



W.P.(MD)No.19005 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 03.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.19005 of 2019

V.Ilayaraja

... Petitioner

versus

1. The Secretary to Government,
Rural Development and Panchayat
Administration,
Secretariat,
Chennai.

2. The District Collector/Inspector
of Panchayat,
Virudhunagar District,
Virudhunagar.

3. The Block Development Officer,
Rajapalayam Panchayat Union,
Virudhunagar District.

4. Panchayat President and
Special Officer,
Jameen Kollankondan Panchayat,
Rajapalayam Panchayat Union,
Virudhunagar District.

... Respondents

Writ Petition filed under Article 226 of Constitution of India, seeking
for the issuance of Writ of Certiorarified Mandamus, to call for the records



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of the 4th respondent pertaining to the impugned order vide resolution dated 13.05.2010 of the Jameen Kollankondan Panchayat, Rajapalayam Panchayat Union, Virudhunagar District and quash the same, subsequently direct the respondents to reinstate the petitioner in service with backwages and continuity of service.

For Petitioner : Mr.P.Gunasekaran,
Legal Aid Counsel
For Respondents : Mr.K.Balasubramanian,
Special Government Pleader

ORDER

The petitioner, a Panchayat Assistant in Jameen Kollankondan Panchayat, was terminated from service, vide Resolution dated 13.05.2010, passed by the 4th respondent. Challenging the same, the present writ petition has been filed.

2. This Court, by order dated 28.10.2024, directed the respondents to file a counter affidavit and directed the Registry to list this writ petition on 28.11.2024. However, it was wrongly listed on 26.11.2024 and on that day, there was no representation for the petitioner. Therefore, the Registry was directed to list this writ petition on 28.11.2024. Even on 28.11.2024, there was no representation for the petitioner. Since the petitioner was terminated



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from service, vide Resolution dated 13.05.2010, this Court, by order dated 28.11.2024, appointed Mr.P.Gunasekaran, learned counsel, who is having 25 years of experience, as Legal Aid Counsel to represent the case of the petitioner.

3. The learned counsel appearing for the petitioner submits that there was an allegation as against the petitioner that he had misappropriated the panchayat funds. Therefore, he was terminated from service vide Resolution dated 13.05.2010, however, without conducting any enquiry and without issuing any show cause notice calling for his explanation and providing an opportunity of hearing. Therefore, on this ground alone, the impugned resolution is liable to be set aside.

4. The learned counsel appearing for the petitioner has also referred to the Section 106 of the Tamil Nadu Panchayats Act and submits that the Panchayat President is not the competent authority to pass the impugned resolution. But, in this case, the Panchayat President has passed the impugned resolution, against whom, a criminal case in Crime No.115 of 2010 is pending for the very same allegation of misappropriation of



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panchayat funds. He further submits that the Panchayat President has paid the amount to the Panchayat admitting the alleged misappropriation of funds. However, the petitioner was terminated from service.

5. The learned counsel appearing for the petitioner has also referred to Section 188 of the Tamil Nadu Panchayats Act and submits that the Panchayat President and the Vice President are the persons entitled to handle the funds and the petitioner, a Panchayat Assistant, cannot have any access to the panchayat funds and cannot handle the panchayat funds. However, on the allegation of misappropriation of panchayat funds, the petitioner was terminated from service even without conducting any enquiry.

6. The learned Special Government Pleader submits that the impugned Resolution is dated 13.05.2010, however, the petitioner has challenged the same only in the year 2019. He further submits that the petitioner was absconded along with the records and most of the records are still with him. He further submits that the petitioner is the main accused in Crime No.115 of 2010, which was registered for misappropriation of



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panchayat funds said to have taken place in the Jameen Kollankondan Panchayat. According to him, on the complaint of a Block Development Officer, (Village Panchayat) Rajapalayam, a criminal case was registered against the petitioner and also against the Panchayat President and the Vice President for misappropriation of panchayat funds to the tune of Rs.8,50,713/-. The learned Special Government Pleader further submits that the criminal case has been charged sheeted and the same is pending before the Chief Judicial Magistrate cum Special Judge for Vigilance Act Cases, Srivilliputhur, in Spl.C.C.No.5 of 2023. The learned Special Government Pleader further submits that the petitioner was placed under suspension and the same was challenged before this Court by way of filing a writ petition before this Court in W.P.(MD)No.7791 of 2010 and the same was dismissed by this Court, by order dated 16.11.2011, observing that the petitioner was dismissed from service vide Resolution dated 13.05.2010. However, the petitioner has preferred to challenge the impugned Resolution only in the year 2019. The learned Special Government Pleader has also relied on the order of the Hon'ble Supreme Court in the case of ***Union of India and another vs. Tarsem Singh***, reported in ***2008 (8) SCC 648*** and submits that a belated service related claim has to be rejected on the ground of laches.



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Therefore, this writ petition is liable to be dismissed on the ground of laches.

7. This Court considered the rival submissions and pursued the materials placed on record.

8. The petitioner, a Panchayat Assistant in Jameen Kollankondan Panchayat, was terminated from service vide Resolution dated 13.05.2010, without issuing any notice, calling for his explanation and without conducting any enquiry. However, the impugned Resolution dated 13.05.2010 is challenged in this writ petition only in the year 2019. The impugned resolution has been passed by the Panchayat President. The power to punish officers and servants is contemplated under Section 106 of the Tamil Nadu Panchayat Act and the same is extracted as under:

“106. Power to punish officers and servants.

- Subject to such control as may be prescribed, the Executive Authority, the Commissioner or the Chief Executive Officer may censure, fine, withhold increments or promotions from, or reduce to a lower rank in the seniority list, or to a lower post or time-scale or to a lower stage in a time-scale, suspend, remove or dismiss any officer or servant



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in the service of Village Panchayat or Panchayat Union Council or the District Panchayat, as the case may be, for any breach of departmental rules or discipline, or for carelessness, unfitness, neglect of duty or other misconduct.”

As per Section 106 of the Tamil Nadu Panchayat Act, the power has been conferred to the Executive Officer. Now, the power has been conferred to the Personal Assistant to the District Collector. Previously, the Executive Authority is only the Panchayat President. However, in this case, it appears that the Panchayat President is also an accused facing the charge of misappropriation of funds along with the petitioner in Cr.No.115/2010.

9. Considering the overall circumstances, this writ petition is disposed of with liberty to the petitioner to challenge the impugned Resolution dated 13.05.2010, based on the outcome of the criminal case, which is pending against him in Spl.C.C.No.5 of 2023 on the file of the Cheif Judicial Magistrate cum Special Judge for Vigilance Act Cases, Srivilliputhur. No costs.



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10. This Court places its appreciation to Mr.P.Gunasekaran, who appointed as Legal Aid Counsel to argue the case on behalf of the petitioner.

The High Court Legal Services Committee shall pay a sum of Rs.15,000/- (Rupees fifteen thousand only) to the Legal Aid Counsel.

03.12.2024

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NCC : Yes / No.

Index : Yes / No.

Internet : Yes / No.

To

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5. The Chairperson,
High Court Legal Services Committee,
Madurai Bench of Madras High Court,
Madurai.

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B.PUGALENDHI, J.

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