



W.P.No.7217 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	28.10.2022
Pronounced on	02.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.7217 of 2011

and

M.P.Nos.1 of 2011, 1 of 2013 & 1 of 2014

V.S.Sivaji

...Petitioner

-Vs-

1.K.Samy,
Panchayat President,
Kuruvappanaickanoor Village,
Maanupatty P.O.,
Udumalpet T.K. - 642 154.

2.The Block Development Officer,
Udumalpet Panchayat,
Udumalpet.

3.The District Collector,
Collectorate,
Tiruppur.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order dated 24.01.2008 issued by the 1st



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respondent herein and quash the same and consequently direct the respondents to permit the petitioner to resume duty with continuation of past services.

For Petitioner : Mr.Babu Rangasamy
For R1 : Mr.K.Surendran
For R2 & R3 : Mr.G.Velu,
Additional Government Pleader

ORDER

The petitioner herein had worked as an Over Head Tank Operator in Kuruvappanaickanoor Village since 1986, which fact is admitted by the first respondent herein. On 26.12.2007, a notice was issued by the first respondent herein to the petitioner, stating that he did not turn up for water distribution work from 22.11.2007 to 24.12.2007 and therefore had called upon the petitioner to receive the key and continue his job of water distribution. The petitioner claims to have given a reply to this notice on 28.12.2007. However, the first respondent, in the impugned order dated 24.01.2008, had stated that no reply has been received to their notice dated 26.12.2007 and on the advice of the Block Development Officer, as well as on the request of the President and members of the first respondent Panchayat, the petitioner herein was



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removed from service. Challenging the same, the present writ petition has been filed.

2. The learned counsel for the petitioner submitted that without consideration of the petitioner's reply to the show cause notice and without enquiry, he was removed from service. Apart from that, the learned counsel for the petitioner also submitted that in the show cause notice dated 26.12.2007, it was stated that the petitioner is alleged to have been on unauthorized absence from 22.11.2007 to 24.12.2007, whereas in the impugned order of removal from service, the period of absence is shown as 22.11.2007 to 23.01.2008.

3. Per contra, the learned Additional Government Pleader appearing for the second and third respondents placed reliance on the averments in the counter affidavit filed by the first respondent and submitted that the petitioner herein had not replied to the show cause notice issued by the first respondent on 26.12.2007, which prompted them to remove the petitioner from service. It is his further submission that the decision to remove the petitioner from service was on the resolution passed by the President and the



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members of the first respondent Panchayat. Since the failure on the part of the petitioner to report for duty has affected the public at large, in view of the non-supply of water, the decision to remove him from service was rightly taken.

4. I have given careful consideration to the submissions made by the respective counsels.

5. Pending the writ petition, the petitioner had reached the age of superannuation in the year 2018 itself.

6. It is not in dispute that the petitioner had been working for about 22 years continuously, since the year 1986 onwards. He has now been unceremoniously removed from services. There are certain discrepancies in the mode in which the order of removal from service has been passed.

7. Firstly, in the notice dated 26.12.2007, the period of absence is shown as 22.11.2007 to 24.12.2007, whereas in the impugned order, the dates differ thereby showing the period of absence as 22.11.2007 to 23.01.2008.



Even otherwise, the notice dated 26.12.2007 cannot be termed to be a show cause notice at all. The notice does not call for the petitioner's objections on some contemplated action, but rather states that, if the petitioner does not turn up to the office and receive the keys pertaining to the tank, he would be removed from service. No opportunity was extended in this notice dated 26.12.2007 for the petitioner to render his explanation. When the first respondent himself admits that the petitioner was employed for the past 22 years, terminating him from service, without a proper show cause notice or giving an opportunity to him by way of an enquiry, is against the principles of natural justice. On the ground of violation of principles of natural justice, the impugned order of removal from service cannot be sustained.

8. The impugned order also suffers from another infirmity. When the petitioner, who has been in long service for 22 years, is proposed with a punishment of removal from service, the resolution of the Board members of the Panchayat is mandatory. The impugned order, however, makes a reference to the advice given by the Block Development Officer in the proceedings in Na.Ka.No.3499/2007/Aa1, dated 26.12.2007 and a request made by the President and the members of the first respondent Panchayat,



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through their letter dated 27.12.2007. Such a request by way of a letter from the members of the first respondent Panchayat cannot be deemed to be a resolution passed by the Panchayat in its Board meeting.

9. There is no representation on behalf of the first respondent and no documents have been filed to substantiate that the first respondent Board had passed a resolution for removing the petitioner from service. On this ground also, the impugned order cannot be sustained.

10. Now that the petitioner has reached the age of superannuation, the question of reinstatement into service may not arise. However, in view of the illegal action initiated by the respondents in terminating the services of the petitioner, he would be entitled for the wages from 24.01.2008 till his date of superannuation.

11. In the result, the impugned order dated 24.01.2008 passed by the first respondent is quashed. Consequently, there shall be a direction to the respondents herein to forthwith pass appropriate orders, notionally retiring the petitioner on the date of superannuation and thereby disburse all the



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retirement benefits, together with continuity of service, from the date of his removal from service till the date of his superannuation, including the arrears of salaries for the said period. Such orders shall be passed by the respondents atleast within a period of four (4) weeks from the date of receipt of a copy of this order.

12. The writ petition stands thus allowed. No costs. Consequently, connected miscellaneous petitions are closed.

02.01.2023

Index:Yes
Internet:Yes
Speaking order
hvk

To

- 1.The Panchayat President,
Kuruvappanaickanoor Village,
Maanupatty P.O.,
Udumalpet T.K. - 642 154.
- 2.The Block Development Officer,
Udumalpet Panchayat, Udumalpet.
- 3.The District Collector,
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M.S.RAMESH,J.

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**Pre-delivery order made in
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02.01.2023