



W.P.(MD).Nos.3952 and 9945 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 03.01.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).Nos.3952 and 9945 of 2018

and

W.M.P.(MD).Nos.9114, 9115 and 9116 of 2018

W.P.(MD).No.3952 of 2018:

K.Karuppasamy

... Petitioner

Vs.

1.The District Collector,
Collectorate,
Sivagangai District.

2.The Block Development Officer,
Manamadurai Block Development Office,
Manamadurai Taluk,
Sivagangai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the second respondent to permit the petitioner to continue his service as Panchayat Secretary at Kattikulam Village Panchayat, Manamadurai Taluk, Sivagangai District and provide consequential benefits from the year 2012 within the time stipulated by this Court.



W.P.(MD).Nos.3952 and 9945 of 2018

W.P.(MD).No.9945 of 2018:

K.Karuppasamy

... Petitioner

Vs.

1.The District Collector,
Collectorate,
Sivagangai District.

2.The Special Officer/
The Block Development Officer (Village Panchayat),
Manamadurai Panchayat Union,
Manamadurai Taluk,
Sivagangai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned notification in Na.Ka.P4/583/2018 dated 04.2018 issued by the second respondent insofar as the vacant post of Panchayat Secretary at Kattikulam Village, Manamadurai Taluk, Sivagangai District and quash the same as illegal.

(In Both Writ Petitions):

For Petitioner : Mr.I.Pinaygash

For Respondents : Mr.P.Thambi Durai,
Government Advocate.



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COMMON ORDER

The Writ Petition in W.P.(MD).No.3952 of 2018 is filed for Mandamus directing the second respondent to permit the petitioner to continue his service as Panchayat Secretary with a consequential benefits from the year 2012 onwards.

2. The petitioner was qualified as +2 and was appointed as Panchayat Secretary in the year 2007. On 06.03.2012, the second respondent issued show cause notice framing six charges against the petitioner. The charge in the show cause notice are extracted as under:

(1) The petitioner reminded absent during Annual Inspection meeting dated 25.04.2011, 23.05.2011, 30.05.2011, 15.03.2011 and 18.07.2011.

(2) The petitioner remained absent during audit inspection on 19.04.2011.

(3) The petitioner had failed to provide medical certificate for the absent dated 30.05.2011 to 30.06.2011 and 24.07.2011 to 18.08.2011 and 22.08.2011 to 29.09.2011.

(4) The petitioner did not provide the details of house Tax and Water Tax.

(5) The petitioner had failed to maintain the documents in proper



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(6) The petitioner failed to do the duty as per G.O.Ms.No.175 dated 05.12.2006.

3. The petitioner submitted explanation on 16.03.2012 denying all allegations. Thereafter, the second respondent orally informed the petitioner that he should not continue to attend the work. From 2012 onwards, the petitioner was not allowed to work. The petitioner submitted various representation dated 09.05.2012, 06.11.2012, 03.04.2013, 05.12.2013, 04.02.2014, 09.09.2014, 03.06.2015, 03.10.2015, 04.03.2016, 21.07.2016, 15.04.2017, 03.07.2017 for allowing him to continue his work. On 03.07.2017, the petitioner sent another representation to the District Collector who is the first respondent herein. The first respondent did not consider the petitioner's representation. The second respondent did not allow the petitioner to continue his work. Aggrieved over the same, the petitioner finally sent another representation on 24.01.2018. Since the respondents have not considered the representations, the petitioner has come up with this Writ Petition.

4. Pending the Writ Petition, the petitioner again filed another Writ Petition in W.P.(MD).No.9945 of 2018 challenging the notification in



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Na.Ka.P4/583/2018 dated April 2018, wherein, the second respondent took steps to fill up the vacant post of Panchayat Secretary. The contention of the petitioner is that the said post is not vacant. The petitioner was not allowed to work, but the respondents are treating the said post as vacant and taking steps to fill up the said post. Aggrieved over the notification, the second Writ Petition in W.P.(MD).No.9945 of 2018 is filed.

5. The respondents submitted that the petitioner deliberately absented for more than 30 days and hence, disciplinary proceedings were initiated. The respondents have issued several notices but the petitioner has failed to receive the notices. Subsequently, the notice was affixed in the house of the petitioner. In spite of several notices, the petitioner has not appeared for enquiry. Therefore, the petitioner cannot allege the petitioner's representation was not considered. Hence, the respondents prayed to dismiss this Writ Petition.

6. Heard Mr.I.Pinaygash, learned counsel for the petitioner and Mr.P.Thambi Durai, learned Government Advocate appearing for the respondents and perused the records.



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7. It is seen from the records when these two Writ Petitions are pending, the petitioner has filed another Writ Petition in W.P.(MD).No.17001 of 2019 with a prayer to conclude the disciplinary proceedings for the charge memo dated 06.03.2012. This Court vide order dated 07.08.2019 has directed the respondents to conclude the disciplinary proceedings and pass appropriate orders within a period of 12 weeks from the date of receipt of a copy of the order. Thereafter, the respondents have proceeded with the departmental enquiry and has concluded the proceedings and passed an order dated 31.01.2020. Aggrieved over the same, the petitioner has filed a Writ Petition in W.P.(MD).No.16176 of 2020 and the said Writ Petition was dismissed. The contention of the petitioner is that the petitioner was absented from service for just 30 days along with the medical certificate. Subsequently, the elected Panchayat President did not allow the petitioner to discharge his duty, inspite of the petitioner sending several representations to the Panchayat President. Hence, the petitioner had filed Writ Petition in W.P.(MD).No.3952 of 2018 seeking a direction to allow the petitioner to continue his work. The petitioner has taken earnest effort by sending complaint to the District Collector as well. In one such complaint dated 24.01.2018, the petitioner has specifically



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complaint about the Panchayat President to the Block Development Officer and also sought permission from the Block Development Officer to permit the petitioner to continue his work in the said post. In spite of several representations, neither the District Collector nor the Block Development Officer interfered in the petitioner's case and allow the petitioner to continue his work. Therefore, this Court is of the considered opinion that the allegation that the petitioner did not report to the duty and the petitioner deliberately absented himself from duty cannot be sustained and the respondents allegation is against the facts and documents.

8. The further allegation by the respondents against the petitioner is that the petitioner has submitted resignation in order to contest an election and hence, the respondents had acted upon the resignation letter and relieved the petitioner from the post. Subsequently, the election was cancelled and hence the petitioner could not contest election. The contention of the petitioner is that he had not submitted any such resignation letter and was not intended to contest any election. But, the respondents submitted that the petitioner has filed a nomination to contest the election. However, the respondents did not submit any materials or any documents to show that the petitioner intended to contest



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election and submitted resignation. It is seen that the petitioner had filed a case regarding this issue and the same is pending before this Court. Therefore, this Court is considering the issue of unauthorized absence only.

9. It is evident from the records that the Panchayat President has not allowed the petitioner to join the duty after his leave period was over. The leave was taken with prior permission. Therefore, the said leave period for 30 days cannot be considered as unauthorized absent. For the subsequent period, it is because of the President who did not allow the petitioner to report for duty or continue his duty, this would be evident from several representations submitted by the petitioner to the District Collector as well as the Block Development Officer. Therefore, the impugned order of notification to call for candidates from the open market to fill up the post is set aside. The petitioner is entitled to continue in the said post. As far as the resignation to contest the election, for this issue the petitioner had filed a Writ Petition in the year 2021 and the petitioner is at liberty to contest the case which is filed in the year 2021. The petitioner is entitled to consequential relief of all monetary service and service benefits without any break in service. The said order shall be implemented



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within a period of eight (8) weeks from the date of receipt of a copy of this order.

10. With the above direction, both the Writ Petitions are allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

03.01.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
Nsr
To

- 1.The District Collector,
Collectorate,
Sivagangai District.
- 2.The Block Development Officer,
Manamadurai Block Development Office,
Manamadurai Taluk,
Sivagangai District.
- 3.The Special Officer/
The Block Development Officer (Village Panchayat),
Manamadurai Panchayat Union,
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Sivagangai District.



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S.SRIMATHY, J.

Nsr

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