

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.P. No.17079 of 2014

N.Kothandan

...Petitioner

Vs.

1.The District Collector/Inspector of Panchayats, Kancheepuram Dist.

2.The Assistant Director of Panchayats Kancheepuram District.

3.The Block Development Officer, Walajabad Block/Panchayat Union, Kancheepuram Dist.

4.The President, Ayimicherri Village Panchayat Walajabad Block/Panchayat Union, Kancheepuram Dist.

...Respondents

PRAYER : Writ petition filed under Article 226 of the Constitution of India for issue of writ of mandamus directing the 3rd respondent herein to consider and pass orders on the petitioner's representation dated 19.05.2014 and appropriate orders.

For Petitioner : Mr.S.Thirumavalavan

For Respondents: Mr.S.Gunasekaran
Govt. Advocate for R1 & R2

Mr.Dig Vijay Pandian for
R3 & R4.

O R D E R

The prayer in the writ petition is to issue a writ of mandamus directing the 3rd respondent to consider and pass orders on the representation of the petitioner dated 19.05.2014.

2. According to the petitioner, he was appointed as part time panchayat clerk in the year 1977 on a consolidated pay and he was brought under the time scale of pay with effect from 01.09.2006. While so, during May 2012, he met with an accident and sustained head injuries due to which he suffered headache often and hence applied for medical leave w.e.f. 01.09.2012. The petitioner would claim that the 4th respondent, in turn forwarded the letter to the 3rd respondent for sanctioning the leave to the petitioner. In the meanwhile, the 4th respondent was permitted to engage a temporary employee. After completion of the treatment, when the petitioner requested the 4th respondent to permit him to join the duty, he was informed that a lady was appointed in his place and when he approached the other respondents, the 4th respondent, hurriedly obtained signatures from the ward members in the minutes book as if they accepted the resignation of the petitioner on 17.09.2012 and the panchayat resolved to appoint one Mrs.M.Anbukarasi as Panchayat Assistant. In this regard, petitioner made representation to the respondents 1 to 3. Since no order has been passed, the present writ petition has been filed.

3. The 4th respondent filed counter affidavit contending that while the petitioner was working as Panchayat Secretary in the 4th respondent panchayat, he has given resignation letters dated 20.08.2012 and 22.08.2012 and the letter dt.22.08.2012 was forwarded to the 4th respondent for his approval. The 4th respondent, by order dated 29.08.2012, accepted the resolution vide order in Na.Ka.No.311/11/A2. Thereafter, the 4th respondent issued a notification for appointment to the post of Panchayat Secretary. Five persons participated in the interview and one Mrs.Anbukarasi was selected for the post, which was approved by the 3rd respondent.

4. It is further stated in the counter that while the petitioner was working in the panchayat, he misappropriated a sum of Rs.58,413/-. The 3rd respondent passed an order vide Na.Ka.No.03/2013/A7 dated 17.05.2013 directing the petitioner to make good the loss and on his failure, the 4th respondent has to pay the amount.

5. Mr.Thirumavalavan, learned counsel for the petitioner would contend that admittedly the petitioner was brought under the time scale of pay and he was on medical leave. While so, the 4th respondent, without issuing any communication directing the petitioner to join the duty and without terminating his services, cannot deny his employment and prayed for allowing of the writ petition.

6. The learned Government Advocate appearing for the respondents 1 and 2 would submit that the writ petition is liable to be dismissed on the sole ground that the petitioner has not approached this court with clean hands and also suppressed the material facts. The learned Government Advocate has filed a typed set containing resignation letters submitted by the petitioner dated 20.08.2012 and 22.08.2012, the resolution passed in the panchayat meeting held on 17.09.2012 and the resolution dated 31.10.2012 appointing one Mrs. Anbukarasi as Panchayat Secretary, letter of the Block Development Officer, Walajabad / 3rd respondent herein dated 21.02.2013 approving the appointment of the said Mrs. Anbukarasi as Panchayat Secretary. However, the petitioner, without disclosing the above facts has filed the writ petition.

7. The specific case of the petitioner is that he applied for medical leave on 26.08.2012 w.e.f. 01.09.2012, but he has not produced any proof to substantiate his case. Further, the petitioner has not produced any acknowledgment for the representations said to have been sent by him in the year 2013 and prior to May 2014. It is further seen that the petitioner has not challenged the resolutions of the Panchayat and appointment of Mrs. Anbukarasi. In the considered view of this court, the petitioner has not come to the court with clean hands.

8. In the light of the above facts, I do not find any merits in the writ petition. Accordingly, this writ petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS IV)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

rgr
To

1. The District Collector/Inspector of
Panchayats, Kancheepuram Dist.

2. The Assistant Director of Panchayats
Kancheepuram District.

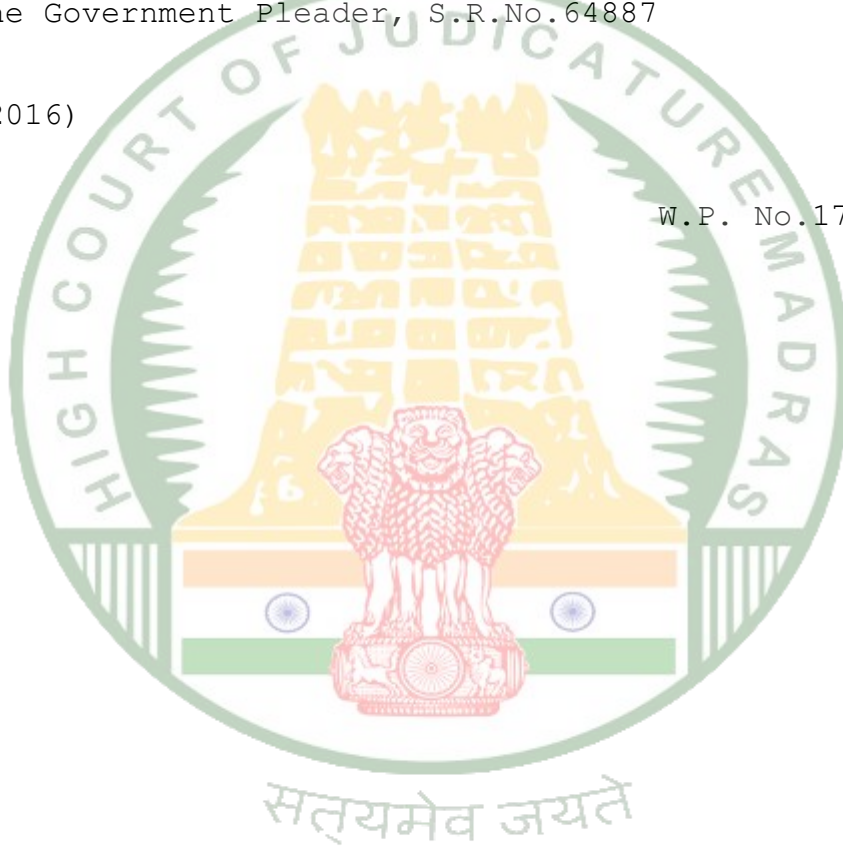
3.The Block Development Officer,
Walajabad Block/Panchayat Union,
Kancheepuram Dist.

4.The President,
Ayimicherri Village Panchayat
Walajabad Block/Panchayat Union,
Kancheepuram Dist.

+lcc to Mr.S. Thirumavalavan, Advocate, S.R.No.65228
+lcc to Mr.M. Dig Vijay Pandian, Advocate, S.R.No.64809
+lcc to the Government Pleader, S.R.No.64887

TEJ(CO)
EU(07/03/2016)

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