



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.11.2015

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

Writ Appeal(MD) No.1139 of 2014
and
M.P(MD)No.1 of 2014

S.Selvarani Sridevi ... Appellant
Vs.

1.The District Collector,
Thoothukudi District,
Thoothukudi.

2.The Block Development Officer,
Kayathar, Thoothukudi District.

3.R.Thangathai ... Respondents

Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 13.08.2014 made in W.P.(MD)No.2287 of 2009.

Prayer in WP(MD) 2287/2009 :

Write Petition filed under Article 226 of the constitution of India, praying for issuance of a writ of Certiorari calling for the records of the first respondent in his proceedings in U.Ni.7/7410/2007 dated 20.02.2009 and that of the second respondent in his proceedings in thi.3/61/08 dated 14.10.2008 and quash the proceedings of the first and second respondents dated 20.02.2009 and 14.10.2008 respectively.

For Appellant : Mr.G.Prabhu Rajadurai

For Respondents 1&2 : Mr.A.K.Baskarapandian,
Special Government Pleader.

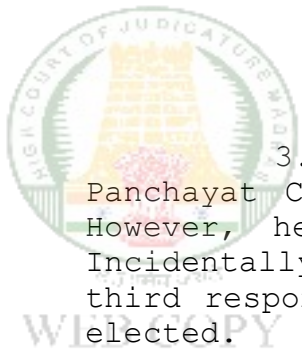
For 3rd Respondent : Mr.G.Thalaimutharasu

JUDGMENT

(Judgment of the Court was delivered by **V.RAMASUBRAMANIAN, J**)

The writ appeal arises out of an order passed by the learned Judge dismissing a writ petition challenging the proceedings of the District Collector and the Block Development Officer, setting aside the termination of services of the third respondent.

2.Heard Mr.G.Prabhu Rajadurai, learned counsel for the appellant, Mr.A.K.Baskarapandian, learned Special Government Pleader appearing for the respondents 1 and 2 and Mr.G.Thalaimutharasu, learned counsel for the third respondent.



3.The third respondent herein was originally appointed as a Panchayat Clerk by a resolution passed by the panchayat on 21.10.2004. However, her services were terminated by an order dated 02.12.2006. Incidentally, it should be pointed out that after the appointment of the third respondent but before her termination, a new panchayat council got elected.

4.The order of termination dated 02.12.2006 was successfully challenged by the third respondent herein in the first round of litigation. In the first round of litigation, this Court directed the panchayat to conduct a proper enquiry, if there were allegations against the third respondent before terminating her services. Therefore, the panchayat was bound to follow the procedure established by law before terminating the services of the third respondent.

5.But unfortunately, the panchayat once again merely issued a charge memo, did not follow it up with an enquiry but terminated her services by a resolution.

6.Therefore, the third respondent filed an appeal before the Block Development Officer who set aside the order of termination on the ground of violation of the procedure. The order of the Block Development Officer was challenged by the Panchayat President before the District Collector under the provisions of the Tamil Nadu Panchayats Act, 1994. The District Collector concurred with the Block Development Officer and dismissed the appeal of the Panchayat President.

7.Aggrieved by the orders of the Block Development Officer and the District Collector setting aside the termination of services of the third respondent, the appellant filed a writ petition in W.P(MD)No.2287 of 2009. The same was dismissed by the learned Judge forcing the appellant to come up with the above appeal.

8.There is no dispute about the fact that the first order of termination dated 02.12.2006 was set aside by this Court for violation of the principles of natural justice and the procedure established by law. There is also no dispute about the fact that even in the second attempt, the appellant did not follow the principles of natural justice and the procedure established by law. Therefore, the Block Development Officer and the District Collector rightly found fault with the appellant for having terminated the services of the third respondent. Hence, the learned Judge was right in upholding the orders of the Block Development Officer and the District Collector.

9.However, it is contended by Mr.G.Prabhu Rajadurai, learned counsel for the appellant that the third respondent was appointed only as a part time clerk and that therefore, by virtue of the decision of the Supreme Court in **(2014) 4 SCC 769 (Secretary to Government, Chennai Vs.R.Govindasamy)**, the question of regularisation of the services of the third respondent does not arise.

10.But unfortunately, such a point was never raised either in the first round or in the second round. It must be remembered that the writ petition out of which the present appeal arises was filed by the appellant. If the appellant had omitted to raise this issue in her sworn



affidavit filed in support of the writ petition, it cannot be raised at the appellate stage. Therefore, we find no reason to interfere with the order of the learned Judge. Hence, the writ appeal is dismissed. No costs. Consequently, M.P(MD)No.1 of 2014 is closed.

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Sd/-
Assistant Registrar (AS)

Sub Assistant Registrar

sms

To

1.The District Collector,
Thoothukudi District,
Thoothukudi.

2.The Block Development Officer,
Kayathar, Thoothukudi District.

+1CC to Mr.G.Prabhu Rajadurai Advocate Sr.No.66313

+1CC to Mr.G.Thalaimutharasu Advocate Sr.No.66065

+1CC to Spl.Government Pleader Sr.No.66216

GJM/AA1/MPA/1.12.2015-3P-6C

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