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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 06.11.2024

ORDER PRONOUNCED ON : 08.11.2024

CORAM:
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.24618 of 2023
and WMP(MD).Nos.20791 & 20792 of 2023

T.Siva ....Petitioner

Vs

1.The Inspector of Panchayats/
The District Collector
Collectorate
Theni District

2.The Assistant Director (Panchayat)
Rural Development & Panchayat Raj Department
Theni District

3.The Assistant Director (Audit)
Rural Development & Panchayat Raj Department
Theni District

4.The Block Development Officer
Andipatti Taluk
Theni District

5.S.Rajesh
Secretary
Thirumalapuram Panchayat
Andipatti Panchayat Union
Theni ....Respondents

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Prayer : This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records on the file of the 4th respondent in connection with the impugned transfer order passed by him vide his proceedings in Na.Ka.No.2811/2023/P1 dated 25.09.2023 and quash the same as illegal.

For Petitioner : Mr.G.Thalaimuthurasu

For Respondents : Mr.A.Baskaran
Additional Government Pleader for R1 to R4

: Mr.R.Maheswaran for R5

ORDER

The present writ petition has been filed by a ward member of Thirumalapuram Panchayat, Theni District challenging the order of transfer issued in favour of the fifth respondent transferring him from Pullimankombai Panchayat to Thirumalapuram Panchayat.

2.According to the learned counsel appearing for the writ petitioner, the fifth respondent was working as a Secretary in Thirumalapuram Panchayat in the year 2013-2014 and audit was conducted for the period between 01.04.2013 to 31.03.2014 and it was found that the fifth respondent has not properly accounted for property tax receipt books. It was also found that the fifth respondent has not remitted a sum of Rs.16,286/- collected as property tax from the residents of the panchayat.

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3.Based upon the above said allegations, the fifth respondent was transferred to another Panchayat. Now under the impugned order, the fifth respondent has been re-transferred to Thirumalapuram Panchayat. If he is allowed to discharge his duty as a Secretary, he is likely to tamper with the records relating to misappropriation. Hence, the present writ petition has been filed challenging the order of transfer.

4.The learned Additional Government Pleader appearing for the respondents relied upon the counter and contended that the fifth respondent is yet to clear the audit objections raised by Paragraph No.22 of the audit objection relating to the period between 2013-2014. He had further contended that the transfer of the fifth respondent to Thirumalapuram Panchayat is only on administrative exigencies and the petitioner has no locustandi to question the same.

5.The learned counsel appearing for the fifth respondent by filing a counter had specifically contended that he was transferred from Thirumalapuram Panchayat in the year 2014 only due to certain matrimonial dispute and not on the allegations of misappropriation. He had further contended that no charges are pending as against him in Thirumalapuram Panchayat. It is the case of the fifth respondent that he left Thirumalapuram Panchayat in the year 2014 and now he has been re-transferred to the said Panchayat after a period of 10 years. The audit objection raised has been

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cleared by depositing the said amount on 07.03.2024. Therefore, as on today, no changes are pending as against him touching upon his secretaryship in Thirumalapuram Panchayat. The learned counsel had further contended that due to some personal motive, this writ petition has been filed by a ward member of the Panchayat. Hence, he prayed for dismissal of the writ petition.

6.I have considered the submissions made on either side and perused the material records.

7.Primarily the ground on which the transfer of the fifth respondent to Thirumalapuram Panchayat is challenged is that the fifth respondent was involved in misappropriation of funds while he was working in Thirumalapuram Panchayat during 2013-2014 and if he is re-transferred, he is likely to tamper with the records.

8.A perusal of the audit report of the said Panchayat for the year 2013-2014 reveals that the receipt books for the property tax have not been properly maintained and most of the books have not been submitted for conducting audit. In the audit report, it is mentioned that is could not be found whether the receipt books have been utilized and any property tax has been collected by the fifth respondent or not. In the said audit report, it is further found that though a sum of Rs.16,286/- has been collected as property tax, the same has not been remitted by the fifth respondent. It could be seen from the records, pending writ petition, the fifth respondent has deposited a

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sum of Rs.42,000/- on 07.03.2024 for clearing the audit objection .Therefore, it is clear that when the order of transfer was issued in favour of the fifth respondent, the audit objection was not cleared.

9.The audit report further reveals that several property tax receipts are missing and they have not been submitted for conducting the audit. It is not known whether the fifth respondent had utilized these receipt books and collected property tax or not. Only if the fifth respondent submits these receipt books, it would come to light, whether there was any collection of property tax and the same was not remitted to the account of the Panchayat. Therefore, these allegations are serious in nature. In such circumstances, if the fifth respondent is again transferred to Thirumalapuram Panchayat, there is every likelihood that he would tamper the records and cause hindrance to the enquiry.

10.The petitioner herein is the ward member of the said Panchayat and in view of serious allegations as against the fifth respondent as stated above, as a representative of residents of the Panchayat, he has got locustandi to challenge the order of transfer, so as to see that proper enquiry is conducted and further misappropriation is prevented.

11.In view of the above said facts, this Court is of the considered opinion that the fifth respondent should not have been transferred to

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Thirumalapuram Panchayat where serious allegations have been made against him in the audit report which are yet to be cleared.

12.In view of the above said observations, the order impugned in the writ petition is set aside and the writ petition stands allowed. The official respondents are at liberty to transfer the fifth respondent to any other Panchayat. No costs. Consequently, connected miscellaneous petitions are closed.

08.11.2024.

Internet : Yes/No
Index : Yes/No
NCC : Yes/No
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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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