2014

and

M.P.(MD)No.1 of 2014

N.Chitrasenan

... Petitioner

Vs.

1. The District Collector,
Dindigul District,
Dindigul.

2. The Block Development Officer,
Panchayat Union,
Kodaikanal.

3. The President,
Vellakavi Panchayat,
Vellakavi,
Kodaikanal Taluk,
Dindigul 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 relating to the impugned order bearing Na.Ka.No.



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8468/2013/O.Va.9, dated 05.05.2014 passed by the first respondent and quash the same and consequently, direct the respondents to reinstate the petitioner in service.

For Petitioner : Mr.T.Antony Arul Raj

For R1 : Mr.P.Thambidurai
Government Advocate (Civil side)

For R2 & R3 : Mr.T.S.Mohammed Mohideen

ORDER

This Writ Petition is filed to quash the impugned order, dated 05.05.2014 and consequently, directly the respondents to reinstate the petitioner in service.

2. The brief facts as stated in the affidavit is that the petitioner was appointed in the year 2002 as part time Clerk. The contention of the petitioner is that certain malpractices were committed in respect of Panchayat funds. As an employee of the panchayat, the petitioner had made a specific complaint against the then Panchayat President before



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the first respondent, District Collector on 10.09.2007. Thereafter, the first respondent directed the Block Development Officer, Kodaikanal to enquire into the complaint. Even though the petitioner had acted as whistle blower, the authorities instead of taking action against the Panchayat President, suspended the petitioner from service, vide order, dated 15.10.2007 on the ground of dereliction of duty. Thereafter, a charge memo, dated 07.07.2008 was issued alleging the petitioner assisted the Panchayat President and the Vice President to misappropriate a sum of Rs.4,48,640/-. The petitioner has impersonated the signatures of the President and the Vice President. When the charge memo was pending, FIR was filed in Crime No.30 of 2008 against the President, the Vice President and the petitioner for offences under section 406, 409, 463 and 420 of IPC. The petitioner has challenged the suspension order in W.P.(MD)No.866 of 2009 and the same was dismissed. Against which the writ appeal in W.A.(MD)No.507 of 2011, was filed and the same was disposed of with a direction to the first respondent to pass final order within a period of three months. However, no order was passed by citing the pendency of FIR and the petitioner was



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also not reinstated in service. Questioning the said order, the petitioner has filed W.P.(MD)No.9861 of 2011 and the same was dismissed, vide order, dated 30.08.2011. When the writ appeal was pending, it was submitted that the petitioner would be reinstated in service. Believing the submission, the petitioner withdrew the writ petition. However, the petitioner was not reinstated in service. Hence, the petitioner had filed another writ petition in W.P.(MD)No. 17706 of 2013. In the meanwhile, the final order was passed. Hence the writ petition has become infructuous.

3. The contention of the petitioner is that inspite of detailed enquiry, the Enquiry Officer has not properly perused the records. The Enquiry Officer has held that the charges were proved. The petitioner was not issued with the copy of the report, dated 25.04.2011. Thereafter, the petitioner was called for personal hearing on 11.04.2014. However, no enquiry was held on that day. Without following any procedures and violation of principle of natural justice, the impugned order was imposed. Therefore, the petitioner has challenged the final enquiry before this



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Court.

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4. The respondents have not filed any counter affidavit. However, the learned Counsels appearing for the first and third respondents submitted that the petitioner has misappropriated along with the President and the Vice President, hence the petitioner was subjected to disciplinary proceedings. After perusing the records, the Enquiry Officer has held that the charges are proved, based on the report the petitioner was dismissed from service. Hence, the respondent submitted that the punishment imposed on the petitioner is legally sustainable and prayed to dismiss the writ petition.

5. Heard Mr.T.Antony Arul Raj, learned Counsel appearing for the petitioner, Mr.P.Thambidurai, learned Government Advocate appearing for the first respondent and Mr.T.S.Mohamed Mohideen, learned Counsel appearing for the second and third respondents and perused the record.



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6. The primary contention of the petitioner is that the impugned order is a Non-speaking order. The petitioner was subjected to 12 charges. In the impugned order none of the charges was discussed. There is no discussion on the evidence. It only states that the petitioner had misappropriated and President and the Vice President had remitted the amount. The respondents are very specific that the President and the Vice President had remitted the amount. In such circumstances, the allegation against the petitioner that he has misappropriated along with the President and the Vice President cannot be considered as true. As rightly pointed out by the Learned Counsel appearing for the petitioner, the petitioner had preferred a complaint before the District Collector that the President and the Vice President had committed misappropriation. But the respondents have taken action against the complainant itself. At this juncture the respondents submitted that action was taken against the President and the Vice President where the cheque issue power was stayed. Subsequently, they were facing criminal proceedings in Crime No.30 of 2008. Even the petitioner is facing the criminal proceedings and the same is pending. The learned Counsel appearing for the



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petitioner submitted that it is only in FIR stage and the FIR was filed in the year 2008 and till this date there is no final report at all. For this the petitioner referred to the endorsement made in the copy application, wherein the Learned Judicial Magistrate had endorsed on 14.09.2011 “that the final report not yet received till date and hence the copy application was returned”. This would clearly indicate that the Police has not filed final report until 2011.

7. Therefore, this Court is inclined to set aside the impugned order. The official respondents are directed to reinstate the petitioner into service. The petitioner has not received any subsistence allowance during the suspension period. Therefore, the respondents are directed to disburse the subsistence allowance for the period of suspension. The petitioner shall be granted all the monetary benefits and service benefits. However, the respondents are at liberty to take action against the petitioner after the completion of the criminal proceedings. The said exercise shall be completed within a period of four (4) weeks from the date of receipt of a copy of this order. With the above said direction, this



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Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes / No
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To

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S.SRIMATHY, J

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