

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2015

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN

AND

THE HON'BLE MR.JUSTICE P.R.SHIVAKUMAR

W.A.No.589 of 2013 and M.P.No.1 of 2013

M.Arumugam

...

Appellant

Versus

1. The District Collector,
Perambalur.

2. The Development Officer,
Veppanthattai Panchayat Union,
Veppanthattai, Perambalur District.

3. The President,
Pimbalur Panchayat,
Pimbalur, Veppanthattai Taluk,
Perambalur District.

... Respondents

Writ Appeal under Clause 15 of Letters Patent against the order of His Lordship Hon'ble Mr.Justice K.Chandru, dated 21.02.2013 made in W.P.No.9097 of 2012.

Petition under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records relating to the order passed by the 2nd respondent in Na.Ka.No.Aaa3/615/2012 dated 16.3.2012 and quash the same and direct the respondent to confer all the consequential benefits on the petitioner.

For Appellant .. Mr.C.Selvaraju, Sr.Counsel for
M/s. C.S.Associates.

For Respondents-1&2.. Mr.R.Ravichandran, AGP

For Respondent-3 .. Mr.C.S.Dhanasekaran.

JUDGMENT

(Made by V.Ramasubramanian, J)

The appeal arises out of the dismissal of a writ petition filed by the appellant, challenging an order of refusal to approve his appointment.

2. We have heard Mr.C.Selvaraj, learned Senior Counsel for the appellant, Mr.R.Ravichandran, learned Additional Government Pleader for the respondents 1 and 2 and Mr.C.S.Dhanasekaran, learned counsel for the third respondent.

3. It appears that one R.Rajarajan, Panchayat Secretary, Pimbalur Panchayat, who was transferred from Inam Agaram Panchayat, was unauthorizedly absent from 8.12.2011 to 23.02.2012. On that basis, the Panchayat Secretary, V.Kalathur Panchayat was put in as additional charge as per the Proceedings of the Block Development Officer (Panchayats) dated 13.12.2011. Therefore, the Panchayat passed a resolution on 29.2.2012 to remove the said person from service and also to approve the appointment of the appellant in the said post.

4. However, the Block Development Officer by an order dated 16.3.2012 refused to accord approval for the appointment of the appellant on the ground that the appellant has crossed the upper age limit of 33 years on the cut-off date for appointment namely 1.7.2012 and therefore his appointment is irregular as per the annexure IV of the orders issued by the Government in G.O.Ms.No.175 Rural Development & Panchayatraj Department, dated 05.12.2006. Challenging the said order the appellant filed a writ petition in W.P.No.9097 of 2012. The said writ petition was dismissed by a learned Judge by an order dated 21.02.2013 on the short ground that when the regular incumbent was removed from service and his appeal pending before the Statutory Authority, no regular appointment could have taken place. Aggrieved by the said order, the appellant is before us.

5. Even on admitted facts, we find that by a resolution passed at 10.00 am. on 29.2.2012, it was resolved to remove the existing regular incumbent from service. By another resolution passed at 3.00 pm. on the same day, the appellant was appointed to the said post. According to the learned senior counsel for the appellant, the appellant discharged the duties of the regular incumbent during the period of his unauthorized absence and that therefore after getting an application from the appellant he was appointed.

6. But the said method of appointment does not have the sanction of law. The Panchayat could not have appointed the appellant without following any procedure for selection as prescribed by the Statutory Rules. When the very appointment of the appellant was not in accordance with the Rules, he cannot contend that the refusal of the Block Development Officer to grant approval was not in accordance with law. The fact remains that the appellant was appointed without following any process of selection, even before the expiry of the period for filing a Statutory Appeal by the regular incumbent. Therefore, the order of the learned Judge cannot be found fault with. Hence, the writ appeal is dismissed. There will be no order as to costs. Consequently, M.P.No.1 of 2013 is closed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The District Collector, Perambalur.
2. The Development Officer, Veppanthattai Panchayat Union,
Veppanthattai, Perambalur District.
3. The President, Pimbalur Panchayat, Pimbalur, Veppanthattai
Taluk, Perambalur District.

+1 cc to M/s.C.S.Associates,Advocate,sR.17156

+1 cc to Government Pleader,SR.16786.

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W.A.No.589 of 2013



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