

(2013) 03 MAD CK 0078
In the Madras High Court
Case No : Writ Petition No. 15603 of 2005

A. Ganesan

APPELLANT

Vs

The District Collector, Kancheepuram, The Block Development Officer (V.P.) and The President, Okkiyam Thuraipakkam Panchayat, Chennai

RESPONDENT

Date of Decision : 28-03-2013

Acts Referred:

Tamil Nadu Panchayats Act, 1994 — Section 106, 83, 84

Citation : (2013) 03 MAD CK 0078

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : C.K. Chandrasekaran for Mr. V. Anantha Natarajan, for the Appellant; N. Srinivasan, Additional Government Pleader for R1, for the Respondent

Final Decision : Allowed

Judgement

T. Raja, J.—This writ petition has been filed by Mr. A. Ganesan, who was initially appointed as a part-time Clerk on 11.12.84 by the

Commissioner of St. Thomas Mount Panchayat Union on a consolidated pay of Rs. 25/-. Subsequently, on 1.3.86, he was appointed as full time

Clerk in the regular time scale of pay and was posted at Okkiyam Thuraipakkam Panchayat and designated as panchayat Assistant. Challenging

the impugned charge memo issued by the District Collector, Kancheepuram District, the first respondent herein dated 26.11.2001 as well as the

enquiry report dated 7.1.2005 on two grounds, the learned counsel for the petitioner submitted that when the petitioner was serving as a full time

panchayat Assistant, the first respondent-District Collector has no power to issue the charge memo, since the District Collector being the Inspector

of Panchayat, as per the Tamil Nadu Panchayats Act, 1994, is only the second

appellate authority and if at all any disciplinary proceedings are warranted, the executive authority of the concerned panchayat alone can initiate departmental proceedings by issuing appropriate charge memo, followed by enquiry, which will culminate in the passing of order of punishment, if the charges are held proved in terms of Section 83. But in the present case, the first respondent has straight-away issued the charge memo to the petitioner. It was also pleaded that Section 84 of the Tamil Nadu Panchayats Act, 1994 clearly shows that the executive authority has to carry into effect the resolutions of the village panchayat. Again referring to Section 106, it was pleaded that the executive authority may pass any order of punishment including censure, fine, withholding of increments or promotions from or reduction to a lower rank in the seniority list, etc. However, the power conferred u/s 106 also includes the power to suspend, remove or dismiss any officer or servant 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. Section 106 is very clear and plain that the executive authority alone has got the power to impose the punishment. He pleads, a joint reading of the provisions of Sections 83, 84 and 106 of the Tamil Nadu Panchayats Act goes to show that the executive authority in the present case is the President of the panchayat, as he was appointed under G.O.Ms. No. 225, Rural Development Department dated 15.10.96. While so, the charge memo issued by the District Collector has to be set aside, as he has no authority to issue the same. Finally, it was pleaded that when the power to impose punishment is also vested with the President, as he being the executive authority of the village panchayat in question, the impugned order calling upon the petitioner to submit his explanation on the basis of the report submitted by the enquiry officer, being improper and unlawful, is liable to be interfered with. A detailed counter affidavit has been filed by the first respondent-District Collector opposing the above stand taken by the petitioner stating that the petitioner, while serving as full time panchayat Assistant, had not maintained the records and registers which have been assigned to him as panchayat Assistant. Therefore, for his lapses, he was issued with the charge memo and he has given his explanation stating that

the panchayat cheques were issued on the instructions of the panchayat President, not on the basis of the bills received, therefore, the excess drawal against cash book entry had occurred. When the petitioner has not produced any basic records or witness to prove that the cheques were issued on the instructions of the panchayat President, it goes to show that he has misappropriated a sum of Rs. 3,20,000/-. Moreover, the enquiry officer also, who was appointed to go into the allegation of charges, during the course of enquiry, specifically asked the petitioner Mr. A. Ganesan whether he wanted to examine any witness for the charges levelled against him, for which the petitioner replied in the negative that he did not want to examine any witness on his behalf. Therefore, the District Collector being the Inspector of Panchayat and that the petitioner is working as a full time panchayat Assistant, whose appointment is vested with the Inspector of Panchayat, initiated the departmental proceedings rightly against the petitioner.

2. This stand taken by the first respondent, as pleaded by the learned Additional Government Pleader, to support the issuance of the charge memo issued by the District Collector and the subsequent proceedings cannot be espoused by this Court. The reason being that for initiating action against the full time panchayat Assistant like the petitioner herein, the President of the third respondent-Village Panchayat is the executive authority.

This could be seen from Sections 83, 84 and 106 of the Tamil Nadu Panchayats Act, which are extracted herein below:-

83. Executive authority of village panchayat.--The Government may, by notification, appoint any person, who shall, subject to such rules as may be prescribed, exercise the powers and perform the functions of the executive authority of a village panchayat.

84. Functions of executive authority.--The executive authority shall,--

(a) carry into effect the resolutions of the village panchayat:

Provided that where the executive authority considers that a resolution has not been legally passed or is in excess of the powers conferred by this

Act or that, if carried out, it is likely to endanger human life or health or the public safety, the executive authority shall refer the matter to the

Government for orders and their decision shall be final

(b) control all the officers and servants of the village panchayat;

(c) discharge all the duties specifically imposed and exercise all the powers conferred on the executive authority and subject to all restrictions and

conditions imposed, by or under this Act, exercise the executive power for the purpose of carrying out the provisions of this Act and be directly

responsible for the due fulfilment of the purposes thereof.

106. Power to punish officers and servants.--Subject to such control as may be prescribed, the executive authority, the commissioner or the

secretary 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 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.

A perusal of Section 83 clearly shows that the appointment of the executive authority shall be made by the Government by notification. Section 84

clearly mentions that the executive authority shall carry into effect the resolutions of the village panchayat. This could be again seen u/s 106 of the

Tamil Nadu Panchayats Act, which says that the executive authority, the President in this case, shall have the power to punish the officers and

servants. Therefore, when the first respondent-District Collector is not the executive authority, admittedly, the power to initiate departmental

proceedings vests only with the executive authority of the village panchayat, namely, the President. This could be again seen in the subsequent

Government Order issued by the Government in G.O.Ms. No. 175, Rural Development Department dated 5.12.2006 and a reading of clause (v)

therein clearly shows that the power to initiate departmental proceedings against the village panchayat Assistant vests only with the panchayat

President. If the disciplinary proceeding is not fairly conducted and if any punishment is imposed against the panchayat Assistant, clause (vi) also

provides for an appeal remedy against the order before the Block Development Officer. Once again the aggrieved person, if aggrieved by the

order of the Block Development Officer, can go for further appeal at the hands of the District Collector. While so, the District Collector, the first

respondent herein being only the second appellate authority to consider the

correctness of the order passed by the Block Development Officer, who is the first appellate authority, in my considered view, ought not to have issued the charge memo to the petitioner. If the impugned proceeding in issuing the charge memo by the District Collector against the full time panchayat Assistant is upheld, then the legal repercussions will be serious and precarious, for the reason that the affected petitioner would be left without any remedy of first appeal and second appeal which are available to all other aggrieved persons. Therefore, this Court, without going into the correctness of the charge memo, finding that the irregularity has occurred in issuing the charge memo, by quashing the proceedings, gives liberty to the third respondent-President to proceed afresh against the petitioner for the lapses alleged to have been committed by him. Accordingly, the writ petition is allowed. Consequently, W.P.M.P. No. 17028 of 2005 and W.V.M.P. No. 94 of 2008 are closed. No costs.