

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.26523 of 2011

MRS.R.CHINNAPONNU

W/O.KUMAR,

MARAMPATTI VILLAGE AND POST

UTHANGARAI KRISHNAGIRI DIST.

PETITIONER

Vs.

1 THE COLLECTOR
KRISHNAGIRI DISTRICT KRISHNAGIRI.

2 THE BLOCK DEVELOPMENT OFFICER
UTHANGARAI BLOCK KRISHNAGIRI DIST.

3 THE PRESIDENT
MARAMPATTI PANCHAYAT MARAMPATTI,
KRISHNAGIRI DIST.

4 P.HARIDOSS
S/O.PANNEER SELVAM MARAMPATTI POST
UTHANGARAI TALUK KRISHNAGIRI DIST.

... RESPONDENTS

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to Call for the records of the Resolution No.8 dated 09.11.2011 passed by the 3rd respondent cancelling the appointment of the petitioner as Panchayat Assistant.

For Petitioner : Mr.V.Suthakar

For Respondent No.1 : Mr.M.Karthikeyan, A.G.P.

For Respondent No.2 & 3 : Mr.P.S.Sivashanmugasundaram

For Respondent No.4 : Mr.P.M.Duraisamy

O R D E R

The President of Marampatti Village Panchayat issued public notice calling for appointment to the post of Panchayat Assistant on 17.4.2011. On 18.4.2011, the petitioner applied for appointment to the post of Panchayat Assistant and the third respondent passed a resolution appointing the petitioner as Panchayat Assistant on 2.5.2011. On 9.6.2011, the appointment of the writ petitioner was cancelled as notification for the General election to the Tamilnadu assembly was issued by the State Election Commission and code of conduct came into force as on 2.5.2011. In the aforesaid meeting, the writ petitioner was appointed, afresh as Panchayat Assistant. The second respondent directed the Panchayat President to convene a meeting as the agenda for the earlier meeting conducted on 9.6.2011 was not properly served to the members and accordingly, meeting was conducted on 12.8.2011, after serving the agenda of the meeting to the members and the appointment of the petitioner was once again approved. Subsequently, on 9.11.2011 the appointment of the petitioner was cancelled by resolution No.8, dated 9.11.2011. Therefore, the petitioner has filed the present writ petition before this Court.

2. The second respondent has filed counter affidavit. The learned counsel appearing for the respondents 2 and 3 would submit that initial appointment of the writ petitioner is illegal. At the time of appointing the writ petitioner, Election notification for Tamilnadu assembly election was issued and therefore, the third respondent decided to cancel the appointment of the petitioner and issued new appointment order to the writ petitioner. Subsequently, general body meeting was convened on 9.6.2011 to rectify the illegal appointment. But the said meeting convened by the third respondent is not in accordance with the procedure contemplated under the Act. Therefore, the second respondent was directed to convene meeting after serving notice to the members. The third respondent by its resolution, dated 29.7.2011 convened the general body meeting and the appointment of the writ petitioner was cancelled. Again on 12.8.2011, the petitioner was appointed by violating the provisions of Tamil Nadu Panchayat Act and Rules. The ward members had also made complaint to the first respondent viz., the District Collector, Krishnagiri. Without following the procedure contemplated under the Act, the third respondent also sanctioned salary for the period for which the petitioner has not worked. Thereafter, the newly elected third respondent office has convened the general body meeting on 9.11.2011, wherein it was unanimously decided to cancel the appointment of the writ petitioner as illegal pending disposal of W.P.No.18848

of 2011. Further, it is submitted that the petitioner obtained interim stay at the time of admission and thereafter, this Court by order, dated 29.1.2015, observed that the petitioner was not appointed through Employment Exchange or by soliciting applications by way of public advertisement and vacated the interim order. Therefore, without following the procedure contemplated under the Rules, the petitioner was appointed as Panchayat Assistant by the third respondent. Therefore, the writ petition is liable to be dismissed.

3 The learned counsel for the fourth respondent reiterated the stand taken by the third respondent and submit that selection of the petitioner is contrary to Rules and therefore, the writ petition is liable to be dismissed.

4. Heard the learned counsel for the petitioner, learned Additional Govt. Pleader for the first respondent, learned counsel for the respondents 2 and 3 and the learned counsel for the fourth respondent and perused the materials available on record.

5. The petitioner was appointed as Panchayat Assistant on 17.4.2011 and his appointment was cancelled by the third respondent for the reason that notification for General election to Tamilnadu legislative assembly was issued by the State Election Commission of India, at that time, code of conduct came into force. Subsequently, meeting was convened and once again, the appointment of the petitioner was approved. Thereafter, challenging the appointment of the writ petitioner, 4th respondent has filed writ petition before this Court and obtained interim order. Subsequently, meeting was convened by the newly elected office bearers of the third respondent. The third respondent by order, dated 9.6.2011 appointed the petitioner without following the procedure as contemplated under the Rules and also sanctioned salary for the period for which the petitioner has not worked. Subsequently, newly elected third respondent convened a general body meeting on 9.11.2011 and unanimously decided to cancel the appointment of the writ petitioner as illegal, pending disposal of the writ petition in W.P.No.18848 of 2011. Accordingly, the said appointment was cancelled and the same was communicated to the petitioner. This Court also considered the fact that the petitioner was not appointed through Employment Exchange and also not followed the procedure as contemplated under the Rules, at the time of vacating the interim order. The petitioner has not placed any materials before this Court to show that the appointment of the petitioner as Panchayat Assistant by the third respondent is in

accordance with the procedure as contemplated under the Rules. In the absence of any materials, this Court cannot interfere with the impugned order passed by the third respondent and therefore, the same is liable to be dismissed.

Accordingly, the writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

- 1 THE COLLECTOR
KRISHNAGIRI DISTRICT KRISHNAGIRI.
- 2 THE BLOCK DEVELOPMENT OFFICER
UTHANGARAI BLOCK KRISHNAGIRI DIST.
- 3 THE PRESIDENT
MARAMPATTI PANCHAYAT MARAMPATTI,
KRISHNAGIRI DIST.

+1c to M/S.V.Suthakar, Advocate Sr.77955

+1cc to Mr.P.M.Duraiswamy, Advocate Sr.77237

+1cc to Mr.S.Sivashanmugasundaram, Advocate Sr.77914

W.P.No.26523 of 2011

spd[co]
srg 14/12/2018

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