



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.02.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.25809 of 2019

and

WMP (MD) No.1324 of 2020

and

WMP (MD) Nos. 22334 and 22335 of 2019

C.Ganesan

... Petitioner

Vs.

1.The District Collector,
Thoothukudi District, Thoothukudi.

2.The Assistant Director of Panchayat,
Thoothukudi District, Thoothukudi.

3.The Special Officer / Block Development
Officer (Village Panchayat),
Ottapidaram Taluk
Thoothukudi District.

4.The Special Officer,
Melapandiyapuram Panchayat,
Kandasampuram, S.Kailasapuram Via,
Ottapidaram Taluk,
Thoothukudi District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the impugned order of termination passed in Na.Ka.No.T3/1223/2019, dated 20.09.2019 by the 3rd respondent and consequential impugned employment notification dated 09.11.2019, under proceeding No.Ve.Aa.No.153/Se.Ma.Tho.Aa/2019 Thoodi issued by the 3rd respondent and to quash the same as illegal and direct the respondents to reinstate the petitioner in service to the post of Panchayat Assistant with continuity in service and back wages.

For Petitioner :Mr.K.R.Laxman

For R1 & R2 :Mr.D.Sadiq Raja
Addl. Government Pleader

O R D E R

The proceedings dated 20.09.2019 and the consequential order dated 09.11.2019 are under Challenge in the present Writ Petition.

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2. The petitioner was holding the post of Panchayat Assistant and he was implicated in a criminal case in Crime No.3 of 1997 under Sections 148 and 302 IPC r/w Section 149 IPC. The petitioner was convicted to life and he preferred Criminal Appeal in CrI.A.(MD) No.761 of 2001. The Criminal Appeal was dismissed by the High Court on 12.12.2008, confirming the Judgment and conviction passed by the trial Court. The petitioner was undergoing imprisonment pursuant to the order of conviction.

3. The respondents issued a show cause notice on 20.09.2019 invoking Section 17(C) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules. Once the Government servant is convicted in a criminal case, then, he is liable to be dismissed from service under Rule 17(C) and no further enquiry is required. Citing the order of conviction, notice was issued on 20.09.2019. Subsequently, the very same authority considered the representation submitted by the writ petitioner for reinstatement and rejected the said representation by stating that the petitioner was convicted. On registration of a criminal case, the petitioner was placed under suspension in proceedings dated 08.05.2009. In view of the fact that he was in prison, there was no progress made by the Authorities pursuant to the order of suspension. It is not made clear whether the order of termination has been passed or not. Contrarily, the show-cause notice itself was issued in the year 2019.

4. The learned counsel for the petitioner made a submission that all along the petitioner was kept under suspension without passing any final orders.

5. This Court is of the considered opinion that certain procedural irregularities committed by the Authorities should not pave way for a life convict to get an order of reinstatement into public service. In the event of forming such an opinion, the same would lead to miscarriage of justice and the fact as a whole is to be considered and certain procedural lapses cannot pave way for a wrong decision, which is otherwise in violation of the rules in force. In other words, misquoting of a provision or certain procedural violations, if lead to miscarriage of justice or a wrong precedent then the courts are bound to consider the facts and circumstances as a whole and form an opinion for the purpose of rendering complete justice to the parties. Thus, the established



6. In the event of proceeding in such circumstances to the advantage of either of the parties, it will result in laying down a wrong precedent and further in violation of the rules. Contrarily, the officials, who have not followed the Rules, are to be prosecuted by the competent authorities. In some circumstances it would be possible that the laches occurred on account of the fact that the petitioner was in jail and the authorities have not noticed the file or they kept the file in abeyance without knowing the consequences. In either of the circumstances, when the matters are placed before the Court for consideration, the Courts are bound to consider the facts, circumstances, rules and other mitigating factors and take a decision appropriately.

7. In the present case, it is an admitted fact that the petitioner was convicted in a murder case. The conviction was upheld by the High Court in the Criminal Appeal. He was in prison for more than 10 years. Out of his good conduct, he was released by way of remission. The authorities have rejected the claim of the writ petitioner for reinstatement. However, the in between lapse committed during the period in which the petitioner was in prison was not taken into consideration, which is to be considered as an administrative lapse and such a lapse cannot be taken undue advantage by the petitioner for the purpose of securing public employment, as he is a convicted person and undergone imprisonment for more than 10 years.

8. However, the order impugned dated 10.11.2019 provides all the facts and circumstances cogently and the Authorities have rejected the claim of the petitioner. The Authorities proceeded on the basis that as if the petitioner was terminated in the year 2009 itself, however, he was suspended in the year 2009 and a show cause notice was issued on 20.09.2019.

9. In view of the facts and circumstances, this Court is of the considered opinion that the relief of reinstatement or service benefits cannot be considered as Rule 17(C) stipulates that a convicted Government employee is to be dismissed from service and in the present case, the conviction stands against the writ petitioner and he had undergone the imprisonment for more than 10 years and under these circumstances, the petitioner is not entitled for the relief as such sought for in the present Writ Petition.



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10. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, the connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

MPK

To

- 1.The District Collector,
Thoothukudi District,
Thoothukudi.
- 2.The Assistant Director of Panchayat,
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Thoothukudi District.

+1 CC to M/s.SPL.GP (SR-5734[F] dated 11/02/2022)

W.P. (MD) No.25809 of 2019

10.02.2022

MA (CO)

KB (05.03.2022) 4P 6C