

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.Nos.20686 to 20688 & 36624 to 36626 of 2015

and

MP.Nos.1,1,1,1,1,1 of 2015

1 B.NANDAKUMAR ... PETITIONER in WP No.20686 of 2015
1 K.GOPI ... PETITIONER in WP No.20687 of 2015
1 A.VELU ... PETITIONER in WP No.20688 of 2015
1 B.NANDAKUMAR ... PETITIONER in WP No.36624 of 2015
1 K. GOPI ... PETITIONER in WP No.36625 of 2015
1 A.VELU ... PETITIONER in WP No.36626 of 2015

.Vs.

1.THE DISTRICT COLLECTOR,
TIRUVALLUR DISTRICT,
TIRUVALLUR.

2.THE SUB COLLECTOR,
TIRUVALLUR.

3.THE TAHSILDHAR,
UTHUKKOTTAI,
TIRUVALLUR DISTRICT.

4.THE DISTRICT EMPLOYMENT OFFICER,
TIRUVALLUR DISTRICT,
TIRUVALLUR.

5.THE CHIEF SECRETARY TO THE GOVERNMENT
OF TAMIL NADU,
SECRETARIAT,
FORT ST.GEORGE,
CHENNAI-9.

... 5th RESPONDENT IN W.P. 20686 TO 20688 OF 2015
(R-5 IS SUO-MOTU IMPEADED AS PER
ORDER DATED 10.07.2015 BY D.H.P.J.
IN WPS.20686 TO 20688 OF 2015)

6.THE SECRETARY TO GOVERNMENT OF TAMILNADU,
REVENUE DEPARTMENT,
SECRETARIATE, FORT ST. GEORGE,
CHENNAI-9.

...5TH RESPONDENT IN W.P.36624 TO
36626 OF 2015

WP No.20686 of 2015:

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records on the file of 2nd respondent pursuant to impugned order in Na. Ka. 3356/2011/A1 dt 9.6.2015, quash the same and consequently direct the respondents to allow the petitioner to join and continue in the post of Village Assistant based on order of appointment issued by the 3rd respondent in Na. Ka. 3111/10/A3 dt ...02.2012 with all consequential benefits with effect from 31.3.2015 AN.

WP No.20687 of 2015:

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records on the file of 2nd respondent pursuant to impugned order in Na. Ka. 3356/2011/A1 dt 9.6.2015, quash the same and consequently direct the respondents to allow the petitioner to join and continue in the post of Village Assistant based on order of appointment issued by the 3rd respondent in Na. Ka. 3111/10/A3 dt ...02.2012 with all consequential benefits with effect from 31.3.2015 AN.

WP No.20688 of 2015:

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records on the file of 2nd respondent pursuant to impugned order in Na. Ka. 3356/2011/A1 dt 9.6.2015, quash the same and consequently direct the respondents to allow the petitioner to join and continue in the post of Village Assistant based on order of appointment issued by the 3rd respondent in Na. Ka. 3111/10/A3 dt ...02.2012 with all consequential benefits with effect from 31.3.2015 AN.

WP No.36624 of 2015:

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus Calling for the records on the file of 3rd Respondent pursuant to impugned order in Na.Ka.3111/2010/A3 dated 05.10.2015, quash the same and consequently direct the Respondents to allow the petitioner to join and continue in the post of Village Assistant based on order of appointment issued by the 3rd Respondent in Na.Ka.3111/10/A3 dated ..02.2012 with all consequential benefits with effect from 31.03.2015 AN.

WP No.36625 of 2015:

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus Calling for the records on the file of 3rd Respondent pursuant to

impugned order in Na.Ka.3111/2010/A3 dated 05.10.2015, quash the same and consequently direct the Respondents to allow the petitioner to join and continue in the post of Village Assistant based on order of appointment issued by the 3rd Respondent in Na.Ka.3111/10/A3 dated ..02.2012 with all consequential benefits with effect from 31.03.2015 AN.

WP No.36626 of 2015:

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus Calling for the records on the file of 3rd Respondent pursuant to impugned order in Na.Ka.3111/2010/A3 dated 05.10.2015, quash the same and consequently direct the Respondents to allow the petitioner to join and continue in the post of Village Assistant based on order of appointment issued by the 3rd Respondent in Na.Ka.3111/10/A3 dated ..02.2012 with all consequential benefits with effect from 31.03.2015 AN.

For Petitioner : Mr.D.Lakshmipathy
(in All WPs)

For Respondents : Mrs.Narmada Sampath
(in All WPs)
Additional Advocate General
Asst. by
Mr.M.Elumalai
Government Advocate

COMMON ORDER

This common order disposes of the following petitions.

2.The Tahsildar, Tiruvallur District gave call letters to the petitioners attend an interview for filling up the vacancies of Village Assistants in Uthukkottai, Tiruvallur District. The petitioners were recruited in January and February 2012. After they were recruited, the Sub Collector, Tiruvallur passed an order on 17.02.2012, cancelling their appointments on the ground that there is discrepancy in their position in the seniority list. This order came to be challenged before this Court in W.P.No.17532 of 2012. This Court by an order dated 05.12.2014, set aside the order dated 17.02.2012 on the short ground that their appointments were cancelled without affording any opportunity to them. Paragraph 4 of the said order is extracted hereunder:

"4.Admittedly, the petitioners are appointed in pursuant to the call letters issued to them. By impuged orders, appointment of the petitioners have been cancelled without even affording opportunity to them. In such view of the matter, the impuged orders are set aside but however,

liberty is given to the concerned respondents to proceed afresh in the manner known to law."

3.The Sub Collector, Tiruvallur, subsequently passed an order on 09.06.2015, stating that pursuant to the order of the High Court, notices were given to 20 candidates, whose appointments were cancelled and they were asked to show cause as to why their appointments should not be cancelled. Explanations were submitted by 19 of them. The candidates whose appointments were cancelled, appeared in the office of the Sub Collector, Tiruvallur along with the original documents and after examining the original documents, the Sub Collector, Tiruvallur, confirmed the orders of cancellation of the petitioner and other candidates on 09.06.2015.

4.The order dated 09.06.2015 was challenged, by filing W.P.Nos.20686 to 20688 of 2015. In the said writ petitions it was challenged that the Sub Collector is not the Appointing Authority, and therefore, he should not have cancelled the orders and it was the Tahsildar, who has to pass the orders for cancellation. This Court by an order dated 23.07.2015, stayed the order dated 09.06.2015, the operative portion of the order reads as under:

"5.The learned Additional Advocate General seeks three months time to comply with the order in M.Govindasamy .Vs. The Collector, Office of the Collectorate, Dharmapuri District (W.P.Nos.31317 of 2012 and 9600 of 2013 dated 19.02.2015) either by issuing necessary amendment to the Special Rules or by framing a new set of Special Rules.

6.As far as these writ petitions are concerned, the petitioners filed W.P.Nos.17532 of 2014, 7615 of 2012 and 12889 of 2012 respectively, when the second respondent herein cancelled their appointments as Village Assistants. In those cases, the appointments were issued by the third respondent herein. The cancellation was issued by the second respondent without notice. Hence, this Court, by a common order dated 05.12.2015, while setting aside the cancellation orders impugned in those writ petitions along with another writ petition, has directed the concerned respondents to proceed afresh in the manner known to law. Thereafter, the impugned orders are now passed by the second respondent.

7.In view of the Special Rules governing the appointment of Village Assistants, the concerned authority in these

cases is the third respondent, who alone is the competent authority to pass orders. The order passed by the second respondent is without jurisdiction. Hence, there shall be an order of interim stay".

5. Pending writ petitions, the Tahsildar passed an order dated 05.08.2015, cancelling the appointment of the petitioner. A perusal of the order would show that the Tahsildar has narrated the entire sequence and observed that after the order dated 05.12.2014, was passed, 20 persons came to the Office of the Sub Collector and appeared before the Tahsildar by giving the relevant orders. The Tahsildar has simply endorsed the findings of the Collector in his order dated 05.10.2015.

6. The order dated 05.10.2015 is the subject matter of challenge in W.P.Nos.36624 to 36626 of 2015 dated 18.11.2015. This Court by an order dated 18.11.2015 has passed an order granting Status Quo till 03.12.2015. The relevant portions of the order reads as Under:

"To grant an interim stay of all further proceedings of the impugned order passed by the 3rd Respondent in Na.Ka.3111/2010/A3 dated 05.10.2015, so as to enable the petitioner to temporarily join in the post of Village Assistant, Nayapakkam Village, or in any other Village in Uthukkottai Taluk, Tiruvallur District, (IN MP.1/15) pending disposal of the Writ Petition (in W.P.36624/15).

(3) To grant an interim stay of all further proceedings of the impugned order passed by the 3rd Respondent in Na.Ka.3111/2010/A3 dated 05.10.2015, so as to enable the petitioner to temporarily join in the post of Village Assistant, Periyapalayam Village, or in any Village in Uthukkottai Taluk, Tiruvallur District, (IN MP.1/15) pending disposal of the writ petition (IN WP.36625/15) and

(4) To grant an interim stay of all further proceedings of the impugned order passed by the 3rd Respondent in Na.Ka.3111/2010/A3 dated 05.10.2015, so as to enable the petitioner to temporarily join in the post of Village Assistant, Periyapalayam Village, or in any Village in Uthukkottai Taluk, Tiruvallur District, (IN MP.1/15) pending disposal of the writ petition (IN WP.36626/15) respectively.

Order: These petitions coming of for orders upon perusing the petitions and the

respective affidavits filled in support thereof and upon hearing the arguments of M/s.M.Ravi, advocate for the petitioner in each the petitions and of M/s.V.Jayaprakash Narayanan, Special Government Pleader on behalf of the Respondents in all the petitioners the court made the following order:-

Against the cancellation of appointment of these petitioners, this Court earlier passed an order in W.P.No.20686/2015 on 23.7.2015 and thereafter, the impugned order came to be passed on 5.10.15. Furthermore, a notification for appointment of fresh candidates also issued fixing the time limit of receiving applications on 9.11.2015. Learned Additional Government Pleader submitted that the required applications have been received by the authorities. Hence, in the interest of justice, there shall be an order of status quo till 3.12.2015. Post the matter on 3.12.2015 for getting proper instructions, along with connected writ petitions."

7.Since the petitioners had not been taken back pursuant to the stay order dated 9.06.2015 and since the Tahsildar had passed the order during the pendency of the orders of this Court, Cont.P.Nos.2044 to 2046 of 2015 have been filed before this Court.

8.This Court by an order dated 25.02.2016, stayed the operation of the order dated 05.10.2015. The Tahsildar once again has passed an order dated 28.04.2016, wherein, the Tahsildar had taken a stand that since the matters are pending before the Court, the applications submitted by the petitioners cannot be considered.

9.Heard the learned counsel for the parties.

10.The narration of the facts could show that it is admitted by both sides that it is the Tahsildar who is the Competent Authority to pass the orders of cancellation of appointment of Village Assistants. The Tahsildar has passed the order impugned in W.P.Nos.36624 to 36626 of 2015 by giving the same reason as given by the Sub Collector in his order dated 09.06.2015. When the Sub Collector has passed an order dated 09.06.2015, the Tahsildar, who is an authority subordinate to the Sub Collector should not have passed any other order that to when the order of the Sub Collector is under challenge in this Court. The spirit of the order dated 05.12.2015, remanding the matter back to the concerned respondent (s) was to give an effective disposal to the representations. The facts narrated above does not show that

there was any effective consideration of the grievance of the parties. The Sub Collector has passed an order on 09.06.2015. Realising that he did not have the jurisdiction and during the pendency of the stay of the order dated 09.06.2015, the Tahsildar on the very same documents without there being any consideration or application of mind, has passed the very same order which only amounts to rectifying the defects without application of mind. This cannot be accepted. Further, it is to be noticed that the orders dated 09.06.2015 and 05.10.2015 have been stayed by this Court by various orders. The petitioners have not yet been put back to their position which is the consequences of the stay passed by this Court of the orders dated 09.06.2015 and 05.10.2015 passed by the Sub Collector and Tahsildar respectively.

11. This Court instead of proceeding ahead with the contempt which has prima facie been committed by the Sub Collector and the Tahsildar, directs the respondents to reinstate the petitioners back as Village Assistants. It is made clear that they are not entitled to any back wages for the period during which they were not working. Admittedly, it is the Tahsildar who is the Competent Authority to pass orders of cancellation of appointment.

12. This Court directs the Tahsildar, Tiruvallur to consider the representations of the petitioners once again uninfluenced by the orders passed by the Sub Collector dated 09.06.2015 and give independent reasoning on the representations. This Court is constrained to observe that these petitioners are not the authors of the seniority list given by the employment exchange. The seniority list is given by the employment exchange itself. The petitioners, therefore, cannot be held responsible for any statement in the employment exchange. This however does not mean that if the petitioners have furnished any wrong fact/information to the employment exchange, they would still be entitled to any benefit from such wrong facts/information. The learned Additional Advocate General Specifically pointed out that the date of birth of B.Nandakumar, the petitioner in W.P.No.20686 of 20115 is 05.06.1983 is shown as 14.06.1996, which according to the learned Additional Advocate General means that he was only 13 years on the date when the employment exchange gave the certificate.

13. The orders which have been passed during pendency of writ petitions cannot be looked into for the reason that these orders amount to overreaching the issue pending in the High Court. The High Court was seized of the issue as to whether the impugned orders dated 09.06.2015 was passed in accordance with law or not. The Tahsildar ought not to have therefore passed the order dated 17.10.2015. Though it amounts to interference in the administration of justice,

this Court is not taking any action against the Tahsildar and the matter is sent back to the Tahsildar. It is for the Tahsildar, to apply his own mind and pass an independent order with reasons and take into account the fact that the petitioners are not liable for any mistake committed by the employment exchange while issuing certificates which is the basis for cancellation of the order appointing them as Village Assistant. The Tahsildar is directed to pass orders within a period of ten weeks from the date of receipt of a copy of the order.

Writ Petitions are allowed. No Costs.
Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The District Collector,
Tiruvallur District,
Tiruvallur.
- 2.The Sub Collector,
Tiruvallur.
- 3.The Tahsildhar,
Uthukkottai,
Tiruvallur District.
- 4.The District Employment Officer,
Tiruvallur District,
Tiruvallur.
- 5.The Chief Secretary to the Government
of Tamil Nadu,
Secretariat,
Fort St.George, Chennai-9.
- 6.The Secretary to the Government of Tamil Nadu,
Revenue Department,
Secretariat, Fort st. George, Chennai.

+1cc to Mr.D.Lakshmipathy, Advocate Sr.82831
+1cc to M/s.C.Uma, Advocate Sr.81995

W.P.Nos.20686 to 20688 &
36624 to 36626 of 2015