

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2019

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
And
THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.A.No.1602 of 2018
And
C.M.P.Nos.12888 and 12889 of 2018

The District Collector,
Ariyalur District,
Ariyalur. Appellant

Vs.

1.P.Andiappan

2.The President,
Thalavai Village Panchayat,
Sendurai Taluk,
Ariyalur District.

3.A.Varatharasu Respondents

Prayer:

Writ appeal filed under Clause 15 of the Letters Patent against the order dated 27.11.2014 made in W.P.No.27862 of 2011.

Prayer in W.P.No.27862 of 2011: Writ petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari calling for the proceedings of the 1st Respondent in Na.Ka.No.1674/09 a3, dated 10/07/2009 and the Consequential orders passed by the 1st Respondent in Na.ka.No.2131/2011/a3, dated 16.08.2011 and quash the same.

For Appellant : Mrs.A.Sri Jayanthi
Special Government Pleader

For Respondents : Mr.K.Thilageswaran for R1
No Appearance for R2 and R3

J U D G M E N T

(Judgment of the Court was delivered by K.K.SASIDHARAN,J.)

The first respondent was initially appointed as Village Assistant by the President, Thalavai Village Panchayat, Sendurai Taluk, Ariyalur District. The appointment was cancelled by the District Collector on the ground that he was over aged. The said order was challenged before the writ Court. The writ petition was allowed and the matter was remitted to the Village Panchayat for fresh consideration. Thereafter the very same first respondent was appointed as Village Assistant by the President. The Resolution appointing him to the post of Village Assistant was sent to the Block Development Officer. The Block Development Officer in turn took up the matter with the District Collector. The District Collector accepted the report filed by the Block Development Officer and the appointment of the first respondent was cancelled. The proceedings of the District Collector was challenged by the first respondent before the writ Court. By the time the writ petition was taken up, the third respondent was appointed. The learned Single Judge allowed the writ petition by directing the District Collector to accommodate the first respondent in any one of the future vacancies as Village Assistant without any right to claim backwages. Feeling aggrieved, the appellant has come up with this intra court appeal.

2.We have heard the learned Special Government Pleader appearing on behalf of the appellant. We have also heard the learned counsel appearing on behalf of the first respondent.

3.The factual matrix indicates that even without issuing Notification or calling for sponsorship from the Employment Exchange, the first respondent was appointed as a Village Assistant by the second respondent. The said appointment appears to have been approved by the Block Development Officer. Thereafter the appointment was cancelled primarily on the ground that the first respondent failed to satisfy the eligibility criteria. The said order was challenged before this Court. The writ petition filed by the first respondent in W.P.No.27600 of 2009 was allowed by this Court. The matter was remitted to the appointing Authority. The President of the Panchayat once again appointed the first respondent in the post of Village Assistant. The Resolution was sent to the Block Development Officer for approval. The Block Development Officer in his report to the Collector submitted that after remitting the matter the very same person was appointed as Village Assistant notwithstanding the earlier order of cancellation on the ground that he was over aged. The District Collector therefore cancelled the appointment.

4.The Panchayat appears to have appointed the third respondent in the vacancy caused on account of the cancellation of the appointment of the first respondent. The learned Single Judge was not correct in directing the appellant to accommodate the first respondent in any one of the future vacancies even after agreeing with the State that he was over aged.

5.There is no dispute that the appointment of the first respondent was not by adopting a transparent procedure by the President of the Panchayat. There was no opportunity given to others to take part in the process of selection. The first respondent was appointed to the post without there being any Notification issued to that effect or calling for sponsorship from the Employment Exchange. We are therefore of the view that the very appointment of the first respondent was in violation of the provisions of the Constitution which gives equal opportunity to all the citizens of the Country.

6.There is no question of giving alternative appointment to the first respondent once it is found that his appointment is void ab initio as he fails to fulfil the eligibility criteria. We are therefore of the view that the appellant must succeed.

7.The order dated 27.11.2014 is set aside. The writ petition in W.P.No.27862 of 2011 is dismissed.

8.In the upshot, we allow the intra court appeal. No costs. Consequently, the connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1) The President,
Thalavai Village Panchayat,
Sendurai Taluk, Ariyalur District.

2) The District Collector,
Ariyalur District.

+1 cc to the Government Pleader, S.R.No.25124

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NRL (CO)
SSM(23/04/2019) .