



W.A.(MD).No.1511 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2024

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.A.(MD).No.1511 of 2022
and
C.M.P.(MD)No.12659 of 2022**

The President,
Shanmmugasundarapuram Panchayat,
Muthusangilipatti,
Rosanapatti Post,
Andipatti Circle,
Theni District.

... Appellant

-VS-

1.P.Sounder

2.The District Collector,
Theni District,
Theni.

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, against the order passed by this Court in W.P.(MD)No.3017 of 2021, dated 11.10.2022.

For Appellant	: Mr.R.Bhaskaran, Additional Advocate General Assisted by Mr.J.Anandkumar
For 1 st Respondent	: Mr.G.Thalaimutharasu
For 2 nd Respondent	: Mr.P.T.Thiraviyam Government Advocate



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JUDGMENT

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[Judgment of the Court was made by R.SUBRAMANIAN, J.]

The President, Shanmmugasundarapuram Panchayat, is on appeal, challenging the order of the Writ Court made in W.P.(MD)No.3017 of 2021 in and by which, the Writ Court had while setting aside the resolution of the President dated 12.02.2007, directed reinstatement of the writ petitioner without backwages.

2.The brief facts that led to the filing of the Writ Petition are as follows:-

The respondent was appointed as an Assistant in the appellant Panchayat in the year 2005 and his services were regularized on 24.01.2007. However, the President served a show cause notice on the petitioner on 09.02.2007, making certain charges against him and requiring him to submit his explanation within 10 days from the date of service of the said notice. Even before the ink could dry, the meeting of the Panchayat has been convened on 12.02.2007, wherein a resolution was passed to remove the petitioner from the post of Assistant in the Panchayat. This was followed by an order of suspension dated 15.02.2007. Soon thereafter, an order was passed on 23.02.2007, removing the petitioner from service. The petitioner sought for reemployment and the



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Block Development Officer recommended to the Collector to reject the request of the petitioner. Thereafter the petitioner, claiming that he was not served with order dismissing him and he was in prolonged suspension, approached this Court in W.P.(MD)No.17472 of 2015, seeking revocation of the suspension. The said Writ Petition came to be dismissed, recording the submission of the learned Government Pleader that the petitioner was terminated from service **on 18.12.2008**. Thereafter, the petitioner filed the instant Writ Petition, challenging the resolution removing him from service. The Writ Court found that though certain charges were framed against the petitioner on 09.02.2007 and a show cause notice was issued giving him 10 days time to reply, even before he could reply, within 3 days, the Panchayat passed resolution on 12.02.2007, to remove the petitioner from service. He was also suspended on 15.02.2007. Within 10 days therefrom, the order removing the petitioner from service, was passed on 23.02.2007. The Writ Court therefore, found that there was no enquiry preceding the dismissal and the punishment of removal from service being the major punishment, could not have been passed without conducting an enquiry. On the above findings, the Writ Court allowed the Writ Petition, setting aside the resolution of the Panchayat and directing reinstatement in any other vacancy. The Writ Court also found the order of termination dated 23.02.2007, was not served on the petitioner. Hence, this Appeal.



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3.We heard Mr.R.Bhaskaran, learned Additional Advocate General, Assisted by Mr.J.Anandkumar, learned Standing Counsel, Mr.G.Thalimutharasu, learned counsel for the 1st respondent and Mr.P.T.Thiraviyam, learned Government Advocate for the 2nd respondent.

4.Mr.R.Baskaran, learned Additional Advocate General, appearing for the appellant would submit that though there has been deviation in the procedure, considering the nature of charges made against the writ petitioner reinstating him would be prejudicial to the interest of the Panchayat. He would also point out that the petitioner has been a fence sitter and he has come to the Court only in the year 2021.

5.Mr.G.Thalaimutharasu, learned counsel appearing for the petitioner in the Writ Petition would submit that the order terminating the petitioner was never served on him. Even the resolution was not served on him. A show cause notice was issued to him, giving 10 days to submit his representation. Even before he could submit his explanation, he was suspended on 15.02.2007. Within a week thereafter, he was removed from service on 23.02.2007.

6.All these according to him, happened only to enable the new President to induct her relative, as Panchayat Clerk or Panchayat



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Assistant. The speed at which proceedings have gone and the fact that there is no record to show the service of the show cause notice dated 09.02.2007, the resolution of the Panchayat, dated 12.02.2007, the order of dismissal order dated 23.02.2007, on the petitioner would go to show that the contention of Mr.G.Thalaimutharasu is justified. As we had already observed the close proximity of the dates, on which the action has been taken reveals more than what meets the eye. More over, the authorities themselves are not sure about the date of dismissal. The typed set of papers filed by the learned Standing Counsel shows that the petitioner was dismissed from service on 23.02.2007 but the communication of the Block Development Officer, Andipatti to the Collector, Theni, dated 18.12.2008, shows that he was dismissed from service on 19.04.2007. No order of dismissal dated 19.04.2007, has been placed before us. Even original files do not contain such order.

7.The learned Standing Counsel has claimed before this Court while when this Court heard W.P.(MD)No.17472 of 2015 that the petitioner was dismissed from service from 18.12.2008, therefore, it is clear that the respondents themselves are not sure about the date on which, the petitioner was dismissed from service. On the above factual backdrop, we are unable to fault the Writ Court for having held that the entire proceedings are vitiated. As we have already observed, the order of



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dismissal, as rightly contended by Mr.G.Thalaimutharasu, the order of dismissal being a major punishment cannot be imposed without conducting an enquiry.

8.It is admitted that no enquiry was conducted. We are therefore, unable to fault the Writ Court for having allowed the Writ Petition and directed reinstatement. Fortunately the Writ Court had directed reinstatement, in any existing vacancy, without any backwages. However, we make it clear that the petitioner will be entitled to wages at least from 11.10.2022, the date of order in the Writ Petition. It will be open to the Department to recover the salary paid from 11.10.2022 to the date of appointment from the then President of Panchayat. The benefits shall be calculated and paid within a period of 12 weeks from today. The Writ Appeal is disposed of with the above observation. No Costs. Consequently, connected miscellaneous petition is closed.

[R.S.M., J.] [L.V.G., J.]
19.09.2024

NCC :Yes/No
Index :Yes/No
Internet: Yes
Mrn

To
The District Collector,
Theni District,
Theni.



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and
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