



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 22.11.2016

Coram:

THE HONOURABLE MR. JUSTICE M.V. MURALIDARAN

W.P. (MD) No. 19638 of 2013
and
M.P. No. 1 of 2013

K. Murugesan

.. Petitioner

Vs.

1. The District Collector,
Tirunelveli District,
Tirunelveli.

2. The Executive Officer,
Sundarapandiyapuram Town Panchayat,
Tirunelveli District.

3. The Sundarapandiyapuram Town Panchayat,
Tirunelveli District,
Rep. by its vice President.

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, for issuance of writ of Certiorari, calling for the records relating to the impugned order passed by the 1st respondent in his proceedings Na.Ka.No.5793/2013/Pa2 dated 27.11.2013 and quash the same as illegal.

For Petitioner : Mr. Jerin Mathew
for M/s. M.E. Ilango

For Respondents : Mr. K. Guru (for R1 and R2)
Additional Government Pleader
No Appearance (for R3)

ORDER

Calling into question the proceedings of the first respondent dated 27.11.2013, in and by which the appointment of the petitioner as Sanitary Worker was cancelled, the present writ petition is filed.

2. It is the case of the petitioner that he is a physically challenged person (Orthopedically handicapped) and studied up to BSSLC. The petitioner claims to have registered his name with the



District Employment Office under the physically challenged category.

3. It is averred that the second respondent sought for list of eligible candidates from the District Employment Officer for appointment of Sanitary Worker in the third respondent/Panchayat. The name of the petitioner was sponsored by the Employer Exchange and after participating in the interview, he was found to be qualified and was duly selected and appointed by the second respondent vide proceedings dated 4.11.2013 and thereupon, the petitioner joined duty.

4. It is the plea of the petitioner that as per the terms of the appointment, he was to submit a medical fitness certificate, which he submitted having obtained the same from Civil Assistant Surgeon, Government Head Quarters Hospital, Tenkasi. He also submitted another certificate issued by the Medical Board, Tirunelveli District on 20.11.2013.

5. When things stood thus, it is alleged that the first respondent, based on the report of discreet enquiry dated 22.11.2013 conducted by the Assistant Director (Panchayats), passed the impugned order dated 27.11.2013 cancelling the appointment of the petitioner without giving any notice or any opportunity to substantiate his case. Hence, the present writ petition for the relief stated supra.

6. The learned counsel for the petitioner vehemently contended that before passing the impugned order, the first respondent had not afforded an opportunity of hearing and, therefore, the same is liable to be set aside on the ground of violation of principles of natural justice. It is further contended that the report of the Assistant Director (Panchayats), which formed the basis for passing the impugned order, was not furnished to the petitioner.

7. It is also contended that the grounds on which the impugned order was passed, namely, (i) the petitioner has not submitted fitness certificate; and (ii) the petitioner is over aged, are without any basis, as the petitioner has submitted fitness certificate and the second respondent on satisfying qua the candidature of the petitioner has only made such appointment.

8. In any event, it is contended that the petitioner having been appointed through proper procedure, namely, his name having been sponsored by the Employment Exchange, participated in interview, etc., his appointment ought not to have been cancelled without issuance of notice.

<https://hcservices.courts.gov.in/hcservices/> On the contrary, it is the submission of the learned Additional Government Pleader appearing on behalf of respondents 1 and 2 that one Madasamy, General Secretary of Workers' Union,



preferred complaint on 7.11.2013 alleging that the petitioner's appointment was illegal and based on the same, the first respondent ordered discreet enquiry and thereafter, on being satisfied that the appointment of the petitioner was not in accordance with law, rightly cancelled the same and such order does not warrant interference by this Court.

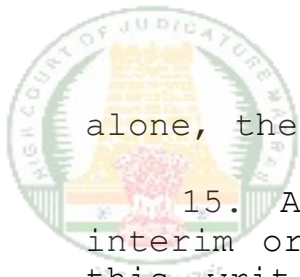
10. It is further contended that the petitioner without exhausting the appeal remedy has filed this writ petition and, therefore, the same is not maintainable.

11. I heard Mr. Jerin Mathew for M/s. M.E. Ilango, learned counsel appearing for the petitioner and Mr. K. Guru, learned Additional Government Pleader appearing for the respondents 1 and 2 and there is no representation on behalf of the 3rd respondent and perused the documents on record.

12. In the case on hand, it is beyond any cavil that the name of the petitioner was sponsored by the Employment Exchange and only based on his selection in the interview, he was appointed by the second respondent. Even as per the counter affidavit filed by the first respondent "On 20.01.2013 (*sic* 20.11.2013) he had produced the copy of medical certificate that he is a disabled person". Therefore, the first ground for cancelling the appointment of the petitioner that he has not submitted fitness certificate does not hold water.

13. Qua the reasoning that the petitioner is over aged and his appointment is not substantiated by any government order, the second respondent, on being satisfied with the candidature of the petitioner, has appointed him. It is not the case of the respondents that the petitioner had played fraud or gained appointment by misrepresentation. The petitioner having been appointed by the second respondent, after having been sponsored by the Employment Exchange, his appointment ought not to have been cancelled in gross violation of the principles of natural justice, namely, (i) without putting him on notice or giving him an opportunity of hearing; and (ii) without furnishing him the documents relied on to cancel his appointment.

14. Where termination is preceded by an enquiry and evidence is received and findings as to some irregularity are arrived at behind the back of the employee and where on the basis of such a report, the termination order is issued, such an order will be violative of the principles of natural justice, inasmuch as the purpose of the enquiry is to find out the truth of the allegations with a view to cancel his appointment. Moreover, it is not the case of the first respondent that the petitioner has been put on notice and that only after due compliance of principles of natural justice his appointment has been cancelled. Therefore, violation of the principles of natural justice is writ large. On this score



alone, the writ petition succeeds.

15. At this juncture, be it noted that by virtue of the interim order dated 03.12.2013 passed in M.P.(MD)No.1 of 2013 in this writ petition, the petitioner continues to discharge his duties for the past four years.

16. Under such circumstances, the writ petition is allowed and the order of cancellation of appointment passed by the 1st respondent in proceedings Na.Ka.No.5793/2013/Pa2 dated 27.11.2013, is set aside. No costs. Consequently, M.P.(MD)No.1 of 2013 is closed.

Sd/-

Assistant Registrar (AS)

/True copy/

Sub Assistant Registrar

To

The District Collector,
Tirunelveli District,
Tirunelveli.

VSA/SKN

KK/SV MMS/SAR 1/15.12.2017/ 4P- 2C/

W.P. (MD)No.19638 of 2013

and

M.P.No.1 of 2013

22.11.2016