



W.P.(MD).No.17946 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.08.2023

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.17946 of 2020

K.Krishnamoorthy

... Petitioner

Vs.

1.The District Collector,
Thoothukudi District,
Thoothukudi.

2.The Assistant Director (Panchayat),
Thoothukudi District.

3.The Block Development Officer/
Special Officer,
Srivaikundam,
Thoothukudi 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 pertaining to the impugned order passed by the 3rd respondent in his proceedings in Thee3778/2018, dated 15.03.2018, quash the same as illegal and consequently directing the 3rd respondent to reinstate the petitioner in service with all attendant and monetary benefits.



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For Petitioner : Mr.S.M.Mohan Gandhi
For R1 & R2 : Mr.N.Muthuvijayan
Special Government Pleader
For R3 : Mr.V.Nirmal Kumar

ORDER

The present writ petition has been filed to call for the records pertaining to the impugned order passed by the 3rd respondent in his proceedings in Thee3778/2018, dated 15.03.2018, quash the same as illegal and consequently directing the 3rd respondent to reinstate the petitioner in service with all attendant and monetary benefits.

2. The petitioner was appointed as Panchayat Secretary in Maramangalam Village in the year 1996. Until 26.02.2018, the petitioner continued his service without any hindrance. While so, due to his health condition, he took medical leave from 27.02.2018. In the meanwhile, on 15.03.2018, the order of termination came to be passed by the 3rd respondent vide proceedings bearing No.Thee3778/2018. Assailing the same, this writ petition came to be filed.



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3. The learned Special Government Pleader has filed a counter and submitted that the petitioner has absented himself continuously from 01.10.2017 to 25.10.2017, 26.10.2017 to 23.11.2017, 01.02.2018 to 26.02.2018 and for 35 days from 27.02.2018 causing grave concern to the administration of Village Panchayat. That apart, several delinquencies came to be identified as against the petitioner including irregularities in releasing the payments to the beneficiaries of Indira Awaas Housing Scheme for the year 2015-16 and 2016-17. The petitioner has also misappropriated a sum of Rs.91,000/-, which came to light on the audit conducted by the Deputy Block Development Officer on 05.02.2018. The petitioner has also deducted his salary twice from Account Nos.1 as well as 7 by contriving the same from the Panchayat funds. Hence, in the interest of public, the petitioner was relieved from the post vide impugned proceedings, dated 15.03.2018 and the same has been passed in accordance with Sections 84 (b) and 106 of the Tamil Nadu Panchayat Act. With no option available, pending framing of regular charges against the petitioner, he was relieved from the post of Panchayat Secretary in Maramangalam Village. Hence, it is not necessary to interfere with the impugned proceedings, by which the petitioner has been relieved from service.



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4. The learned counsel for the petitioner relied upon a judgment of this Court reported in 2009 (5) MLJ 107 (K.Devaki Vs. Superintendent, Central Prison), dated 09.06.2009 and the relevant portion of which is extracted hereunder:

“10. From the above rulings of the Supreme Court, it will be clear that there is no escape for the respondents to dispense with an enquiry before ordering removal of service of a Government servant. In the present case, it is an admitted fact that the petitioner's husband had died on 28.03.1996 and he was not served personally even the so called order of desertion. No charge memo was framed against him and no enquiry was also held against him in terms of Rule 17(b) of the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules, while the petitioner's husband was alive. It was after his death, the wife was making representation for getting pension and other terminal benefits.

11. Even in cases where members of the police force were ordered to be removed for long absence, it was preceded by a regular enquiry. It was only when such an enquiry was held and punishment of removal from service was sought to be made, the Supreme Court had declined to interfere with such punishment.”

5. He further relied upon a judgment of this Court reported in 2009 (5) MLJ 113 (N.Jayaseelan Vs. State of Tamil Nadu, Represented by Secretary to



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Government, Department of Tamil Development and Culture) and the relevant portion of which is extracted hereunder:

“7. In the present case, admittedly there was a policy by the State to regularize the teacher on contract basis and the petitioner but for his termination would have been considered for granting such benefit. In the present case, as admitted in the reply affidavit, the termination is for a misconduct and the petitioner was not heard before the impugned order came to be passed. Though the so-called contract clause was invoked in passing the impugned order of termination, the contents of the reply affidavit, clearly discloses that it was done for the alleged misconduct and for which, no enquiry was held.

8. Therefore, in the light of the above, the impugned order deserves to be set aside. Accordingly, the writ petition stands allowed. However, there will be no order as to costs. But, it is open to the respondents to initiate fresh action if necessary after complying with the principles of natural justice.”

6. Heard the learned counsel on either side and perused the materials available on record.

7. It is pertinent to mention here that the 3rd respondent has fairly conceded in Paragraph No.5 of the counter affidavit that the order of relieving



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the petitioner from the post of Panchayat Secretary has been made pending framing of regular charges against him. However, any such power to punish the employee cannot be exercised without giving any opportunity of hearing and without seeking an explanation of the delinquent employee. In failure to give opportunity to the delinquent employee and in failure to conduct appropriate departmental enquiry giving due opportunity would amount to violation of principles of natural justice. It is a clear case of violation of principles of natural justice against the petitioner by the 3rd respondent.

8. In view of the same, this Court hereby quashes the impugned proceedings, dated 15.03.2018 as *per se* illegal and consequently, remand back the matter to the file of the 3rd respondent, directing the 3rd respondent to reinstate the petitioner in service and thereafter, issue appropriate charge memo, for which, the petitioner shall submit an appropriate explanation. An Enquiry Officer may also be appointed, who will conduct the enquiry after affording due opportunity to the petitioner and pass appropriate orders in accordance with law. The said exercise shall be completed within a period of two (2) weeks from the date of receipt of a copy of this order.



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9. With the above said observations, this Writ Petition stands disposed of. No costs.

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NCC : Yes / No
Index : Yes / No
Internet : Yes/ No

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L.VICTORIA GOWRI, J.

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