



WP.No.10583/2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.08.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.10583/2017 & WMP.No.11525/2017

P.Manimozhi

... Petitioner

Versus

1.Block Development Officer
Thilagadurugam Panchayat Union
Kallkurichi Taluk
Villupuram District.

2.Special Officer
Eranji Village Panchayat
Kallakurichi Taluk
Villupuram District.

3.State of Tamil Nadu rep.by its
Secretary to Government,
Rural Development & Panchayat Raj
Department, Secretariat,
Chennai 600 009.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records pertaining to the order passed by the 3rd respondent in Letter



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No.29010/Pa.A.5/2014-6, Rural Development & Panchayat Raj Department, dated 03.03.2017 and quash the same and direct the 3rd respondent to consider the representation made by the petitioner seeking age relaxation in the light of the present rules and confer all the consequential benefits.

For Petitioner : Mr.P.Ganesan
For Respondents : Mr.S.Ravikumar, Spl.GP

ORDER

- (1) This writ petition has been filed in the nature of a certiorarified mandamus, seeking records of the order of the 3rd respondent, the Secretary to Government, State of Tamil Nadu, Rural Development and Panchayat Raj Department, Chennai in Letter No.29010/Pa.A.5/2014-6, Rural Development and Panchayat Raj Department, dated 03.03.2017 and to quash the same and to direct the 3rd respondent to consider the representation made by the petitioner seeking age relaxation in the light of the present Rules and confer consequential benefits to the petitioner herein.
- (2) The petitioner had applied for Part Time Clerk in Eranji Village Panchayat at Kallakurichi Taluk in Villupuram District and was so



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appointed on 20.12.1999. His appointment was also approved by the Block Development Officer as well as by the District Collector. The 1st respondent, Block Development Officer, Thilagadurugam Panchayat Union in Kallakurichi Taluk in Villupuram District [now in Kallakurichi District], stated that the petitioner was overaged at the time of appointment. The upper age limit for Part Time Clerk was 28 years and it is claimed that relaxation of 5 years could be given to those who belong to Backward Castes, Schedule Castes and Schedule Tribes. The upper age, therefore, could be 33 years. The petitioner belongs to Schedule Caste.

- (3) It is seen from the counter that when the petitioner was so appointed as Part Time Clerk, he was aged 34 years 7 months and 19 days which is beyond 33 years which is the cut off age. Questioning that particular communication dated 11.02.2004, the petitioner filed WP.No.6608/2004. That writ petition came up for consideration before a learned Single Judge [The Hon'ble Mr. Justice S.MANIKUMAR, as His Lordship then was] on 03.04.2012 and by a very detailed order, the learned Single Judge had observed and held



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as follows. Since the issue in the present writ petition is the same, let me extract the said observations and the final conclusion of the learned Single Judge in entirety:-

"10. Heard the learned counsel for the parties and perused the materials available on record.

11. First of all, as rightly pointed out by the learned Government Advocate, the impugned order is only an internal communication between the Block Development Officer, Thiyaadurugam Panchayat Union, Kallakurichi, Taluk, Villupuram District and the President, Eranji Village Panchayat, Kallakurichi Taluk, Villupuram District, directing the latter to terminate the services of the petitioner, who had been appointed contrary to the Government guidelines in G.O.Ms.No.245, prescribing the educational qualifications and the maximum age limit, in respect of the candidates belonging to SC/ST, MBC/BC, etc. An internal communication between officers would not give rise to a cause of action for filing a writ petition, unless and until any consequential action has been taken by which, the person is aggrieved, can challenge the action in the appropriate forum. Therefore, at the foremost, this Court is of the view that this writ



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petition, is not maintainable, in the absence of any order being passed by the appointing authority, to terminate the services of the petitioner as directed by the 1st respondent. The Supreme Court in Bachhittar Singh Vs. State of Punjab, reported in AIR 1963 SC 395, has held that internal correspondence between officials cannot be a subject matter of a writ petition, unless and until by any consequential action, the person is aggrieved.

12.Perusal of the impugned order also shows that if termination had not been effected immediately and not reported to the Block Development Officer, Thiyaadurugam Panchayat Union, Kallakurichi, Taluk, Villupuram District, within one week, then the Executive officer of the village Panchayat has to take full responsibility for any loss of revenue to the Government. In such circumstances, it is for the 2nd respondent, who has appointed the petitioner, knowing fully well that he was over aged, to take immediate action, for removal or to make any representation to the Block Development Officer, Thiyaadurugam Panchayat Union, Kallakurichi, Taluk, Villupuram District, the 1st respondent, justifying his appointment.



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13.Rule 12(d) of the Tamilnadu State and Subordinate Service Rules states as follows:

The maximum age-limit prescribed in the special rules shall not apply—

**(i) to the appointment of a candidate belonging to any of the Scheduled Castes, Scheduled Tribes, Backward Class Muslims, Backward Classes, Most Backward Class and Denotified communities or of destitute widows of all castes to a post included in a service for which the Special Rules prescribe a qualification lower than a degree of any University mentioned in Schedule II to this part, if such candidate possesses a general educational qualification which is higher than that referred to in sub-rule (a) and he is otherwise qualified for appointment; or *(ii) to the appointment to a post included in a service of a candidate belonging to any of the Scheduled Castes, Scheduled Tribes, Backward Class Muslims, Backward Classes, Most Backward Classes and Denotified communities or of destitute widows of all castes who holds a degree of any University mentioned in Schedule II to this part, if the degree he holds is not lower than the degree prescribed in the Special Rules for appointment to such post and if he is otherwise qualified for appointment.*

Amendments issued in G.O.Ms.No.67, P&AR (S) Department, dated 10- 3-95. with effect from 28-03-1989. Provided that, for direct recruitment to a post included in a service for which the minimum qualification required is not higher than the minimum general educational qualification, the age limit prescribed shall be increased by five years in respect of candidates belonging to Scheduled Castes or Scheduled Tribes or in respect of destitute widows of



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*all castes, who do not possess a general educational qualification, which is higher than the minimum general education qualification. ** Provided further that for direct recruitment to a post included in a service for which the minimum qualification required is not higher than the minimum general educational qualification, the age limit prescribed shall be increased by two years in respect of candidates belonging to *Backward Class Muslims, Backward Classes, Most Backward Classes and Denotified Communities, who do not possess a general educational qualification, which is higher than the minimum general educational qualification. ** Amendment issued in G.O.Ms.No.67, P&AR (S) Department, dated 10-3-95. with effect from 20-10-1993.*

**Amendment issued in G.O.Ms.No.118, P&AR(S) Dept. dt.30.9.2002.*

14.Section 102 of the Tamilnadu Panchayats Act, 1994, states as follows:

102.Conditions of service of officers and servants of Panchayats.- (1) *The Government shall have power to make rules regarding the authorities who may appoint the officers and servants of Panchayats, other than the Commissioners and the I[Secretaries] and the classification, method of recruitment, pay and allowances, discipline and conduct and conditions of service of such officers and servants. Such rules may provide for the constitution of any class of officers or servants of Village Panchayats, Panchayat Union Councils and the District Panchayats, as the case may be, other than the Commissioners and the I[Secretaries], into a separate service for the whole or any part of the state.*



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(2) Subject to the provisions of this Act and any Rules which the Government may make in this behalf, the Panchayat Union Council or the District Panchayat, as the case may be, may frame regulations in respect of the officers and servants on the staff of the Panchayat Union Council or the District Panchayat,-

(a) fixing the amount and nature of the security to be furnished;

(b) prescribing educational and other qualifications;

(c) regulating the grant of leave, leave allowances, acting allowances and traveling allowances;

(d) regulating the grant of pensions and gratuities;

(e) establishing and maintaining Provident Funds and making contributions thereto compulsory;

(f) regulating conduct; and

(g) generally prescribing conditions of service:

Provided –*(i) that the grant of any leave, leave allowances, traveling allowances, pension or gratuity provided for in such regulations shall in no case, without the special sanction of the Government exceed what would be admissible in the case of Government servants of similar standing and status;*

(ii) that the conditions under which such allowances are granted or any leave, superannuation or retirement is sanctioned shall not without similar sanction, be more favourable than those for the time being prescribed for such Government servants.

(3) A Rule may be made under sub-section (1) in so far as it relates to officers and servants of Village Panchayats and Panchayat Union Councils, so as to have retrospective effect on and from a date not earlier than the date of commencement of this Act.



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15.Though, Rule 12(d) of the Tamilnadu State and Subordinate Service Rules, has been relied on by the learned Senior counsel for the petitioner, the Government have prescribed the qualifications and the age, for appointment to the post of Part time Clerk, in G.O.Ms.No.230, Rural Development (E 5) Department, dated 15.10.1996, and permitted the Presidents of the Village Panchayats to appoint Part Time Clerks. As per the said Government Order, the Village Panchayat President (Executive Officer), is the appointing authority. Such appointees should have passed SSLC, not exceeding 28 years and should be residents of the same Panchayat. The maximum age limit prescribed has been retained in respect of candidates belonging to MBC and BC and five years relaxation has been ordered in respect of candidates belonging to SC/ST castes, by the subsequent order in G.O.Ms.No.245. Rule 12, which is applicable to personnel, governed under Special Rules, cannot be made applicable to appointment made under the Panchayat Act, when the same is governed only by a Government order. General rules cannot be read into Government orders, governing the services of part time clerks. In such a view of the matter, this Court is not inclined to



subscribe to the contentions of the learned Senior Counsel, regarding application of Rule 12(d) of the Tamilnadu State and Subordinate Service Rules.

16.Merely because, a person, has been appointed contrary to the guidelines governing such appointment and allowed to continue for quite some time, the same cannot be legalised. If such contentions are to be accepted then all the irregular appointments and actions of the Executive Officers of the Village Panchayat, have to be regularised, automatically, on the sole ground of continuance of service for some period. Such contention, if accepted would run contrary to public policy and would tantamount to giving stamp of approval, to the irregular orders, passed by the authorities.

17.The contention that the appointment to the petitioner, has been approved by the Block Development Officer, Thiyaadurugam Panchayat Union, Kallakurichi, Taluk, Villupuram District, the 1st respondent herein and therefore, it is not open to him to retract and issue the impugned order, is not supported by any material evidence. For all the reasons stated supra, this Court is of the view that the writ petition is not maintainable on the facts and



circumstances, but, also is liable to be dismissed on merits. The interim stay granted and made absolute in WPMP No.7813 of 2004, is vacated.

18.In the result, the writ petition is dismissed.

No costs.

- (4) The petitioner herein then filed a writ appeal in WA.No.1596/2012. The writ appeal came up for consideration before a Division Bench consisting of the Hon'ble Mr. Justice A.SELVAM and the Hon'ble Mr. Justice P.KALAIYARASAN on 20.07.2016. The observations and the conclusion of the Division Bench are as follows:-

"4.The learned counsel appearing for the appellant/petitioner has repeatedly contended that the appellant/petitioner has been appointed as part-time Clerk in Eranji Village Panchayat and all of a sudden, he has been terminated from service without assigning any proper reason and the same has been challenged in writ petition No.6608 of 2004, but the learned Single Judge, without considering the contentions put forth on the side of the appellant/petitioner, has erroneously dismissed the writ petition and therefore, the impugned order passed by the learned Single Judge is liable to be set aside.



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5.Per contra, the learned Additional Government Pleader appearing for the third respondent has contended that the appellant/petitioner has got birth on 1.5.1965 and he has been appointed as part-time Clerk on 20.12.1999. Even on the date of appointment, he has attained 34 years of age. Under such circumstances, he has been terminated from service and the learned Single Judge, after considering the aforesaid factual aspects, has rightly dismissed the writ petition and therefore, the impugned order passed by the learned Single Judge does not require any interference.

6.It is an admitted fact that the appellant/petitioner has got birth on 1.5.1965 and he has been appointed as Part-time Clerk in Eranji Village Panchayat on 20.12.1999. Even on the date of appointment, he has attained the age of 34.

7. It is also an admitted fact that even as per age relaxation, the appellant/petitioner should have attained only 33 years of age. Since on the date of appointment, the appellant/petitioner has attained the age of 34, it is needless to say that the appointment itself is erroneous and therefore, the concerned authority has rightly terminated the



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appellant/petitioner from service.

8.The learned Single Judge, after considering the aforesaid factual aspects, has rightly dismissed the writ petition. In view of the discussions made earlier, this Court has not found any acceptable force in the contentions put forth on the side of the appellant/petitioner and altogether, the present writ appeal deserves to be dismissed.

In fine, the Writ Appeal is dismissed without cost. The order dated 3.4.2012 passed in Writ Petition No.6608 of 2004 by the learned Single Judge of this Court is confirmed. However, the third respondent is directed to consider the representation dated 9.12.2014 alleged to have been given by the appellant/petitioner as early as possible. Consequently, the connected Miscellaneous Petition is closed."

- (5) It is thus seen that the findings of the learned Single Judge was confirmed. As a concession, however, the Division Bench had directed the 3rd respondent therein to consider the representation dated 09.12.2014 alleged to have been given by the petitioner, as early as possible. The present writ petition has been filed questioning the orders passed on the representation dated 09.12.2014. The



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impugned order was passed on 03.03.2017 in Letter No.29010/Pa.A.5/2014-6. The final conclusion in the said proceedings are extracted below:-

"எனவே, மேலே முதலாவது மற்றும் இரண்டாவது படிக்கப்பட்ட நீதிமன்றம் தீர்ப்புகளின் அடிப்படையில், ஆரசாணை (நிலை) எண்.245இ ஊரக வளர்ச்சி (இ5) துறை, நாள் 04.08.1997க்கு புறம்பாக தனியர் திரு.பி.மணிமொழி என்பவரை வயது கடந்த பின்னர் நியமனம் செய்ததால், பார்வை நான்கில் உள்ள தங்களது 09.12.2014 நாளிட்ட கோரிக்கையை பரிசீலனை செய்ய வழிவகையில்லை என்பதால் தங்களது கோரிக்கை நிராகரிக்கப்படுகிறது என தெரிவித்துக்கொள்கிறேன்."

- (6) It is seen that there was no other option except to adhere to the findings of the learned Single Judge and the Division Bench. They had both reached the definite conclusion that the petitioner was overaged at the time of initial appointment. The petitioner has then filed the present writ petition.
- (7) But since a definite finding has been given that the petitioner was overaged at the time of his initial appointment which is violative of



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G.O.Ms.No.245, Rural Development and Local Funds

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Administration, dated 04.03.1997, the petitioner will necessarily have to suffer an order of dismissal in the present writ petition also.

- (8) The writ petition therefore stands **dismissed**. The order of status quo granted on 26.04.2017, stands vacated. Necessary proceedings to be issued by the respondents within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

07.08.2023

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Internet : Yes



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To
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1. Block Development Officer
Thilagadurugam Panchayat Union
Kallkurichi Taluk
Villupuram District.
2. Special Officer
Eranji Village Panchayat
Kallakurichi Taluk
Villupuram District.
3. The Secretary to Government,
State of Tamil Nadu,
Rural Development & Panchayat Raj
Department, Secretariat,
Chennai 600 009.



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C.V.KARTHIKEYAN, J.,

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