



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.01.2017

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

W.P. (MD) No.13314 of 2011

and

M.P (MD) No.1 of 2011

M.Thangadurai

... Petitioner

Vs.

1.The District Collector,

Madurai.

2.The Block Development Officer,

Panchayat Union,

Vadipatty, Madurai District.

3.The President,

Mullipallam Village,

Vadipatty Union Panchayat,

Madurai District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Mandamus, forbearing the office bearers of the third respondent from interfering with the petitioner's lawful right and discharging his duties as clerk as per the order dated 08.08.2011 with the third respondent office.

For Petitioner : Mr.S.Vellaichamy

For Respondents : Mr.K.Guru (for R1 & R2)

Additional Government Pleader
for R1 and R2

Mr.B.Pugalendhi for R3

ORDER

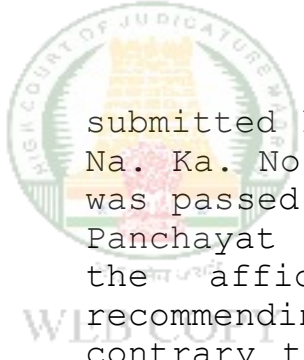
This writ petition has been filed by the petitioner praying for the issuance of a Writ of Mandamus directing the office-bearers of the 3rd respondent from discharging his duties as Clerk, as per order dated 08.08.2011.



2. The case of the petitioner is that he is the resident of Mullipallam Village and he studied upto 12th standard at Vivekananda Higher Secondary School, Thiruvudagam. He was doing agricultural work and thereby eaking out his lively hood. It is the further case of the petitioner that on 05.08.2011 one Sumathi, who was working as the clerk of respondent Panchayat, was promoted and transferred to different place, hence, the post of clerk felt vacant. By exercise of power conferred under G.O.Ms.No.125, dated 05.12.2006, the then incumbent of the 3rd respondent appointed the petitioner as Clerk with effect from 08.08.2011 and he joined duty on the same day. The appointment of the petitioner was also intimated to the 2nd respondent for approval on the same day. It is further case of the petitioner that after the local body election on 17.10.2011, a new incumbent of the 3rd respondent took the office. As that incumbent was inimical towards the petitioner she restrained him from functioning as a clerk. So on 09.11.2011, the petitioner sent a representation to the respondents 1 and 2 requesting them to take action enabling them to do his duties. Since no action has been taken, the present writ petition has been filed.

3. The 2nd respondent filed a counter affidavit stating that previously one Sumathi was working as the Panchayat Clerk in Mullipallam Panchayat and she was transferred on promotion on 05.08.2011. One Manthayan, who was working as Panchayat Secretary for Kuruvithurai Panchayat, was given additional charge as the Mullipallam Panchayat Clerk. In the Panchayat Clerk post fell vacant on 05.08.2011 due to the transfer of Sumathi. But, Manthayan expressed his inability to look after the additional charge on health condition and therefore, by proceedings in Na.Ka. No. 1992/11/T, dated 04.11.2011, one D. Selvam, the Panchayat Secretary in Thenkarai Panchayat was directed to look after the Mullipallam Panchayat Clerk post as additional charge. D. Selvam also is discharging his duties as Panchayat Clerk as additional charge for Mullipallam Panchayat till date. It is further stated in the counter affidavit that there was no proper resolution for appointment of the petitioner and the appointment dated 08.08.2011 was passed incorrect.

4. The incumbent 3rd respondent filed a counter stating that the then President in order to favour the petitioner without the knowledge of the other members of the Panchayat, had tampered the minutes book and had inserted the resolution in respect of the appointment of the petitioner, after the meeting was over. When the members came to know about the manipulation and tampering of the minutes book by the then President, they gave a complaint against the then President to the first respondent herein. The first respondent directed the Assistant Director (Panchayat) to enquire in respect of the said complaint made by the members of the Mullipallam village, Panchayat on 05.09.2011 and the Assistant Director (Panchayat), after conducting enquiry,



submitted his report to the first respondent vide his proceedings Na. Ka. No. 1827/11/A4 dated 02.11.2011 that, no proper resolution was passed in respect of the appointment of the writ petitioner as Panchayat Clerk. Therefore, the averments made in para No.2 of the affidavit that resolution was passed on 08.08.2011 recommending his appointment is totally false incorrect and contrary to the truth. It is further stated that in the counter the resolution dated 08.08.2011 was only manipulated and inserted by then President without the knowledge of the office bearers.

5. Heard the learned Counsel for the petitioner and the learned counsel appearing for the respondent.

6. The specific case of the petitioner is that he was appointed as Clerk of 3rd respondent Panchayat in the place of Sumathi who was promoted and transferred. This factum of promotion and transfer of Sumathi is not disputed by the 3rd respondent, who was competent official. By resolution No. 48 dated 08.08.2011, the Panchayat has chosen to appoint the petitioner as Clerk in the 3rd respondent panchayat. It is only question to that an order of appointment was issued by the then incumbent of 3rd respondent. It seems that the resolution was also forwarded to the 2nd respondent.

7. It is a admitted fact that after election on 17.10.2011 the new incumbent, namely, one Mrs.Seetha, wife of Nagaraj has been elected as President of 3rd respondent Panchayat. It is the very case of the petitioner that this incumbent of the 3rd respondent prevented him from functioning as clerk of 3rd respondent and hence, he made a representation to the 1st and 2nd respondents on 09.11.2011.

8. The resolution for appointment of the petitioner was duly passed on 08.08.2011 by the Panchayat. It is not the case of the respondents 2 and 3 that the appointment of the petitioner was put to challenge in the alleged enquiry by the Assistant Director of Panchayat. The said enquiry report was not filed before the Court.

9. The perusal of the records shows that there was no doubt about the appointment of the petitioner as Clerk of the 3rd respondent Panchayat. As it usual happens the subsequent incumbent did not seems to have relished the appointment of the petitioner as clerk so that seems to have been of power play in the matter that was why the petitioner has submitted the representation dated 09.11.2011 to the respondents 1 and 2 and that fact is not disputed.

<https://hcservices.courts.go.in/hcservices> Considering the rival contention and considering the fact that there are disputed facts involved in the matter, this Court feels that it would suffice to issue a direction to the 1st



respondent, who is the Secretary of Panchayat, to consider the representation of the petitioner with relevant records and pass appropriate orders in this matter.

11. Accordingly, this writ petition is allowed to the extent that the representation of the petitioner, dated 09.11.2011, should be considered by the 1st respondent with relevant records, affording opportunity of hearing to all the respondents and pass appropriate orders relating to the appointment of the petitioner as Clerk of 3rd respondent Panchayat. As the livelihood of the petitioner is involved, the 1st respondent is directed to complete the enquiry and pass orders within a period of eight weeks from the date of receipt of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CSII)

/True Copy/

Sub Assistant Registrar

vsa/skn

To

- 1.The Director of School Education,
Chennai-6.
- 2.The Chief Educational Officer,
Sivagangai.
- 3.The District Educational Officer,
Sivagangai.

+1 cc to Mr. S.Vellaichamy ,Advocate, Sr.No: **3442**

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