

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

WP.No.15872 of 2008

& M.P. No.1 of 2008

S.Kavitha

... Petitioner

Versus

The Tahsildar,
Tirupattur Taluk,
Vellore District.

... Respondent

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Certiorarified Mandamus to call for the records of the respondent in his proceedings So.Mu.Order.No.A3/12138/06 dated 26.06.2008 and direct the respondent to continue the petitioner in service in Thoppalagunta Village, Tirupput Taluk, Vellore District.

For Petitioner : Mr.G.Jeremiah

For Respondent : Mr.S.V.Duraisolaimalai
Addl. Govt. Pleader

ORDER

The petitioner has approached this Court seeking the following relief:

'To issue a Certiorarified Mandamus to call for the records of the respondent in his proceedings So.Mu.Order.No.A3/12138/06 dated 26.06.2008 and direct the respondent to continue the petitioner in service in Thoppalagunta Village, Tirupput Taluk, Vellore District'.

2.The petitioner was selected on 17.03.2008 as Village Assistant after following various rules and Government Order. She was sought to be terminated by order, dated 26.06.2008, by the same order, few of the persons who were also sought to be terminated. The other two persons viz., Jaishankar and S.Indira

have filed the writ petitions before this Court and the same were dismissed on 25.03.2010.

3. Learned counsel for the petitioner would submit that aggrieved against the order of dismissal dated 25.03.2010, the said Jaishankar and S.Indira have preferred Writ Appeals in W.A.Nos.843 and 844 of 2010 before this Court. The Hon'ble Division Bench of this Court by order dated 08.12.2016, has allowed the Writ Appeals and the relevant portions of the order passed by this Court, in paragraph Nos.3 to 16 are extracted below:

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 respectfully. 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 the said post, for nearly nine years and in view of the fact that now, they have 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."

4.Learned counsel for the petitioner herein would submit that the present writ petition is covered by the order passed in the above writ appeals by the Hon'ble Division Bench of this Court.

5.The said facts are not disputed by the learned Additional Government Pleader appearing for the respondent.

6.In view of the same, the present writ petition is allowed on the terms of the above writ appeal order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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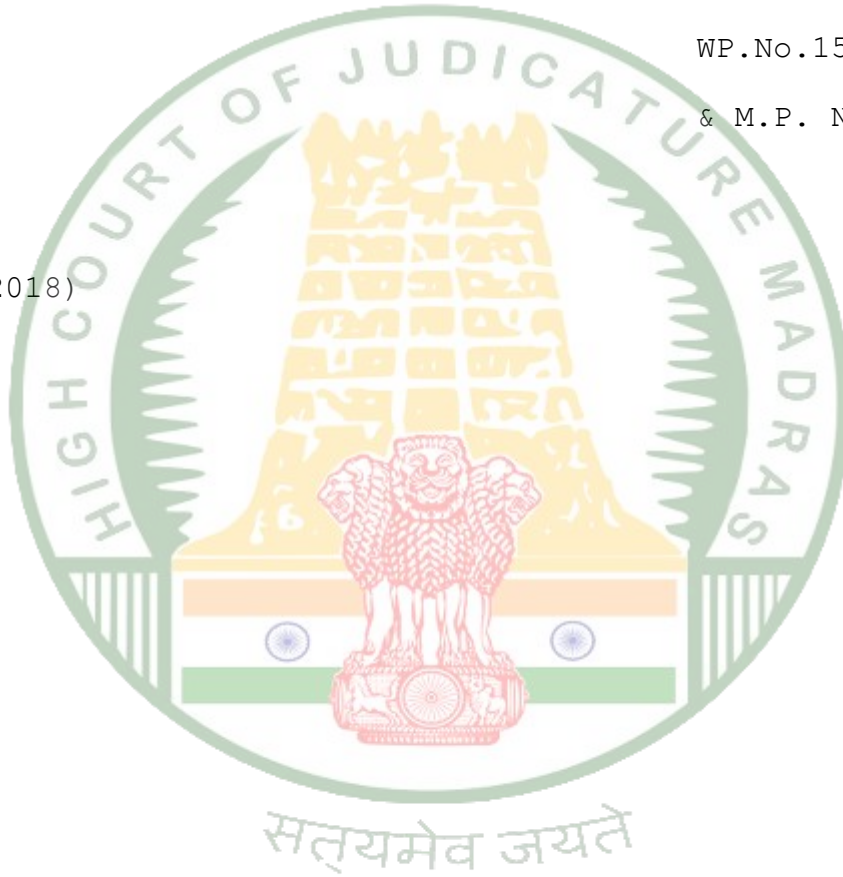
The Tahsildar,
Tirupattur Taluk,
Vellore District.

+ 1 cc to MR. Government Pleader Sr.87713
+ 1 cc to Mr.G. Jeremiah, Advocate SR.86999

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KJI (CO)
EU(11/01/2018)



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