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W.P.Nos.29370 and 34472



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.Nos.29370 and 34472 of 2012

and

M.P.No.1 of 2012

S.Karnan

... Petitioner in both WPs

Vs.

1. The District Collector,
Dharmapuri, Dharmapuri District.

2. The Assistant Director,
Rural Development (Panchayat),
District Collector Office,
Dharmapuri District.

3. The Block Development Officer,
(Village Panchayat), Harur Taluk,
Dharmapuri District.

4. The President,
Vedakattamadu Panchayat,
Vedakattumandu Village and Post,
Harur Taluk, Dharmapuri District.

... Respondents in both WPs

Prayer in W.P.No.29370 of 2012: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 3 herein to pay subsistence allowance to the petitioner from



the date of suspension i.e., 12.03.2011.

Prayer in W.P.No.34472 of 2012: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the entire records of the 1st respondent's order made in Na.Ka.No.19031/2011 K4 dated 30.10.2012 and quash the same.

In both Writ Petitions

For Petitioner : Mr.K.M.Ramesh, Senior Counsel
for M/s.M.Azhagananth

For R1 to R3 : Mr.P.Muthukumar,
Additional Advocate General
assisted by Mr.T.M.Rajangam,
Government Advocate

COMMON ORDER

These two writ petitions are filed by the same petitioner, as such they are taken up for consideration together and are being disposed of by this common order.

2. The petitioner, while working as a 'Panchayat Assistant' in Vedakattamaduvu Village Panchayat, he was placed under suspension by issuing a proceedings bearing ந.க.எண்.418/2011/அ1 dated 12.03.2011 and thereafter, on the same date, a charge-memo dated 12.03.2011 was also served on the petitioner containing seven charges and thereafter, a second charge-memo dated 28.11.2011 was issued containing a single charge. It is thereafter



the petitioner submitted his explanation denying the charges and at that stage, the Respondent No.1 herein issued a notice dated 10.01.2012, requiring the petitioner to appear before him for enquiry and accordingly, the petitioner appeared and his statements were recorded by the Respondent No.1, wherein the petitioner, once again denied of having misappropriated any amount. However, the Respondent No.1 herein, proceeded to pass an order bearing ந.க.எண்.19031/2011 கே4 dated 30.10.2012, dismissing the petitioner from service. It is aggrieved by the said order of suspension dated 12.03.2011, the petitioner filed W.P.No.29370 of 2012 and aggrieved by the order of dismissal dated 30.10.2012, W.P.No.34472 of 2012 came to be filed.

3. Heard Mr.K.M.Ramesh, learned Senior Counsel for M/s.M.Azhagananth, appearing for the petitioner and Mr.P.Muthukumar, learned Additional Advocate General assisted by Mr.T.M.Rajangam, learned Government Advocate appearing for the respondents 1 to 3.

4. Sri.K.M.Ramesh, learned Senior Counsel appearing for the petitioner contended that the order of suspension is illegal, as the same states that the petitioner is not entitled for subsistence allowance and therefore, the said order is liable to be set aside. Insofar as the order of dismissal is concerned, the



learned Senior Counsel contended that the disciplinary proceedings that were continued against the petitioner without payment of subsistence allowance is in violation of the principles of natural justice as well as violative of Article 21 of the Constitution of India and in support of his contention, he placed reliance on the decision of the Hon'ble Apex Court in the case of ***"Capt.M.Paul Anthony -vs- Bharat Gold Mines Ltd., and another"*** reported in (1999) 3 SCC 679 and in the case of ***"C.Thirugnanasambandam -vs- Joint Registrar, Co-operative Societies, Cuddalore and others"*** (2011) 7 MLJ 1275.

5. Learned Senior Counsel also contended that in terms of the Rules issued in G.O (Ms) No.175, Rural Development and Panchayat Raj (E5) Department, dated 05.12.2006, it is only the President of the Panchayat, who is competent to take disciplinary proceedings against the Panchayat Assistant. The first appellate authority against the orders passed by the disciplinary authority is the Block Development Officer and the second appellate authority is the District Collector. But in the instant case, instead of the disciplinary authority taking an appropriate action, the second appellate authority has passed the impugned order of dismissal from service, imposing a primary punishment and hence, the same is liable to be set aside.



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6. On the other hand, learned Additional Advocate General appearing for the respondents contended that the petitioner has misappropriated huge amounts and also remitted a part of the said amount from time to time and thereby, admitted his guilt and therefore, the order of dismissal is justified. He also further contended that in terms of the Rules issued in G.O (Ms) No.175, Rural Development and Panchayat Raj (E5) Department, dated 05.12.2006, governing the post of Panchayat Assistant, the petitioner is not entitled for payment of subsistence allowance and therefore, the impugned suspension order was rightly issued denying the payment of subsistence allowance.

7. As rightly contended by learned Senior Counsel for the petitioner, the payment of subsistence allowance is a mandatory requirement, whether such a provision is made under the relevant Rules or not. In case, if no subsistence allowance is paid, while having kept the employee under suspension and any enquiry proceedings are proceeded, the same will act as a slow poison and thereby disable the delinquent employee from contesting the disciplinary proceedings. The reliance placed by learned Senior Counsel on the above two decisions in the cases of ***“Capt.M.Paul Anthony -vs- Bharat Gold Mines Ltd., and another”*** reported in (1999) 3 SCC 679 and ***“C.Thirugnanasambandam -vs- Joint Registrar, Co-operative Societies, Cuddalore and others”*** (2011) 7



MLJ 1275 are to the same effect and the right of the delinquent employee, who was placed under suspension for subsistence allowance was upheld by the Hon'ble Apex Court as well as this Court. Hence, the action of the respondents in denying the payment of subsistence allowance to the petitioner, after having placed him under suspension, is liable to be declared as illegal.

8. Then, coming to the order of dismissal from service is concerned, admittedly, the competent authority for taking an action against the Panchayat Assistant is only the President of the concerned panchayat and the first appellate authority is the Block Development Officer and the second appellate authority is the District Collector. But in the instant case, the District Collector, being the second appellate authority, has passed the primary order of punishment, which is contrary to the Rules. By passing the impugned order dated 30.10.2012, the Respondent No.1 deprived the remedy of appeal, and second appeal provided under the relevant Rules, thereby causing prejudice to the petitioner.

9. Be that as it may, a perusal of the material on record shows that the Respondent No.1, while passing the impugned order, except recording the



statements from the petitioner on the date of enquiry, has not conducted any other enquiry nor any witnesses were examined in support of the charges framed against the petitioner. Even in the statement that was recorded by the District Collector also, the petitioner has denied the charges of misappropriation of any amount. In the light of the denial of the charge in the response to the charge-memo and also in the statement that was recorded by the District Collector, it is obligatory on the part of the disciplinary authority to conduct a detailed enquiry and establish the charges against the petitioner. In the instant case, none of the above said procedure is followed.

10. In the circumstances, the impugned order of dismissal is wholly unsustainable and the same is liable to be set aside. Accordingly, the said impugned order bearing ந.க.எண்.19031/2011 கே4 dated 30.10.2012 passed by the Respondent No.1 is quashed and the petitioner shall be deemed to have been continued under suspension since 12.03.2011. The respondents are granted liberty to take appropriate action against the petitioner in accordance with law and the respondents are further directed to pay the subsistence allowance that is due and payable to the petitioner since the date of suspension till the conclusion of the disciplinary proceedings. The respondents are further



directed to conclude the proceedings, if they so desire, within a period of six months from the date of receipt of a copy of this order.

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11. Accordingly, these Writ Petition are **disposed of**. There shall be no order as to costs. Connected Miscellaneous Petitions, if any shall stand closed. However, it is made clear that this cannot be understood as acknowledging the alleged misconduct of the petitioner.

12. Before parting with the case, this Court is constrained to make certain observations in the matter.

13. The Respondent No.1 is an officer from the Indian Administrative Service and is expected to act strictly in accordance with law. But, for the reasons best known, while passing the impugned order dated 30.10.2012, the Respondent No.1 has given a go-bye to all tenets of fair play and the procedure that is required to be followed under the relevant rules, especially Rules issued in G.O (Ms) No.175, Rural Development and Panchayat Raj (E5) Department, dated 05.12.2006. It is only because of the action of the Respondent No.1 in exercising powers, not otherwise conferred upon him, the litigation has cropped up before this Court and is pending for more than 12 years and which is



ultimately causing enormous loss by way of subsistence payable to the petitioner. In view of the gross negligence on the part of the Respondent No.1, while passing the impugned order, this Court is of the considered view that it is just and proper to bring these facts to the notice of the Chief Secretary of the Government of Tamil Nadu for taking appropriate action against the person holding the office of the Respondent No.1 at the relevant time, who is responsible for passing orders impugned in these writ petitions.

14. Registry is directed to communicate a copy of this order to the Chief Secretary to the Government of Tamil Nadu.

skr

19.09.2024

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To



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