



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.04.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.16874 of 2016

and

W.M.P. (MD)No.12243 of 2016

WEB COPY

N.Vellaichamy ... Petitioner

vs

1. The District Collector
Collectorate, Madurai District.
2. The Block Development Officer,
Kallikudi Block, Madurai District.
3. K.Unnipatti Panchayat
represented by its Panchayat President,
Aavulsurampatti Post, Thirumangalam Taluk,
Madurai District.

4. Mr.Ravi ... Respondents

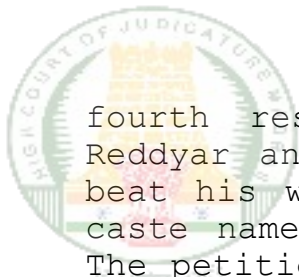
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order dated 05.08.2016 on the file of the Respondent No.3 and quash the same as illegal and consequently direct Respondent Nos.2 and 3 to reinstate him back in service with back wages and other consequential benefits

For Petitioner : Mr.T.Lajathpathi Roy
For Respondents : Mrs.D.Farjana Ghoushia for R1 to R3
Special Government Pleader
No appearance for R4

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, challenging the impugned order dated 05.08.2016 with the consequential prayer directing the respondent Nos.2 and 3 to reinstate the petitioner with backwages and other consequential benefits.

2. The petitioner belongs to Schedule Caste Community and working as a Sweeper in K.Unnipatti Panchayat for the past 20 years. The contention of the petitioner is that after the election of the fourth respondent as the President in the Panchayat elections. He had a grudge against the petitioner since the petitioner did not canvass for his election among his community members and tried to accuse the petitioner over all trivial issues. On 23.06.2007, the



fourth respondent along with one Dhanasekar, Saravanan, Ayyavu Reddyar and Rajkamaar entered the petitioner's house and began to beat his wife and son and the said person abused the petitioner's caste name and attacked the petitioner with sticks and iron rods. The petitioner sustained severe injuries in his left thigh and left leg and he was bleeding in the whole body. Having received severe injuries the petitioner ran to the Kallikudi Police Station to lodge a complaint against them. But respondents chased and caught the petitioner near the Registrar Office and tied his both hands and took him in a T.V.S.50 vehicle to the Panchayat Office and obtained his signature in three blank papers and then tied the petitioner to a nearby neem tree. Thereafter, the petitioner was attacked brutally. In the meantime, the petitioner's wife and his son informed the second respondent and the petitioner was taken to the Police Station. The fourth respondent informed the Police not to register F.I.R and they amicably make settlements. Then they brought the petitioner outside the Police Station and gave him Rs.1500/- and warned him not to make it a big issue. The petitioner took treatment in the Government Hospital. Later on, when the petitioner went to the third respondent Office on duty, the third respondent slapped the petitioner in front of the public for resorting to the Police Station. On 18.06.2007, the third respondent issued a show cause notice stating that the petitioner was absent for many days and referred the same to the second respondent, vide proceedings, dated 22.06.2007 along with many other charges. The second respondent without conducting proper enquiry has stated that the petitioner has admitted all the charges in his proceedings dated 11.07.2007 and referred the matter to the Extension Officer for taking action. On 18.07.2007, the third respondent issued the impugned order dismissing the petitioner from service. Aggrieved over, the petitioner has preferred a writ petition in W.P. (MD) No. 8188 of 2007 and this Court, vide order, dated 06.12.2007 set aside the order and directed to conduct a fresh enquiry. On 28.02.2008, the third respondent conducted a Village Panchayat meeting and passed a resolution against the petitioner without considering the petitioner's grievance. Again the petitioner has preferred another W.P.(MD)No.8569 of 2008 and this Court, vide order, dated 25.02.2016 set aside the impugned order for not following due procedure and strictly directed the third respondent to follow the due procedure. In spite of the same, the respondents have passed the same order without following any due procedure. Aggrieved over the same, the present writ petition is filed.

3. The respondents relied on the impugned orders and the learned Government Pleader submitted on instructions from the official namely Mr. S.S.Raja, Zonal Deputy Block Development Officer, who was present in the Court that the case may be remitted back for a fresh consideration.

4. Heard Mr.T.Lajapathi Roy, learned Counsel appearing for the petitioner and Mr.D.Farjana Ghousia, learned Special Government



Pleader appearing for the respondent Nos.1 to 3 and there is no appearance for the fourth respondent.

5. It is seen from the records that the issue was remitted back and the official respondents have not conducted any proper enquiry. Therefore, this Court is of the considered opinion that if the case is remitted back there will not be any justice to the petitioner. Hence this Court further proceeds to peruse the records, the show cause notice and the charges. The charge against the petitioner is that he was absented himself and has not reported to duty for so many days and the allegation against the petitioner is that he has consumed liquor and he is addicted to it, therefore, he has not reported to the duty. But the contention of the petitioner is that because of the brutal attack of the fourth respondent he could not attend the office. The same was not considered by the respondents. The learned Government Pleader submitted that in the Service Register of the petitioner, it is stated that the petitioner joined the service in the permanent post of Sweeper on 17.07.2000 and his date of birth is 10.07.1965 and the petitioner is still having three more years of service. On perusing the records it is seen that the respondents have conducted Panchayat meeting and have decided that the petitioner has committed offence. But the respondents have not conducted proper enquiry as envisaged in the statutory provisions. There was no show cause notice, no enquiry officer and all procedures were violated. But the respondents have stated that the petitioner has accepted the guilt. This Court is of the considered opinion that the respondents have acted in irresponsible way and the petitioner deserves protection of law.

6. Therefore, this Court is of the considered opinion that the respondents are determined not to conduct proper enquiry. The delinquency was in the year 2007 and it is prolonging until now. Therefore, the punishment of dismissal ought to be modified. The petitioner has not denied the allegation of intoxication. Therefore, this Court is of the considered opinion that the punishment of stoppage of increment for one year without cumulative effect will meet the ends of justice. Therefore, the dismissal order is set aside and the respondents are directed to reinstate the petitioner along with the continuity of service. It is made clear that the petitioner is not entitled to any backwages under the principle of "No Work and No Pay", but the respondents have not allowed the petitioner to join the duty and it is not the fault of the petitioner. Hence this Court is of the considered opinion that the petitioner is entitled to 50% of backwages.

7. It is submitted by the respondents that in the said place another three person were already been appointed. Therefore, the respondents are directed to appoint the petitioner in any vacancy within the same Union. This order shall be implemented within a period of four weeks from the date of receipt of the copy of the



8. With the above direction, the Writ Petition is disposed of.
No costs. Consequently, connected miscellaneous petitions are closed.

WEB COPY

Sd/-

Assistant Registrar (Protocol)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

jbr

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The District Collector
Collectorate, Madurai District.

2.The Block Development Officer,
Kallikudi Block, Madurai District.

+1 CC to M/s.T. LAJAPATHI ROY, Advocate (SR-18028[F]
dated 12/04/2022)

+1 CC to M/s.SPL.GP. (SR-18133[F] dated 12/04/2022)

Order made in

W.P. (MD)No.16874 of 2016

11.04.2022

BK (CO)

GC(03.06.2022) 4P 5C