



Writ Appeal No.305 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.02.2024

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal No.305 of 2021 &
CMP.No.1534 of 2021**

The District Collector/
Inspector of Panchayat,
Namakkal District.

... Appellant

Vs

C.Rajeshkannan

... Respondent

PRAYER: Writ Appeal has been filed under Clause 15 of Letter Patent against the order dated 21.06.2019 made in W.P.No.14337 of 2011

For Appellant : Mr.K.V.Sajeev Kumar Spl., G.P.,

For Respondent : Mr.C.Prakasam

JUDGMENT

(Judgment of the Court was made by R.SURESH KUMAR.,J.)

This Writ Appeal had been directed against the order passed by the



Writ Appeal No.305 of 2021

Writ Court dated 21.06.2019 made in W.P.No.14337 of 2011.

WEB COPY

2. The petitioner was working as Panchayat Clerk in Sikkanaickenpalayam Panchayat as he was appointed on 01.11.1997. However during the service, he was suspended on 13.04.2009 for certain allegations of misappropriation of funds. To that extent, a charge memo dated 29.06.2009 containing four charges was issued to the Writ Petitioner/appellant and he had given an explanation.

3. Thereafter, based on the report received from the Block Development Officer, the final order of punishment had been inflicted after taking the statement given by the employee dated 25.05.2011 thereby he has been removed from service. Challenging the said order dated 31.05.2011, removing the employee from service he had moved the said Writ Petition. The learned Single Judge who heard the Writ Petition has allowed the same through the impugned order. Against which the present appeal has been directed.

4. Heard Mr.K.V.Sajeev Kumar learned Special Government Pleader



Writ Appeal No.305 of 2021

appearing for the appellant and Mr.C.Prakasam, learned counsel appearing for the respondent.

5.The learned Special Government Pleader has taken strenuous efforts to assail the order passed by the learned Single Judge which is impugned herein successfully by stating that there has been a definite charges framed against him based on which an enquiry was conducted where the charges since said to have been approved as per the report of the Block Development Officer and thereafter a choice had been given to him to give his reply and he gave his reply on 25.05.2011. On consideration of these aspects, the disciplinary authority had decided to inflict the maximum punishment of removal from service as the proven charges against the delinquent is serious in nature, as there has been misappropriation of the funds of Panchayat. Therefore, there is every justification on the part of the appellant/Department to sustain the order of removal of service, which has not been considered in a proper perspective by the learned Single Judge, who allowed the said Writ Petition and therefore, the said judgment which is impugned herein, according to the learned Special Government Pleader, is li-



Writ Appeal No.305 of 2021

able to be set aside.

WEB COPY

6. However, the fact remains that, there has been an explanation on 03.05.2011, being not satisfied with the same, a charge memo, dated 17.05.2011 has been issued. Thereafter, no enquiry officer was appointed and no domestic enquiry in consonance with the principle of natural justice seems to have been conducted.

7. However only based on the report of the Block Development Officer dated 18.05.2011, further explanation had been sought for from the employee/delinquent, who had also given such explanation on 25.05.2011.

8. Therefore, the mere report of the Block Development Officer cannot be construed as the enquiry officer's report. The reason being that, before taking any decision of inflicting the maximum punishment of removal of service against the employee, the procedure contemplated under the service jurisprudence to conduct a domestic enquiry by giving proper oppor-



Writ Appeal No.305 of 2021

tunity of being heard to the delinquent should have been made.

WEB COPY

9. However, in the present case, no such enquiry has been conducted as no enquiry officer has been appointed, a procedure of marking the documents or recording the evidence orally as per the witnesses to be let in before the enquiry officer has not been followed. Since the said procedure have not been followed in this case, it cannot be construed that a domestic enquiry was properly conducted and based on which only disciplinary authority has inflicted the maximum punishment of removal of service against the employee.

10. This infact has been pointed out by the learned Single Judge in the order impugned and therefore, ultimately the learned Single Judge has come to a conclusion that the Writ Petition has to be allowed and accordingly, the learned Single Judge allowed the Writ Petition. The learned Single Judge by giving the said reason that, no enquiry since has been conducted in the eye of law before passing the order of removal of service against the employee, the entire proceedings since has been vitiated,



Writ Appeal No.305 of 2021

has therefore allowed the said Writ Petition and the said conclusion reached by the learned Single Judge is to be approved by this Court.

11. Resultantly, this Appeal fails therefore, is liable to be dismissed and accordingly is dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

(R.S.K.,J.)

(K.B., J.)

02.02.2024

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
pbn



WEB COPY



Writ Appeal No.305 of 2021

R.SURESH KUMAR., J.
and
K.KUMARESH BABU.,J.

pbn

Writ Appeal No.305 of 2021

02.02.2024