

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2016

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE M.GOVINDARAJ

Writ Appeal Nos.843 and 844 of 2010
M.P.Nos.1 and 1 of 2010

Jaishankar ... Appellant/Petitioner in W.A.No.843 of 2010
S.Indira ... Appellant/Petitioner in W.A.No.844 of 2010

vs.

1. The Tahsildar,
Thirupathur Taluk,
Vellore District.
2. The Sub-Collector,
Thirupathur Taluk,
Vellore District. ... Respondents/Respondent in both appeals

Writ Appeals under clause 15 of the Letters Patent against the orders passed in W.P.Nos.15486 and 15487 of 2008, dated 25.03.2010.

Petitions filed under Art.227 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to A-3/12138/06 dt. 26.06.08 from the file of the 1st respondent to quash the same consequently directing the 1st respondent to allow the petitioners to continue as Village Assistant for [i]Genginaickenpatti thirupathur Taluk, Vellore District and [ii] Kollangottai Village, Thirupathur Taluk, Vellore District respectively.

For Petitioner : Mr.G.Appavu

For Respondents : Mr.T.M.Pappiah,
Special Government Pleader

COMMON JUDGMENT

(Judgement of this Court was made by M.GOVINDARAJ, J)

Writ Appeals are directed against the common order made in

W.P.Nos.15486 and 15487 of 2008, dated 25.03.2010.

2. As the facts and law, involved in both the writ appeals, are common, they are taken up together and disposed of, by a common judgment.

3. Short facts leading to the writ appeals are as follows:

The appellants were appointed as Village Assistant, vide order, dated 13.03.2008 and they joined duty on 14.03.2008 and 17.03.2008 respectively. While discharging their duties, without any remarks, the Tahsildar, Thirupathur Taluk, Vellore District, 1st respondent herein, vide order, dated 26.06.2008, cancelled their appointments, on the grounds, inter alia that they are residing 10 Kms., away from the place of posting. The said order was challenged in W.P.Nos.15486 and 15487 of 2008. Considering the rival submissions and facts and circumstances of the case, a learned single Judge, vide order, dated 25.03.2010, has dismissed the writ petitions, on the grounds that they were appointed only under Rule 10(a)(i) of the Service Rules and they continued to work, under the strength of the interim order. Since the appointment was not in terms of the prevailing Government Order, both the writ petitions were dismissed. Aggrieved by the same, the appellants have preferred the present appeals.

4. This Court, while admitting the present appeals on 28.04.2010, has granted interim direction to the respondents to allow the appellants to continue in their respective posts, till the disposal of the appeals. As on today, both the appellants are continuing in the said post.

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

5. Considering the nature of the post of Village Assistant, qualifications prescribed are to read and write Tamil and ride bicycle. Insofar as the appellants are continuing in the said post, for nearly nine years and in view of the fact that now, they have been transferred to some other village and they are living within the radius of 5 Kms., this Court is of the opinion that the order of the first respondent, cancelling the appointment of the appellants, as Village Assistant, is bad.

6. Now, the Rules, regarding appointment of Village Assistant, have undergone changes and were extended to Taluk and District levels. As per Rule 7C of the Village Servants Service Rules, the Village Assistant shall reside in the village and serve. As per the judgment of this Court reported in (2007) 6 MLJ 402 [P.Vasantha and others v. District Collector, Dindigul District and others], it is held that selection could not be solely on the ground of residential preferences to the exclusion of other

criteria, as it would hit Article 16(2) of the Constitution of India. Therefore, the other ground, on which, the 1st respondent has cancelled the appointment of the appellants, is also not sustainable.

7. In view of the above, we are inclined to allow the writ appeals, by setting aside the order of the 1st respondent herein, dated 26.06.2008 and the respondents are directed to pass suitable consequential orders, treating the appellants as regular vacancies, from the date of their initial appointment.

8. Hence, the Writ Appeals are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

skm

To

1. The Tahsildar,
Thirupathur Taluk,
Vellore District.

2. The Sub-Collector,
Thirupathur Taluk,
Vellore District.

+1cc to the Government Pleader, S.R.No.72618,72627

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W.A.Nos.843 and 844 of 2010

rsy(co)

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