



W.A.No.3783 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 06.01.2025

CORAM

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN**

**W.A.No.3783 of 2024
and
C.M.P.No.29720 of 2024**

V.Elumalai
S/o.Vadivel Gounder

... Appellant

-Vs-

1. The District Collector,
Thiruvannamalai District,
Thiruvannamalai.
2. The Block Development Officer,
Peranamallur Panchayat Union,
Peranamallur, Now Chetpet Taluk,
Thiruvannamalai District.
3. The President,
Namathodu Village Panchayat,
Namathodu, Peranamallur Union,
Now Chetpet Taluk,
Thiruvannamalai District.

... Respondents

PRAYER : Appeal filed under Clause 15 of Letters Patent, to set aside the order in W.P.No.31634 of 2022 dated 05.04.2024 and allow the above writ appeal.



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For Appellant : Mr.P.Rajesh
For Respondents : Mr.M.Venkateswaran
Special Government Pleader for R1
Mr.S.Yashwanth
Addl. Government Pleader for R2&R3

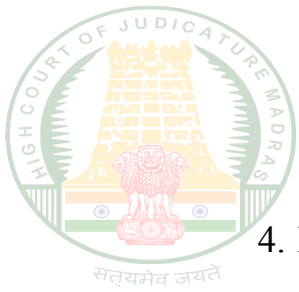
J U D G M E N T

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

This intra Court appeal has been directed against the order passed by the writ Court dated 05.04.2024 in W.P.No.31634 of 2022.

2. The appellant / petitioner was appointed as a Part-time Clerk of the third respondent Panchayat by Resolution of the Panchayat dated 04.05.1999. Though the said appointment was approved by the proceedings of the Additional Block Development Officer by his proceedings dated 31.05.1999, because of the charge against him, he was placed under suspension by order dated 17.04.2002, this was pursuant to the Resolution of the Panchayat dated 16.04.2002.

3. Challenging the said Resolution as well as the suspension order, the petitioner filed a writ petition in W.P.No.43892 of 2002.



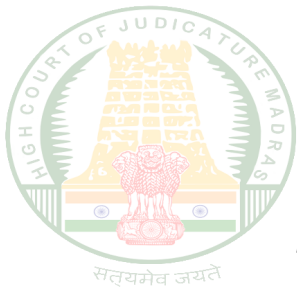
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4. It is to be noted that, simultaneously, an order of termination also had been passed against him on 23.04.2002, when this was attempted to be served on the appellant / petitioner by sending the same through the registered post, it was refused by the appellant / petitioner.

5. Therefore, when the final hearing of the writ petition, i.e., W.P.No.43892 of 2002, the said factors had been taken note of by the writ Court, thereby in paragraph Nos.4 and 5 of the order dated 05.11.2009 in W.P.No.43892 of 2002, the writ Court has recorded the following and dismissed the writ petition:

"4. At the time of final hearing, learned counsel for the first respondent produced the original order of removal sent to the writ petitioner which was refused by the writ petitioner, to substantiate the stand taken by the first respondent in para 2 of the counter affidavit. A copy of the said order removing the petitioner from service was given to Mr.N.S.Nandakumar, learned counsel appearing for the petitioner.

5. The petitioner has already been removed from service. Intimation was sent to him by Registered Post with Acknowledgement due which was refused. According to Order V Rule 19A (2)(ii) CPC, if the Registered Post is refused, it should be declared that the notice has been duly



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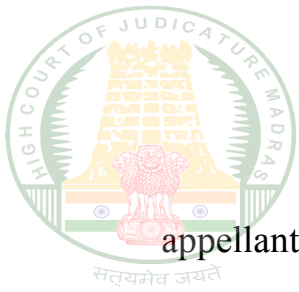
served. Order V Rule 19A (2) (ii) CPC, reads as follows:

"(ii) Where the summons sent by registered post by an officer of Court is received back by the Court with an endorsement purporting to have been made by a postal employee to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons, when tendered to him the Court issuing such summons may declare that the summons had been duly served on the defendant."

6. While dismissing the said writ petition, liberty was given to the appellant / writ petitioner to challenge the order of termination dated 23.04.2002.

7. Therefore, the appellant / petitioner again filed a writ petition in W.P.No.11919 of 2010 challenging the order of termination dated 23.04.2002.

8. Though the said writ petition was filed in the year 2010 which was pending before this Court, it seems that, no effective steps had been taken by the appellant / petitioner to pursue the matter and it was allowed to be pending till the year 2022 and only on 11.04.2022 it was disposed of, where the learned Judge while disposing the said W.P.No.11919 of 2010, had given liberty to the



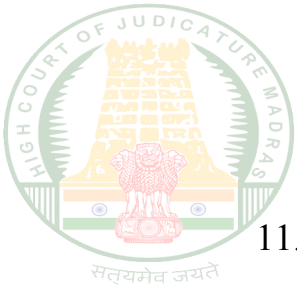
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appellant / petitioner to file a statutory appeal against the order of termination

and by giving such liberty, the said writ petition was disposed.

9. Thereafter, the appellant / writ petitioner seems to have given an appeal to the Appellate Authority, i.e., first respondent, that appeal also, having been considered, was rejected by the order of rejection dated 05.08.2022 passed by the first respondent / District Collector which was under challenge before the writ Court in the third round of litigation in W.P.No.31634 of 2022.

10. The learned writ Court having considered the delay caused in approaching the Court and also the delay caused for more than twenty years, where the appellant / petitioner has not persuaded his legal claim if any in successfully challenging the order of termination and also taking note of the fact that, the termination order though was issued in the year 2002 and was sent through the registered post since it was refused to be received by the appellant / petitioner, it is the delay on the part of the appellant / petitioner alone, therefore, at this length of time, the plea now raised by the appellant / petitioner cannot be considered, that is what the view taken by the learned Judge through the impugned order dated 05.04.2024.



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11. We have gone through the correctness of the order, which is

impugned hereunder.

12. First of all, the job in which the appellant / petitioner was appointed is only a Part-time job, therefore, it is not a regular job. From the said job, when he was suspended and after a week's time, he was also terminated by passing two separate Resolutions by the third respondent / Village Panchayat, the petitioner had chosen to challenge only the suspension order not the termination order.

13 Though the learned counsel appearing for the appellant has taken a defence that, the termination order had not been served on him, that plea cannot be accepted because of the reason that, in paragraph No.5 of the order dated 05.11.2009 in W.P.No.43892 of 2002, the learned Judge has recorded that, the order has been sent by the registered post which was refused by the appellant / petitioner and the learned Judge quoted Order V Rule 19(A)(ii) of CPC, and has come to the conclusion that, once the summon has been attempted to be served on the person who has refused to receive the same, it shall be deemed to have been served. This position which has been made very clear by the learned Judge through the order dated 05.11.2009 as has been quoted herein above has



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become final, as no challenge to that order has been made by the appellant /
petitioner.

14. Simply the appellant / petitioner has chosen to challenge the termination order dated 23.04.2002 by projecting as if that, he has been served with a termination order only in the year 2009 or 2010 and not before that.

15. Moreover, once the writ petition was filed in the year 2010, no attempt seems to have been taken by the appellant / petitioner to pursue the matter and it was allowed to be pending to take his own course for final disposal only in the year 2022. In the meanwhile, the post from which the appellant / petitioner was terminated, a new incumbent had been appointed and he had been in service for twenty plus years. These factors also have not been taken into account by the appellant / petitioner and no challenge seems to have been made against such appointment made to a third party, thereby third party right already been created, where the incumbent had been working for more than two decades.

16. Therefore, at last, he had come out with the present writ petition to challenge the recent order dated 05.08.2022, whereby only the appeal filed to



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the first respondent having been considered was dismissed on the ground of delay and also on merits, therefore, even though it has given a new cause of action on the part of the appellant / petitioner to challenge the same by filing the third round of litigation, i.e., present writ petition in W.P.No.31634 of 2022, even on merits, the appellant / petitioner has not projected any case and also the huge delay for more than twenty years in pursuing the matter can be attributed only on the appellant / petitioner for all these reasons which we have discussed herein above. Therefore, the conclusion reached by the learned Judge through the impugned order dated 05.04.2024 is perfectly in order and therefore, we do not see any plausible reasons to interfere with the same.

17. Resultantly, this Writ Appeal fails and hence, it is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(R.S.K., J.) (C.S.N., J.)

06.01.2025

NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

vji



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