

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17.07.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.20541 of 2013

and

M.P.No.2 of 2013

Kalaiselvi

..Petitioner

vs

1.The District Collector,  
Krishnagiri District,  
Krishnagiri.

2.The Commissioner,  
Panchayat Union,  
Kaveripattinam,  
Krishnagiri District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the orders in Pro.Na.Ka.No.2913/2009/Ab dated 21.01.2012 of the Second Respondent and (2) Pro.Na.Ka.No.13921/2012/X.2 dated 12.09.2012 of the first respondent, quash the same in so far as it relates to the Petitioner herein and issue consequential direction to the Respondents to allow the Petitioner to continue in service as Cook Helper and to disburse salary from January 2012 onwards.

For Petitioner : Mr.R.Thamaraiselvan

For Respondents : Mr.M.Elumalai, GA for R1  
Mr.V.Jayaprakashnarayanan for R2

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O R D E R

The order of cancellation of appointment and the termination of service of the writ petitioner issued by the District Collector is under challenge in this writ petition.

2.The writ petitioner was appointed as Cook Helper by the Block Development Officer /the second respondent / The Commissioner, Panchayat Union, Kaveripattinam. The appointment was made by the second respondent in proceedings dated

27.07.2007 and accordingly, the writ petitioner was working as Cook Helper for more than five years in the 2<sup>nd</sup> respondent Panchayat Union. Initially, the salary was paid to the writ petitioner and subsequently, it was not credited in her account without any valid reasons. Thus, the writ petitioner approached the respondents and thereafter, submitted a representation on 03.10.2012, seeking certain informations. It was informed by the authorities that the Block Development Officer/The Commissioner, Panchayat Union has no authority to issue an order of appointment for the post of Cook Helper and the Government has not granted any such delegation of powers or authorization, enabling the Block Development Officer/The Commissioner, Panchayat Union to issue an order of appointment. Thus, the appointment of the writ petitioner was irregular and contrary to the rules in force. When the matter was sent for the approval of the District Collector, the District Collector passed an order in proceedings dated 12.09.2012, stating that the Block Development Officer/The Commissioner, Panchayat Union had irregularly appointed the petitioner in the Post of Cook Helper in 2<sup>nd</sup> respondent Panchayat Union and the Government on the Head of the Department have not issued any such authorization or delegation of powers in favour of the Block Development Officer/The Commissioner, Panchayat Union to issue an order of appointment. This apart, suitable disciplinary actions were also issued against the concerned Block Development Officer/The Commissioner, under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, in view of the fact that the initial appointment of the writ petitioner was irregular and the order of appointment was issued by an incompetent authority without any jurisdiction. The District Collector canceled the order of appointment in proceedings dated 12.09.2012 and accordingly, the writ petitioner was relieved from service. Challenging the said impugned order, the present writ petition has been filed.

3. The writ petitioner has stated that the initial appointment of the writ petitioner was made by the Block Development Officer/The Commissioner, Panchayat Union and an order was passed to that effect and the writ petitioner was permitted to join duty. Initially, the salary was paid to the writ petitioner and subsequently, the salary paid to the writ petitioner was not credited in her account. When she approached the authorities, they informed the writ petitioner that the initial appointment made was irregular. The writ petitioner pleads that she is innocent and she is no way connected with any such irregularity. She participated in the process of interview and selected by the Block Development Officer/The Commissioner, Panchayat Union and an order of appointment was issued. When the writ petitioner must be allowed to continue in service.

4.This Court is of an opinion that when an order of appointment had been issued by an incompetent authority, having no jurisdiction and the said order has been sent for the approval of the District Collector and the District Collector in turn, cancelled the order of appointment on the ground that there is no delegation of power or authorization issued by the Government, permitting the Block Development Officer/The Commissioner, Panchayat Union to issue an order of appointment. Thus, the initial appointment of the writ petitioner was irregular and not in accordance with the recruitment rules in force. Further, the Block Development Officers/The Commissioners have not empowered or authorized to issue an order of appointment for the post of Cook Helper in Block Development Officer Panchayat Union or any other Union.

5.This being the legal position, this Court is of an opinion that the order of appointment issued in favour of the writ petitioner was an illegal one and therefore, it is left open to the writ petitioner to participate in the open competitive process, whenever the recruitment notification is issued. However, in respect of the illegal appointment, no relief can be granted and accordingly, the order passed by the respondent is in accordance with law and there is no infirmity as such.

6.Accordingly, the writ petition is devoid of merits and stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

To

1.The District Collector,  
Krishnagiri District, Krishnagiri.

2.The Commissioner, Panchayat Union,  
Panchayat Union,  
Kaveripattinam,  
Krishnagiri District.

+1 C.C. to M/S.V.JEYAPRAKASHNARAYANAN, Advocate SR.NO. 47688

+1 C.C. To Government Pleader SR.NO. 48025

W.P.No.20541 of 2013

BM(CO)

ASK(01/08/2018)



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