

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2016

Coram

THE HON'BLE MR. JUSTICE B. RAJENDRAN

Writ Petition No.19875 of 2008
and
M.P.Nos.1 & 2 of 2008

P. Victoria .. Petitioner

Versus

1.The Sub-Collector,
Tirupathur,
Vellore District.

2.The Tahsildar,
Tirupattur,
Vellore District

.. Respondents

Writ Petition filed under Article 226 of the constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in his impugned proceedings bearing No.Se.Mu.B.No.A3.12138/06, dated 06.08.2008 and consequently direct the respondents to reinstate the petitioner as Village Assistant with continuity of service, backwages and all other benefits.

For Petitioner : Mr.Balan Haridas
For Respondents : Mrs. M.E.Rani Selvam,
Additional Government Pleader

O R D E R

This Writ Petition has been filed to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in his impugned proceedings bearing No.Se.Mu.B.No.A3.12138/06, dated 06.08.2008 and consequently direct the respondents to reinstate the petitioner as Village Assistant with continuity of service, backwages and all other benefits.

2. The petitioner was appointed as Village Assistant on 13.03.2008. While, she was working as Village Assistant in Kumdikampatti, without putting her on notice and hearing her, she was terminated from service on 06.08.2008 by the 2nd respondent. In the order dated 06.08.2008, the second respondent relied upon the proceedings of the first respondent bearing No.Na.Ka.A4.6065/08 dated 05.08.2008 to the effect that an enquiry was conducted on the basis of a complaint received from one Vanathi and the enquiry disclosed that the petitioner was not a resident of Kandili Village. According to the respondents, one of the foremost requirement for appointment to the post of Village Assistant is that the appointee should reside in the Village where he or she is sought to be appointed. When the petitioner was not residing in Kathili Village, her appointment as Village Assistant is illegal and therefore she was terminated from service. Before passing the order of termination, it appears that an enquiry was conducted by the first respondent with the Village Administrative Officer, Revenue Inspector and Villagers and concluded that the petitioner is not residing in Kandili Village and only after being appointed as Village Assistant, she started residing in the Kandili Village.

3. Mr.Balan Haridas, learned counsel for petitioner would submit that even assuming that the petitioner was not a resident of Kandili Village and her appointment as Village Assistant is illegal, before passing the impugned order of termination, the petitioner should have been issued with a notice. Further, in the present case, the first respondent has conducted enquiry behind the back of the petitioner and came to the conclusion the petitioner was not residing in Kandili Village and that she has misrepresented herself and obtained the employment. According to the learned counsel for the petitioner, after the petitioners marriage, she settled down at Konganeru Village, which is 3 kilometers away from Kandili Village. After residing in Konganeru Village for about three years, the petitioner re-settled herself with her husband in Kandili Village. Further, the complaint has been given by Ms. Vanathi, one of the non-selectees to the post of Village Assistant and therefore, before imposing the capital punishment of termination from service, the respondents ought to have followed the principles of natural justice and non-compliance of the same vitiates the order of termination.

4. Mrs. M.E.Rani Selvam, learned Additional Government Pleader would contend that the petitioner has committed acts of misrepresentation and falsification of record to secure the employment. In such an event, adherence of principles of natural justice is not necessary to be complied with and

therefore the learned Additional Government Pleader justified the passing of the order of termination.

5. I heard the learned counsel for both sides and perused the records. At the time of admission of the writ petition, this Court granted interim stay on 14.08.2008 and on the strength of the interim order, the petitioner is continuing in service.

6. Admittedly, the petitioner was terminated from service without even issuing a notice or conducting an enquiry against her. The termination order as been preceded by an enquiry conducted by the respondents, however, the petitioner was not made known about such enquiry being conducted. According to the petitioner, she was a resident of Kandili Village and for a short duration, she settled herself with her husband at Konganeru Village, which is about 3 kilometers from Kandili Village. Thereafter, the petitioner re-settled herself at Kandili Village. It is the contention of the petitioner that at the time of her appointment, she was very much residing in Kandili Village. It is also her contention that before passing the impugned order of termination, if she was put on notice, she would be in a position to defend the enquiry conducted behind her back. Such a contention urged on behalf of the petitioner has force. When the petitioner has not been put on notice before passing the impugned order of termination, such order cannot be sustained under law. Therefore, this Court is of the considered view that the impugned order has been passed in violation of principles of natural justice. Before the petitioner's appointment was terminated, the basic necessity is to put her on notice and to call for her explanation. In the absence of the same, the impugned order cannot be sustained under law.

7. Before parting with, it is to be mentioned that the impugned order of termination is not sustainable for non-adherence of principles of natural justice. Therefore, this Court hereby direct the respondents to give sufficient opportunity to the petitioner to submit her explanation and thereafter pass an order on merits in according with law, if they are so advised. It is made clear that it is for the respondents to take into consideration whether after eight years from the date of passing the order of termination, an enquiry at all is necessary to be conducted against the petitioner or not.

8. Accordingly, the impugned order is set aside only on the ground of violation of principles of natural justice . No costs. Consequently, connected Miscellaneous Petition is closed.

dn/rsh

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

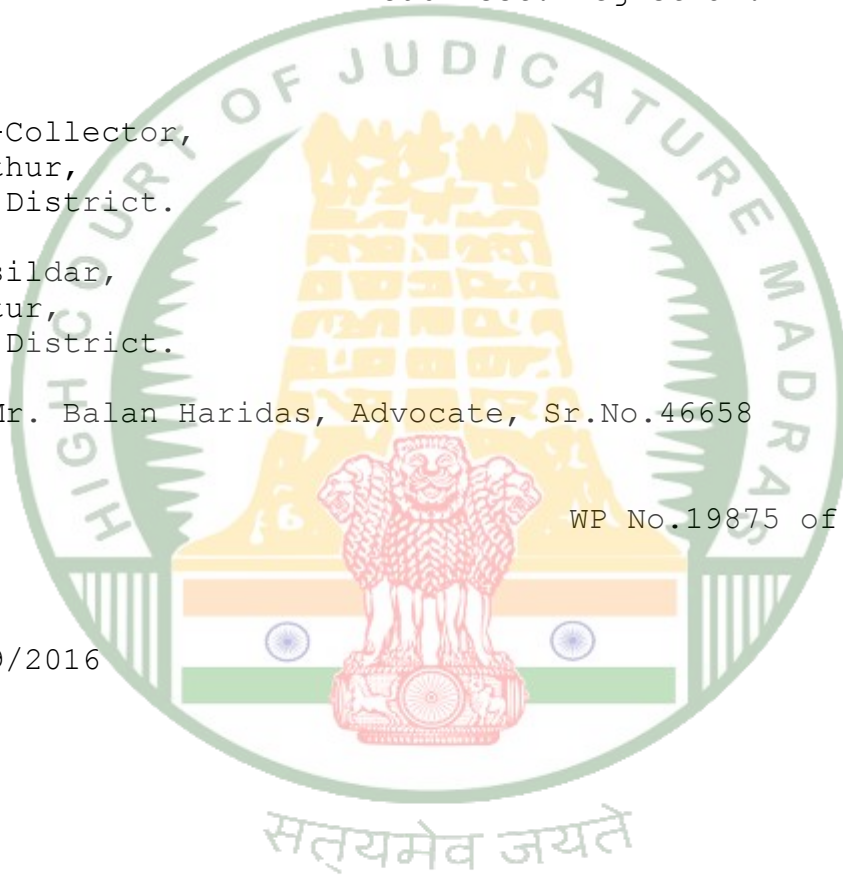
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Vellore District.

2.The Tahsildar,
Tirupattur,
Vellore District.

+1 CC to Mr. Balan Haridas, Advocate, Sr.No.46658

WP No.19875 of 2008

TM (CO)
MD : 14/09/2016



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