



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.02.2018

CORAM

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

W.P.(MD) No.13731 of 2013

and

M.P(MD)No.1 of 2013

S.Lathan

... Petitioner

-vs-

1.The District Collector,
Kanyakumari District.

2.The Assistant Director of Rural Development(Panchayat),
Nagercoil,
Kanyakumari District.

3.The Block Development Officer,
Kuruthancode Panchayat Union,
Kanyakumari District.

4.The President-cum-Executive Officer,
Kattimancode Panchayat,
Kattimancode Post,
Kanyakumari District.

... Respondents

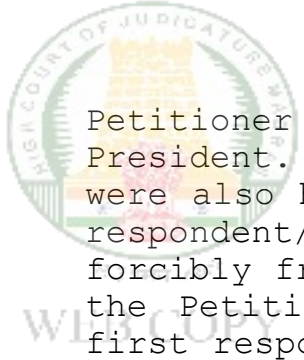
Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents 1 to 3 to consider the Petitioner's representation, dated 27.5.2013 and to direct the fourth respondent to permit the Petitioner to discharge his duties as an Overhead Tank Operator in the fourth respondent Panchayat.

For Petitioner	: M/s.S.C.Herold Singh
For Respondents	: Mr.R.Sethuraman,
1 to 3	Special Government Pleader
For Respondent-4	: No appearance

O R D E R

The relief sought for in this Writ Petition is for a direction to the respondents 1 to 3 to consider the representation of the Petitioner, dated 27.5.2013 and to direct the fourth respondent to permit the Petitioner to discharge his duties as an Overhead Tank Operator in the fourth respondent Panchayat.

2.The Petitioner states that he was engaged as Over-Head Tank Operator and the Petitioner claims that his appointment was approved by the fourth respondent/Panchayat by Resolution, dated 19.4.2009. However, due to his ill-health, he was on leave from 13.4.2011 to 2.10.2011.During the relevant leave period, the



Petitioner handed over the keys to the fourth Respondent/Panchayat President. The Petitioner was permitted to join duty and the keys were also handed over to him. Under these circumstances, the fourth respondent/Panchayat President had taken over the lock and key forcibly from the Petitioner and locked the Over-Head Tank. Thus the Petitioner was constrained to submit a representation to the first respondent on 27.5.2013 and the first respondent has also not taken any action till date.

3.The learned Special Government Pleader appearing on behalf of the respondents 1 to 3 states that the Government in G.O.Ms.No.93, Rural Development Department, dated 26.3.1997 imposed ban in respect of the appointment in the Village Panchayats in Full-time/part-time basis. In violation of the Government Order, the Petitioner has been appointed as Water Tank Attender by the fourth respondent/Panchayat President on 19.4.2000. As such, the appointment of the Petitioner is illegal and the Government order is still in force. The Petitioner was absent from duty for a long period from 13.4.2011 to 2.10.2011.The Petitioner was a daily-waged employee and he was not covered under any service rules or regulations and therefore, he is not entitled to avail any kind of leave as prescribed under the Tamil Nadu Government Leave Rules. Under these circumstances, considering the case of the Petitioner shall not arise at all. When the Petitioner was on leave for a long period and when his services are not regularized and more over, when he was a daily-waged employee, the question of re-instatement does not arise at all.

4.Irrespective of the allegations and counter allegations made by the respective parties to the lis on hand, this Court is of an opinion that the Writ Petitioner was not appointed in accordance with the recruitment rules in force. His appointment was directly in violation of the Government Orders. The Writ Petitioner was engaged on daily wage basis and he was on leave from April 2011 to October 2011. Under these circumstances, the Petitioner has not established any right for reinstatement. Appointment to the permanent post are to be made only by following the recruitment rules in force. Thus even the representation submitted by the Writ Petitioner cannot be directed to be considered, in view of the fact that the Writ Petitioner has not established any right for reinstatement or appointment to the post of Over-Head Tank Operator.

5.Accordingly, the Writ Petition stands dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-
Assistant Registrar (CS-III)

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Sub Assistant Registrar



To

1.The District Collector,
Kanyakumari District.

2.The Assistant Director of Rural Development (Panchayat),
Nagercoil,
Kanyakumari District.

3.The Block Development Officer,
Kuruthancode Panchayat Union,
Kanyakumari District.

+1cc to M/S.S.C.Herold Singh, Advocate SR.No. 49738
+1cc to Special Government Pleader, SR.No. 50254

W.P. (MD) No.13731 of 2013
20.02.2018

vsn

JM/GT/SAR 2/08.03.2018/3P/6C