



W.P(MD)No.2493 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.06.2023

DELIVERED ON : 11.09.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.2493 of 2022

and

W.M.P(MD)Nos.2196 & 2197 of 2022

G.Kishore

... Petitioner

Vs

- 1.The District Collector,
Thoothukudi Collectorate,
Thoothukudi Post & District.
- 2.The Assistant Director of Village Panchayats,
Thoothukudi Collectorate,
Thoothukudi Post & District.
- 3.The Block Development Officer (Village Panchayat),
Ottapidaram Panchayat Union Office,
Ottapidaram Post,
Thoothukudi District.
- 4.The President, Ottanatham Village Panchayat,
Ottanatham Post, Ottapidaram Taluk,
Thoothukudi District.
- 5.K. Vijaya Pandian
*(R.5 suo motu impleaded vide
order of this Court dated 30.06.2023 in
W.M.P(MD)No.21390 of 2022)*

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned termination order passed by the fourth respondent in File No.3 dated 16.05.2012 and appellate orders passed by the third respondent in proceeding No.Thi3/1476/2011, dated 17.01.2013 and by the 1st Respondent in Na.Ka.No.Va12/27310/2015 dated 22.06.2020 and quash the same and consequently direct the respondents to reinstate the Petitioner in service with all attendant and monetary benefits as Panchayat Secretary in Ottanatham Village Panchayat, Ottapidaram Panchayat Union, Thoothukudi District.

For Petitioner : Mr.Mr.K.Govindarajan
for Mr.M.Saravanakumar

For Respondents : Mr.S.Shanmugavel
Additional Government Pleader
for R.1 to R.4

ORDER

Heard the learned counsel on either side.

2.The case on hand has such a chequered history. The petitioner's mother Mariyammal was the President of Ottanatham Village Panchayat during 1996 – 2001. She appointed his son / the petitioner herein as the Panchayat Secretary on 25.10.1996. When her term came to an end, one Jeyabarathi became the Panchayat President and the petitioner was promptly removed from service. The petitioner's allegation is that in his place, the Vice President's wife was



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accommodated. The petitioner filed O.A.No.189 of 2002 before the Tamil Nadu Administrative Tribunal challenging the dismissal order dated 05.01.2002. Interim stay was granted. Original Application was transferred to the High Court and renumbered as W.P No.40918 of 2002. The writ petition suffered dismissal on 13.11.2002 on the ground that the petitioner can approach the Court after the appeal filed by him was disposed of. The appeal suffered dismissal on 13.01.2003. Challenging the same, the petitioner filed WP No. 5440 of 2003. The writ petition was allowed on 26.03.2009 in the following terms :

“7.A perusal of the appeal grounds available in the typed set of papers shows that though several grounds have been raised by the petitioner, none of the same have been considered by the first respondent and therefore, this Court is satisfied that the order of the first respondent cannot be sustained. When there is absolutely no material to show that before passing the order of dismissal, any show cause notice was issued or departmental enquiry was conducted, the order of dismissal passed by the third respondent cannot be sustained and therefore, the order of dismissal passed by the second respondent dated 17.9.2002 which was confirmed by the order of the first respondent dated 13.1.2003 are set aside. However, liberty is given to the third respondent to proceed afresh against the petitioner by following the necessary rules



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governing the departmental enquiry and pass orders afresh.

In the meantime, petitioner is directed to be reinstated into service.”

Aggrieved by the same, the local body filed W.A.No.1274 of 2011. The writ appeal was dismissed on 30.11.2011. The ground on which the petitioner succeeded earlier was that he was not even issued with any charge memo and that there was gross violation of the principles of natural justice.

3.The President of the local body issued charge memo dated 27.02.2012. It contained as many as 8 articles of charge. The petitioner was called upon to offer his explanation. The petitioner offered his explanation on 07.05.2012. On 14.05.2012, the President of the local body issued proceedings to the effect that all the charges framed against the petitioner stood established. On 16.05.2012, the petitioner was dismissed from service. Aggrieved by the same, the petitioner filed appeal before the Block Development Officer (Panchayats), Ottapidaram. The first appellate authority vide proceedings dated 17.01.2013 came to the conclusion that Charge Nos.2, 3, 4, 5, 7, 8, 9 and 10 stood established. Since the said charges pertained to misappropriation of panchayat funds, the appeal was dismissed. Aggrieved by the same, the petitioner filed Second Appeal before the District Collector, Thoothukudi. The District Collector was of the view that the first appellate authority had not properly



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gone into the issues. He therefore ordered *de novo* enquiry. Based on the available records, the enquiry officer submitted his report to the District Collector, Thoothukudi. Based on the same, the District Collector passed the impugned order holding that charges 1 to 10 stand established. He dismissed the second appeal filed by the petitioner herein. Challenging the same, the present writ petition came to be filed.

4.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for.

5.The respondents have filed counter affidavit and the learned Additional Government Pleader took me through its contents. He submitted that charges of misappropriation have been framed against the writ petitioner and that based on the available records, the first appellate authority as well as the second appellate authority concurred with the findings of the disciplinary authority and that therefore the writ Court cannot interfere in such case. He pressed for dismissal of the writ petition.



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6.I carefully considered the rival contentions and went through the materials on record.

7.It is not necessary for this Court to elaborately go into the factual matrix. Charge No.1 framed against the writ petitioner was that since he was not possessing the requisite educational qualification, he could not have been appointed as Panchayat Secretary in the first place. The petitioner in his explanation had already stated that he passed 10th standard in March 1987 and that he was a student of TDTA Kamala Gnanasiromani Memorial Higher Secondary School, Kailasapuram. He had also referred to the Registration Number. Copy of the Secondary School Leaving Certificate including the Mark sheet and Transfer Certificate have been enclosed in the typed set of papers. This material furnished by the petitioner has been brushed aside by the authority. The first respondent had mechanically come to the conclusion that the petitioner did not possess the requisite educational qualification. This clearly establishes non-application of mind. This indicates the manner in which the entire issue has been approached.

8.Be that as it may, the manner in which the disciplinary authority has dealt with the matter is wrong. Charge memo was issued on 30.03.2012. The petitioner offered his explanation. The petitioner had been suspended in the



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meanwhile. The enquiry committee appears to have been appointed. This is because the final order of dismissal dated 16.05.2012 makes a specific reference to it. But the report of the enquiry committee is not made available. The disciplinary authority came to the conclusion that all the charges levelled against the petitioner stood established. After serving the proceedings on the petitioner on 14.05.2012, the dismissal order straightaway passed on 16.05.2012. Of course, during the relevant time, elaborate service rules were not in place. Therefore, only a summary enquiry used to be held. But then, when there is a specific reference to the decision of the enquiry committee, the petitioner should have been served with the report. I hold that non-service of the report of the enquiry committee on the petitioner vitiates the entire proceedings.

9.In this view of the matter the orders impugned in the writ petition are set aside. The respondents are directed to reinstate the petitioner in service.

10.The learned counsel on instructions wants to purchase peace by forgoing the claim for backwages. It is for this reason that I do not want to remand the matter. Otherwise, when an order set aside on the ground of violation of principles of natural justice, only an order of remand can be made.

The matter is hanging fire since 2002. For 21 years, the petitioner has been



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knocking the doors of this Court for relief. Another major reason which impels me to interfere is that one Muthulakshmi was appointed in the place of the writ petitioner. The said Muthulakshmi is none other than the wife of K.Vijaya Pandian who passed the order of dismissal. Nothing can be more shocking. Of course, it is a case of pot calling the kettle back. Because the petitioner's mother was the Panchayat President when he was appointed.

11.This writ petition is allowed. For all other purposes, the period from the petitioner's date of dismissal till the petitioner's reinstatement shall be taken into account. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

11.09.2023

Index : Yes / No

Internet : Yes / No

NCC : Yes / No

MGA

To

1.The District Collector, Thoothukudi Collectorate,
Thoothukudi Post & District.

2.The Assistant Director of Village Panchayats,
Thoothukudi Collectorate, Thoothukudi Post & District.



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3.The Block Development Officer (Village Panchayat),
Ottapidaram Panchayat Union Office,
Ottapidaram Post, Thoothukudi District.

4.The President, Ottanatham Village Panchayat,
Ottanatham Post, Ottapidaram Taluk, Thoothukudi District.



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G.R.SWAMINATHAN, J.

MGA

Pre-delivery Order made in
W.P(MD)No.2493 of 2022

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