

**P.Kanagaraj Vs. the Block Development Officer and anr.**

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**Court :** Chennai

**Decided On :** Feb-28-2011

**Judge :** T.Raja, J.

**Appeal No. :** Writ Petition No.25033 of 2010 and M.P. No.1 of 2010

**Appellant :** P.Kanagaraj

**Respondent :** The Block Development Officer and anr.

**Advocate for Def. :** Mr.V.Viswanathan, Adv.

**Advocate for Pet/Ap. :** Mr.D.Rajagopal, Adv.

**Judgement :**

**O R D E R**

1. The petitioner herein was appointed as Panchayat Assistant in the year 1995 and initially posted at Padarami Panchayat, Gudiyatham Taluk. Subsequently, he was transferred to Kallapadi Panchayat and, in the year 2008, he was posted at Gudanagaram Panchayat by the Block Development Officer/Commissioner. According to the petitioner, while he was serving in Gudanagaram Panchayat, the 2nd respondent/Panchayat President asked him to do some malpractice in the accounts, for which, the petitioner did not oblige and, as a result, the 2nd respondent developed grudge against the petitioner and was taking efforts to remove the petitioner and, in his place, to place an obliging person. In that background, alleging irregularities on the part of the petitioner from 04.01.2010 to

10.09.2010 and stating that such irregularities resulted in a loss of Rs.2 lakhs to the Panchayat, the 2nd respondent issued the impugned suspension order, dated 27.09.2010, as against the petitioner. The said order is challenged on the sole ground that, without issuance of any show cause notice, straight away, the petitioner was suspended on the basis of certain whimsical allegations, in utter violation of the principles of natural justice.

2. In an arduous endeavour to assail the impugned order, learned counsel for the petitioner, by adverting to clause-v of the Annexure to G.O. Ms. No.175, Rural Development and Panchayat (E5) Department, dated 05.12.2006, under the caption 'Administrative Discipline, which provides that, before proceeding against a Panchayat Assistant so as to impose the punishments of censure, fine, stoppage in increment/withholding promotion, reduction to lower rank, suspension, reversion or dismissal for the acts of violation of the rules, disqualification, misconduct and irregularities etc., sufficient opportunity should be given to such Village Assistant including personal hearing, enabling him to submit his explanation, would submit that neither a show-cause notice was issued nor a proper enquiry conducted in this case. According to the learned counsel, when the procedure prescribed in the above Government Order was obviously given a complete go-bye, the impugned suspension order, which came to be passed with ulterior motives against an employee who refused to oblige the 2nd respondent to do mal-practice in the panchayat accounts, is rendered invalid in the eye of law. So submitting, learned counsel pleads that the prayer sought for may be granted.

3. Per contra, learned counsel appearing for the respondents would submit that the procedure outlined in G.O. Ms. No.175, dated 05.12.2006, was followed in its letter and spirit. He would further submit that even on the earlier occasions, the petitioner indulged in alike irregularities and point out that, while he was serving at Kallapadi panchayat, he committed misappropriation of panchayat funds to the tune of Rs.29,452/- and for which, he was suspended for a long period and only on repayment of the misappropriated sum, sympathetically considering the poor family background of the petitioner, the Inspector of Panchayat revoked the suspension order. After revocation of the suspension order, he came to be posted in the present panchayat where also, he committed misappropriation of panchayat

funds by creating bogus bills and thereby, caused monetary loss to the Panchayat. In the enquiry conducted by the first respondent-Block Development Officer on 29.08.2010 about the irregularities, the petitioner himself had given a written statement admitting the guilt and after such enquiry, on the direction of the said authority, the 2nd respondent initiated disciplinary proceedings and ultimately issued the suspension order against the petitioner. Therefore, according to the learned counsel, the allegation that the petitioner was not issued with proper notice and no enquiry was conducted has no basis at all and, since the procedure outlined in the relevant G.O. was indeed followed, there is no scope for interference by this Court.

4. Taking note of the reiterated claim that no show-cause notice was issued before proceeding against the petitioner, this Court directed the respondents' counsel to produce the entire File, whereupon, the same is placed before the court. The Government Order in G.O. Ms. No.175, dated 05.12.2006, imposes a clear obligation upon the Village President to conduct a proper enquiry preceded by a Notice seeking explanation, before proceeding to initiate disciplinary action against the delinquent-Village Assistant which may result in reversion, dismissal, removal, suspension etc. In the case on hand, the impugned suspension order does not even refer to service of a proper notice upon the Village Assistant. A careful perusal of the File, in particular the memo (said to be the show cause notice) suggests something different about the version of the respondents/Panchayat. Firstly, the actual notice in hand-written script running to two pages as contained in the File, reflects the date over-written as "27.03.2010" both in the beginning and at the end for the actually written date "27.04.2010". Such aspect could be deciphered effortlessly as a clear over-writing, for, the reference column in the Memo cites two letters of the 4th month ie., "09.04.2010" and "nil.04.2010". Even if one argues that there was in fact no over-writing or interpolation of the date, such argument would fade away in the light of the reference as cited above, thereby, this Court could conclude that the over-writing was done to suit the endorsement, dated "27/3" made by the delinquent in the Memo. Thirdly, such a vital notice has been so casually written on the front-side of two waste sheets - one, already used to draft the Collectorate Proceedings in Na.Ka.2/A4/2010, dated 13.01.2010, and another sheet is an application-format to seek employment from the Village

President. As this Court finds that there was, in fact, no proper show-cause notice issued and even in the so-called show-cause notice, there was over-writing to suit the convenience of the Panchayat, no importance can be attached to the same. When there was no proper show cause notice issued to the petitioner, the personal enquiry said to have been conducted by the first respondent on 29.08.2010 would in no way advance the case or cause of the respondents. It follows that the petitioner was placed under suspension without recourse to the procedure outlined in G.O. Ms. No.175, dated 05.12.2006 and in utter violation of the principles of natural justice, thereby, the impugned proceedings are rendered invalid in the eye of law.

5. In this view of the matter, the writ petition is allowed, setting aside the impugned order of suspension dated 27.09.2010 and it is made clear that the respondents are at liberty to initiate the proceedings afresh after due compliance of the procedure adumbrated in G.O. Ms. No.175, dated 05.12.2006, and thereafter proceed further in accordance with law. No costs. Connected Miscellaneous Petition is closed. File received from the learned counsel for the respondents is returned to him in the open court.

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