
(2011) 04 MAD CK 0322

In the Madras High Court

Case No : Writ Petition (MD) No. 5177 of 2007 and M.P. (MD) No. 1 of 2007

A. Karuppiah

APPELLANT

Vs

The Block Development Officer, (Village Panchayat) and The
President, Easwaran Koil Panchayat Union

RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

Citation : (2011) 04 MAD CK 0322

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : G.R. Swaminathan, for the Appellant; Pala. Ramasamy, Special Government Pleader for R.1 and J. Anandkumar, for R.2, for the Respondent

Final Decision : Allowed

Judgement

D. Hariparanthaman, J.—The Petitioner joined in service as Part Time Clerk on 06.01.1997 in Easwaran Koil Panchayat, Annavasal Panchayat Union, Pudukottai District. He was brought on time scale of pay by order of the first Respondent dated 27.12.2006. According to the Petitioner, he was not assigned with any work after January 2007 and he was also not paid salary thereafter.

2. It is further stated by the Petitioner that on 28.03.2007, the President of Easwaran Koil Panchayat and some officials of the Panchayat Union took away the records forcibly from the Petitioner. While so, the Block Development Officer of Annavasal Panchayat Union, issued a show cause notice dated 08.05.2007 alleging that the Petitioner was negligent in his duties by not attending Panchayat Union meetings and failed to submit accounts/reports. The Petitioner submitted reply dated 16.05.2007 stating that the Extension Officer, the Village President and others had taken away the documents forcibly on 28.03.2007. The allegations made in the show cause notice dated 08.05.2007 has no basis. He expressed his grievance that he was not assigned any duty from January 2007 and he was also not paid salary from January 2007.

3. In these circumstances, the Petitioner filed W.P. No. 5177 of 2007 on 08.06.2007 praying for a direction to the President, Easwarankoil Panchayat, to assign work to the Petitioner and also to pay salary from January 2007. Notice of motion was ordered on 09.06.2007. So far, no counter is filed by the Respondents.

4. While so, the president of Easwarankoil Panchayat issued an order dated 19.06.2007 placing the Petitioner under suspension. According to the Petitioner, on receipt of notice in W.P. No. 5177 of 2007, the President placed him under suspension. The Petitioner filed W.P. No. 7361 of 2007 to quash the aforesaid suspension order. The Writ Petition was admitted on 21.09.2007 and stay of suspension was granted on 25.06.2008.

5. Thereafter, a charge memo dated 10.10.2007 was issued making many allegations against the Petitioner. The Petitioner sought for certain documents so as to give explanation in his letter dated 22.10.2007.

6. In spite of the order of stay of suspension dated 25.06.2008, after hearing the Respondent therein, the Petitioner was not restored to duty. Hence, contempt Petition No. 410 of 2008 was filed.

7. In the Contempt Petition, no counter is filed so far. Notice was ordered on 15.10.2008. The President was present on 05.11.2008 and further personal appearance of the President was dispensed with and the matter was posted on subsequent dates. On 30.09.2009, this Court directed the President of Easwarankoil Panchayat to comply with the order dated 25.06.2008 within a period of two weeks, otherwise he should be present before this Court on 13.10.2009 and the matter was posted to 13.10.2009.

8. In these circumstances, the President did not choose to comply with the order and on the other hand, sent a show cause notice dated 07.10.2009 directing the Petitioner to submit explanation within three days on the charges and also to the charge memos dated 19.08.2009 and 30.09.2009. The said show cause notice was served on the Petitioner on 13.10.2009 as per the acknowledgement enclosed at page 48 of the typeset of papers filed by the President. Without waiting for three days from the date of receipt of copy of the notice, the President had chosen to pass dismissal order dated 13.10.2009.

9. The Petitioner filed W.P. No. 10696 of 2009 to quash the order of the dismissal and for consequent direction to reinstate the Petitioner with continuity of service and all other benefits.

10. The Respondent filed counter affidavit in W.P. No. 10696 of 2009 refuting the allegations. In W.P. No. 7361 of 2007, an application in M.P. No. 1 of 2008 was filed to vacate interim order granted on 25.06.2008. Both the application seeking stay and M.P. No. 1 of 2008 in W.P. No. 7361 of 2008 were taken up together and common order dated 16.06.2010 was passed making interim stay granted on 25.06.2008 absolute.

11. Heard both sides.

12. The following facts emerged from the above narration of events.

The Petitioner was not given work from January 2007 and he was not also paid salary from January 2007. Certain records were forcibly taken by some Officials including the President from the Petitioner on 28.03.2007. While so, a show cause notice dated 08.05.2007 was issued alleging that he was negligent in duties. The Petitioner submitted his explanation dated 16.05.2007 stating that he was not assigned any duty from January 2007 and therefore, the allegations are baseless. He filed W.P.(MD) No. 5177 of 2007 seeking direction to the President to assign him work and to pay salary from January 2007. Notice of motion was ordered on 09.06.2007. While so, the Petitioner was placed under suspension by the President on 19.06.2007, pending disciplinary action. Thereafter, the Petitioner filed W.P.(MD) No. 7361 of 2007 to quash the suspension order. The Writ Petition was admitted on 21.09.2007. However notice was ordered in the stay petition. Ultimately, stay was granted in M.P.(MD) No. 2 of 2007 in W.P.(MD) No. 7361 of 2007 on 25.06.2008, after hearing the Respondent/President.

13. Since the order dated 25.06.2008 was not complied with by the Respondent, the Petitioner filed contempt petition No. 410 of 2008.

14. Notice was ordered in the contempt petition on 15.10.2008. The President against whom the contempt petition was filed appeared in person on 05.11.2008. His further personal appearance was dispensed with and the matter was posted for counter and hearing to 14.11.2008 and also posted subsequently on various dates. On 30.09.2009, this Court passed the following order.

The Respondent is directed to comply with the order of this Court within two weeks from today, failing which the Respondent shall appear in person before this Court on 13.10.2009.

The said order was communicated to the President by the Registry and the same was despatched on 08.10.2009 as per the records.

15. In these circumstances, the president issued a notice dated directing the Petitioner to submit explanation within three days from the date of receipt of the said notice. It is alleged therein that the Petitioner failed to submit explanation to the charge memo dated 19.08.2009 and 30.09.2009. Admittedly, the said notice was received by the Petitioner on 13.10.2009 as per the acknowledgement that is enclosed at page no 48 of the typed set of papers filed by the President. The Petitioner gave a reply dated 14.10.2009 that the charge memo dated 19.08.2009 and 30.09.2009 referred to in the notice dated 07.10.2009 were not received by him.

16. According to the learned Counsel for the President, those notices were sent by Certificate of posting.

17. While the notice dated 07.10.2009 was sent by registered post with

acknowledgement card, the aforesaid notices were sent by certificate of posting. But the Petitioner says that he did not receive those charge memos. I am of the view that the certificate of posting in the said circumstances could not be relied on.

18. Further more, without waiting for three days from the date of receipt of a copy of the notice dated 07.10.2009, the President passed the order dated 13.10.2009 dismissing the Petitioner from service. When the President issued notice on 07.10.2009 directing the Petitioner to submit his explanation within three days, otherwise further orders will be passed, he could wait for three days from the date of receipt of copy of the notice. Admittedly the notice dated 07.10.2009 was served only 13.10.2009. Hence, passing dismissal order dated 13.10.2009 without waiting for 3 days is bad and illegal.

19. Further even assuming that the Petitioner failed to submit any explanation to the charge memos, the Respondent could not straight away dismiss the Petitioner from service stating that since the Petitioner did not submit explanation, the Panchayat decided to dismiss him from service. The President and the Panchayat should hold an enquiry giving opportunity to the Petitioner. That is witnesses should be examined and the Petitioner should be given opportunity to cross-examine and thereafter, the Petitioner should be given opportunity to let in evidence on his side. The aforesaid minimum ingredients of the enquiry are not present. Hence the dismissal order is liable to be set aside. Accordingly, W.P.(MD) No. 10696 of 2009 is allowed with cost of Rs. 2,000/- (Rupees Twenty Thousand only) payable to Petitioner by the President within 4 weeks from the date of receipt of a copy of this order.

20. In the aforesaid circumstances, I am also of the considered view that order dated 19.06.2007 placing the Petitioner under suspension is a malafide action and the same also deserves to be quashed and hence, it is quashed. Accordingly, W.P. No. 7361 of 2007 is allowed.

21. In W.P.(MD) No. 5177 of 2007, the Respondents have not chosen to file counter affidavit refuting the allegations. The narration of the facts makes it clear that the Petitioner was not assigned work from January 2007 and he was also not paid salary from January 2007. When the Petitioner stated that documents under his possession were forcibly taken by the President and others, the same is not disputed by filing counter affidavit. Under these circumstances, W.P.(MD) No. 5177 of 2007 is also allowed.

22. In the contempt petition, the complaint was that the order dated 25.06.2008 in M.P.(MD) No. 2 of 2007 in W.P.(MD) No. 7361 of 2007 was not complied with. This Court granted stay of the suspension order dated 19.06.2007 by the said order dated 25.06.2008 by this Court. Hence, the contempt petition was filed.

23. Notice was ordered in the contempt petition on 15.10.2008. The President against whom the contempt petition was filed appeared in person on 05.11.2008. His further personal appearance was dispensed with and the matter was posted

for counter and hearing to 14.11.2008 and also posted subsequently on various dates. On 30.09.2009, this Court passed the following order.

The Respondent is directed to comply with the order of this Court within two weeks from today, failing which the Respondent shall appear in person before this Court on 13.10.2009.

The said order was communicated to the President by the Registry and the same was despatched on 08.10.2009 as per the records. But, the said order was not complied with.

24. However, the President of the Panchayat appeared in person and has filed an affidavit of unconditional apology. It is stated therein that there is no willful omission or disobedience in complying the order of this Court and he tendered unconditional apology.

25. The unconditional apology is accepted and the contempt petition is closed.

26. In the result, all the writ petitions are allowed and the President is directed to pay the cost of Rs. 20,000/- (Rupees Twenty thousand only) to the Petitioner within a period of 4 weeks from the date of the receipt of a copy of this order and the contempt petition is closed.