



W.A.(MD)No.490 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

W.A.(MD)No.490 of 2013
and M.P.(MD)Nos.1 and 2 of 2013

J.Johns Miller

... Appellant

Vs.

1.The District Collector,
Tirunelveli District.

2.The Block Development Officer,
Valliyoor Panchayat Union,
Valliyoor Post,
Tirunelveli District.

3.Aanaikulam Village Panchayat,
Rep. by its President,
Thulukarpatti Post,
Radhapuram Taluk,
Tirunelveli District.

... Respondents

PRAYER: Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 19.04.2013 made in W.P.(MD)No.6854 of 2011 on the file of this Court.



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For Appellants : Mr.A.Haja Mohideen
For Respondents 1 & 2 : Mr.B.Saravanan
Additional Government Pleader
For 3rd Respondent : Mr.Ananth C.Rajesh
Standing Counsel

JUDGMENT

(Judgment of the Court was delivered by ***R.SURESH KUMAR, J.***)

This intra-Court Appeal has been directed against the order passed by the Writ Court dated 19.04.2013 made in W.P.(MD)No.6854 of 2011.

2. The appellant is the writ petitioner, who was appointed as Panchayat Assistant / Clerk / Secretary of the third respondent Panchayat, by passing a resolution by the third respondent Panchayat. Subsequently, on 09.06.2011, the second respondent i.e., Block Development Officer had passed an order to remove the appellant / petitioner, thereafter, a consequential order dated 17.06.2011 was passed by the third respondent and these orders were under challenge in W.P.(MD) No.6854 of 2011.



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3. When the earlier Writ Petition in W.P.(MD) No.8921 of 2010, challenging the order dated 12.05.2010, passed by the second respondent was pending, the second respondent had revoked the same by order dated 02.08.2010, therefore, the said Writ Petition was dismissed as infructuous, by order dated 29.04.2011.

4. The second respondent while rescinding the order dated 12.05.2010 by an order dated 02.08.2010, rescinded the same unconditionally, but has recommended to the District Collector stating that the resolutions said to have been passed by the third respondent Panchayat in the Meeting held on 26.04.2010 and 30.04.2010, pursuant to which the appellant was appointed, are liable to be cancelled for certain reasons assigned by him.

5. All these aspects have been taken note of the learned Judge who has passed an order dated 19.04.2013, which is impugned herein, whereby he had directed the first respondent District Collector to pass orders on the recommendations of the Block Development Officer with regard to the validity of the resolutions passed by the third respondent Panchayat and till



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such time the subsequent suspension made against the appellant / writ petitioner has to continue and the appellant / petitioner would be entitled to get subsistence allowance also. Only that order passed by the Writ Court dated 19.04.2013 has been under challenge in this Writ Appeal.

6. A Division Bench of this Court, at the time of admission in the year 2013, has granted interim stay of the order impugned, pursuant to which, on 10.11.2014 the first respondent District Collector passed the following order:-

“ஆணை

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வள்ளியூர் ஊராட்சி ஒன்றியம்இ ஆணைகளும் ஊராட்சிச் செயலாளர் பணி தொடர்பாக சென்னை உயர்நீதிமன்ற மதுரை கிளையில் தொடரப்பட்ட வழக்கின் (எண் W.P.(MD) 10483/2010) 19.08.2014 - ம் உத்திய தீர்ப்புரையில் வ.எண்.5 - ல் தெரிவிக்கப்பட்ட ஆணையின் அடிப்படையில் நிரந்தரமாக ஆணைகளும் ஊராட்சிச் செயலாளர் பணி நியமனம் செய்யப்படும் வரை என்ற நிபந்தனையுடன்இ 4 வது பிரதிவாதியான திரு.ஜாண்மில்லர் என்பவரை தனியரது ுகாநிக்கையினை ஏற்று ஆணைகளும் ஊராட்சிச் செயலாளராக தற்காலிகமாக பணி நியமனம் செய்து தேன் முலம் ஆணையிடப்படுகிறது.

தனியர் பணியைச் செய்த விவரத்திற்கு அறிக்கை அனுப்பி வைக்குமாறு வள்ளியூர் வட்டார வளர்ச்சி அலுவலர் (கி.ஊ) ுகட்டுக் கொள்ளப்படுகிறார்.”



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7. Pursuant to the said order passed by the District Collector, the appellant / writ petitioner has been taken into the third respondent fold and he has been continuously working till date. When that being the position, when this Writ Appeal is taken up for final hearing Mr.B.Saravanan, learned Additional Government Pleader appearing for the District Collector has submitted that, in view of the pendency of the Writ Appeal, where stay has been granted, the first respondent District Collector has not acted upon in passing orders upon the resolutions passed by the third respondent Panchayat and therefore, during this period the said order dated 10.01.2014 was passed by him pursuant to which the appellant / writ petitioner has been reinstated and he has been continuously working with the third respondent Panchayat.

8. However, insofar as the validity of the resolutions passed by the third respondent Panchayat, based on which only the appointment has been made is concerned, that has to be decided on merits by the first respondent District Collector, being the Inspector of Panchayat as directed by the Writ Court through the impugned order. Therefore, in this regard the first respondent District Collector is ready and willing to do such exercise.



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9. On the other hand, learned counsel appearing for the third respondent would submit that, in view of the Government Order viz., G.O. (Ms) No.72, Rural Development & Panchayat Raj (E5) Department, dated 09.07.2015 is concerned, certain procedures have been established as to how the service conditions of the Panchayat employees has to be dealt with, which was under challenge and that has also been subsequently stayed by this Court. Therefore, at this juncture, whether the District Collector is empowered to look into the service matters of the Panchayat like the third respondent, especially in the context of the appellant's appointment as Panchayat Clerk is the question, he contended.

10. Learned counsel for the appellant / writ petitioner would submit that, in view of the said fluid situation with regard to the legal position as to who is the authority to deal with the service conditions of the appellant is concerned, the issue is yet to be settled and the status quo as on today where the appellant / writ petitioner is working with the third respondent panchayat, of course pursuant to the order passed the first respondent dated 10.11.2014, may be permitted to continue, he contended.



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11. We have considered all these rival submissions made by the learned counsel appearing for the parties and perused the materials placed before this Court.

12. Insofar as the view taken by the learned Judge in the order dated 19.04.2013 is concerned, the appointment order in respect of the appellant / writ petitioner in the third respondent Panchayat was made only pursuant to the resolutions said to have been taken by the third respondent and the validity of the said resolutions has to be looked into by the first respondent District Collector, for which recommendatory report or communication has already been sent by the second respondent Block Development Officer, which has been taken note of by the Writ Court and a direction also to that effect was given to the District Collector, however, for all these years, in view of the interim stay granted by this Court in the Writ Appeal, that has not been acted upon by the District Collector.

13. However, subsequently, the District Collector has passed an order on 10.11.2014, permitting the petitioner / appellant to work in the third respondent Panchayat, pursuant to which he is also working.



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14. At this juncture, therefore, we feel that insofar as the validity of the resolutions is concerned, whether it is to be, rescinded or not has to be decided by the District Collector, first respondent, therefore, to that extent the direction given by the Writ Court through the impugned order need not be interfered with.

15. Once such a decision is taken by the District Collector, based on the present legal position, where there is interim order granted by this Court as against the G.O. (Ms) No. 72 dated 09.07.2013, referred to above, a leverage has been given insofar as the present incumbent, who has already been appointed prior to the coming of the said G.O.72 and they can continue in their respective job.

16. Therefore, the District Collector, while deciding the issue as to the validity of the resolution is concerned, this legal position, he must borne in mind and accordingly, he has to take a decision on the said resolutions. Depending upon the said resolutions the further fate as to the continuance of the appellant / writ petitioner on the job concerned at the third respondent



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Panchayat can be decided.

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17. In that view of the matter, this Court feels that this Writ Appeal can be disposed of with the following orders:-

- i. that the first respondent District Collector is hereby directed to act upon as per the direction given by the Writ Court dated 19.04.2013 in the order impugned in W.P.(MD) No.6854 of 2011 and order shall be passed thereon within a period of four weeks from the date of receipt of a copy of this order.
- ii. It is needless to mention that, depending upon the outcome of such order to be passed by the first respondent District Collector, the further course of action can be taken by the second and third respondents as to the continuance of the appellant / writ petitioner in the said job of the third respondent Panchayat.
- iii. In this regard, it is made clear that, the legal position pursuant to G.O. (Ms) No. 72 dated 09.07.2013 and the subsequent judicial order as referred to above shall be taken note of by the District Collector, while deciding on the resolutions passed by the third respondent Panchayat.



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18. With all these directions, the order impugned, with the aforesaid modification, is hereby sustained. Accordingly, this Writ Appeal is disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(R.S.K., J.) & (K.K.R.K, J.)

23.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
SJ

To

- 1.The District Collector,
Tirunelveli District.
- 2.The Block Development Officer,
Valliyoar Panchayat Union,
Valliyoar Post,
Tirunelveli District.

R.SURESH KUMAR, J.

AND

K.K.RAMAKRISHNAN, J.

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