

(2010) 11 MAD CK 0151

In the Madras High Court

Case No : Writ Petition (MD) No. 10296 of 2009 and M.P. (MD) No's. 1 and 2 of 2009

R. Vellaichamy

APPELLANT

Vs

The District Collector, The Block Development Officer,
Kamuthi Union and The Panchayat President, Mustakuruchi
Panchayat Union

RESPONDENT

Date of Decision : 02-11-2010

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (2010) 11 MAD CK 0151

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : M.E. Ilango, for the Appellant; S.C. Herold Singh, GA and D. Sasikumar, for R-3, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—The Petitioner has come forward to file the present writ petition seeking to challenge an order of the third Respondent Panchayat, dated 02.01.2007 vide resolution No. 24 and the consequential resolution No. 46, dated 16.04.2007. Notice of motion was ordered on 14.10.2009. On behalf of the first Respondent, Mr. S.C. Herold Singh, learned Government Advocate took notice.

2. In the first resolution, the Petitioner was placed under temporary suspension. This was on the ground that he did not come to work and had not given any leave letter. In the subsequent resolution, dated 16.4.2007, it was informed that after suspension, he did not contact the panchayat and the work of the panchayat did not take place properly. Therefore, he was permanently removed from service. In view of his removal, an another person came to be appointed in the panchayat.

3. On behalf of the second Respondent, a counter affidavit, dated 27.4.2010

came to be filed. In the counter affidavit, it was stated that the Petitioner did not attend duty without any leave or information and he was coming to office after consuming liquor. He had misappropriated house tax, professional tax and miscellaneous receipts of the panchayat. He had not shown interest to return to duty. Therefore, he was removed from service in which all members of the panchayat had participated. In terminating his service, they had followed the guidelines issued by the Government. In paragraph 6 of the counter, specific act of the misappropriation of the Petitioner was given.

4. But, however, before terminating the Petitioner, it did not know that any show cause notice was given listing out the charges against him. On the contrary, in the Petitioner's letter sent to the Assistant Director, Ramnadapuram, allegations were made against the President of the Panchayat. The Petitioner stated that he had married the daughter of maternal aunt of the Panchayat President S. Perumal in the year 1999. Subsequently, due to difference of opinion, they got separated through court order during 2003. Ever since the divorce, the President has challenged that you will not be entered into the panchayat and no work will be assigned. The same complaint was made to the first Respondent District Collector. But, as there was no reply the present writ petition was filed.

5. The learned Counsel for the Petitioner Mr. M.E. Ilango placed reliance upon a judgment of this Court in *R. Palanivel v. Commissioner, Gingee Panchayat Union Villupuram District and Anr.* reported in 2008 (5) MLJ 1284. Though it was stated that even part time employees of the panchayat are entitled to protection under Article 311 of the Constitution of India, this Court is unable to agree with the said submission. For the purpose of coverage under Article 311(2), the Petitioner should be belonged to the service constituted by the Government. The part time Village Assistant cannot be said to be a Government servant though he is the servant of the Village Panchayat.

6. In any event, before terminating the service of any panchayat assistant, minimum principles of natural justice will have to be followed. As to what constituted minimum principles of natural justice came to be considered by the Supreme Court vide its judgment in *Meenglas Tea Estate Vs. Its Workmen*, in paragraph 4 held as follows:

4. ...It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross-examination as he desires. The he must be given a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character and this requirement must be substantially fulfilled before the result of the enquiry can be accepted. A departure from this requirement in effect throws the burden upon the person charged to repel the charge without first making it out against him....

7. In the light of the same, the writ petition will stand allowed. The second resolution No. 46, dated 16.04.2007 stands set aside. The third Respondent is directed to conduct an appropriate enquiry in the light of the dictum of the Supreme Court and in accordance with the principles of natural justice and pass appropriate orders. This exercise shall be carried out within a period of three months from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petitions stand closed.