

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 4.1.2017

CORAM

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
and
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.A.No.1304 of 2016
and

C.M.P.Nos.16914 and 19208 of 2016

M.Saraswathy,
President,
Narasingapuram Village Panchayat,
Wallajah Panchayat Union,
Vellore District. Appellant

-vs-

1. The District Collector,
Vellore District, Vellore.
2. The Personal Assistant to District
Collector (Development)
Vellore District, Vellore.
3. The Block Development Officer,
(Village Panchayat),
Wallajah Panchayat Union,
Vellore District.
4. Thiru.V.K.Vasudevan,
Panchayat Secretary,
V.C.Mottur Village Panchayat,
Wallajah Panchayat Union,
Vellore District. Respondent

Writ Appeal filed under clause 15 of the Letters Patent against the order dated 6.10.2016 rendered in W.P.No.8151 of 2016.

Wp8151/2016 Writ Petition filed Under Article 226 of the Constitution of India Praying for Issue of Writ of Certiorari Calling for the records passed by the second respondent in Na.Ka. PC1/3039/ 2012 dated 11.02.2016 and the consequential orders passed by the third respondent in Na.Ka. A2/332/ 2012 dated 16.02.2016 and quash the same

For Appellant : Mr.S.Kamadevan
For R1 to R3 : Mr.P.S.Sivashanmugasundaram,
Special Government Pleader
For R4 : Mr.E.P.Senniyangiri

J U D G E M E N T

NOOTY.RAMAMOHANA RAO, J.

This Writ Appeal, under Clause 15 of the Letters Patent, has been preferred by the writ petitioner, aggrieved by the dismissal of the writ petition instituted by her.

2. The writ petition is instituted calling in question the correctness of the order passed on 11th February 2016, by the Personal Assistant to District Collector (Development) accommodating the fourth respondent as Panchayat Secretary of Narasingapuram Village Panchayat, Wallajah Panchayat Union, Vellore District. The writ petitioner/appellant is the elected President of the said Narasingapuram Village Panchayat and consequently, she is the Executive Authority of the said Panchayat.

3. The learned counsel for the appellant would contend that contrary to the scheme of statutory provisions governing the Village Panchayat Secretaries viz., the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules, 2013, in particular, in contravention of Rule 5, the impugned order of transfer has been passed by the second respondent in the writ petition and hence, the said order ought to have been interdicted by the learned Single Judge instead of dismissing the writ petition merely on the ground that the fourth respondent had joined the service of the Panchayat on 16.2.2016 itself, which is few days prior to the date of institution of the writ petition.

4. It is true that the Government of Tamil Nadu framed the Tamil Nadu Village Panchayat Secretaries (Conditions of Services) Rules, 2013, exercising power conferred by sub-Section (1) of Section 102 of the Tamil Nadu Panchayats Act, 1994. Therefore, the said Rules are enforceable Rules. Under Rule 4 of these Rules, the Personal Assistant to the Collector (Development) has been constituted as the appointing authority for the post of Panchayat Secretaries. Rule 5 deals with qualifications for appointment to the post of Panchayat Secretaries. Sub-Rule (2) of Rule 5 states that no person

shall be appointed to the post unless he is a resident of the village Panchayat concerned. An argument is developed on this score by the learned counsel that since the fourth respondent in the writ petition is not a resident of Narasingapuram Village Panchayat, he ought not to have been posted as Panchayat Secretary in the said Panchayat. It is plain from Rule 5 that qualifications have been prescribed for the purpose of appointment to the post. Therefore, Rule 5 deals with the initial stage of all appointments whereas Rule 11 of the said Rules talks of the transfers. Therefore, when we read Rules 5 and 11 together, it becomes imminently clear that only at the stage of initial appointment, perhaps, it is required that the candidate seeking appointment is required to be a resident of the Panchayat concerned. Even there, we record our disapproval of the imprecise language employed in Rule 5. Rule 5 talks of qualifications for the purpose of appointment as Panchayat Secretaries. When once a cadre called as Panchayat Secretary has been constituted by the Governor and Rules are framed for the purpose of regulating the conditions of service of such personnel, the question of insisting, even for initial recruitment, that the candidate must be a resident of the Panchayat Union concerned is an absolute redundant factor. Any such eligibility condition for recruitment for public services offends the constitutional rights guaranteed under Articles 14 to 16 of the Constitution of India. It is time, a fresh look is given and corrective measures have to be taken. It is one thing to say that preference will be given in the matter of employment for those who are residing in one Panchayat or Panchayat Union or the other as the case may. But, it is altogether a different thing to confine the recruitment exclusively in favour of the resident of the same Panchayat. In other words, resident of one Panchayat is effectively denied the opportunity to compete for recruitment as Panchayat Secretary to the neighbouring Panchayat. That is not what equality of opportunity in employment guaranteed by Articles 14 and 16 of the Constitution of India, would set out or approve. We, therefore, hope and trust that the State Government will spare adequate consideration for suitably altering the eligibility conditions prescribed in Rule 5.

5. Even otherwise, in the instant case, Rule 5 is not attracted because, the fourth respondent is already appointed to the service. He was kept under suspension pending enquiry as there was a criminal case booked against him. However, the criminal case ended in acquittal. Hence, the necessity of reinstating him in service has arisen. In the meantime, the post earlier held by him was filled up because, it could not be kept vacant. That has created an extraordinary situation where the fourth respondent has to be given a posting order and if he were to be re-posted to the same Panchayat where he was working

earlier, it would result in removal of the existing Panchayat Secretary there. Instead of indulging in such a cumbersome process, the Personal Assistant to the Collector (Development) has chosen a softer option of posting the fourth respondent against the vacancy available at Narasingapuram Panchayat as that would avoid causing hardship to the existing Panchayat Secretary appointed in the place of the fourth respondent originally. Therefore, in the exigency of service and purely for administrative reasons alone, the power is exercised. We are of the opinion that the impugned order of transfer, in fact, falls within the first limb/clause of Rule 11. Whereas Rule 11 (2) talks of the authority for effecting such transfers. Transfers intra-Block are to be made by the Block Development Officer (Village Panchayat) whereas, the inter-Block transfers have to be made by the Personal Assistant to the Collector (Development).

6. The grievance is that the present one is a intra-Block transfer and hence, the Block Development Officer concerned ought to have made the transfer instead of the Personal Assistant to the Collector (Development). It is true that for effecting intra-Block transfers, it is the Block Development Officer, who is the competent authority and it is only for inter-Block transfer, the Personal Assistant to the Collector (Development) derives necessary authority. In a situation as is presented now, perhaps initiation of the process by the Personal Assistant to the Collector (Development), cannot be completely faulted, as he may have to explore a suitable vacancy in yet another Block. It is purely incidental that suitable vacancy became available within the same Block. Extraordinary situations call for or warrant some kind of extraordinary remedies.

7. We are informed that as of now, the writ petitioner/appellant is not the Executive Authority of the Panchayat. A Special Officer has been appointed as the elected tenure of the appellant has come to an end. In the overall consideration of the peculiar facts prevailing on record, though we see some force behind the submission of the learned counsel for the appellant that consultation with the Executive Authority of the Panchayat concerned ought to have been indulged in, we are not inclined to dismiss the Writ Appeal which sought for setting aside the impugned order, only on that ground.

8. The Concise Oxford English Dictionary describes the word 'consult' as under:-
"consult - verb - seek information or advice from someone, especially an expert or professional"

9. It is plain from the meaning of the word 'consult' that

the necessary information either should be sourced from the Executive Authority of the Panchayat/Panchayat Union as the case may be or the same should be passed on to the said authority. In that view of the matter, care should be taken henceforth for passing on prior information to the Executive Authority concerned.

Subject to what has been observed by us, the writ appeal stands disposed of. No costs. The connected miscellaneous petitions are closed.

sd/
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssk

To

1. The District Collector,
Vellore District, Vellore.
2. The Personal Assistant to District
Collector (Development)
Vellore District, Vellore.
3. The Block Development Officer,
(Village Panchayat),
Wallajah Panchayat Union,
Vellore District.
4. The Principal Secretary,
Panchayatraj Department,
of the Government of Tamil Nadu,
Chennai.

+1cc to Mr.EP.Senniyangiri , Advocate SR.No.1370.
+1cc to Mr.S.Kamadevan, Advocate SR.No.692
+1cc to The Government Pleader SR.No.892

W.A.No.1304 of 2016

KJI (CO)
GN(31/01/2017)