

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.19413 of 2019
& WMP No.18913 of 2019

M.Balamurugan

.. Petitioner

Vs.

The Block Development Officer (Village Panchayat),
Gudimangalam Block,
(Special Officer Virugalpatti Village Panchayat)
Tirupur District.

.. Respondent

Petition filed under Article 226 of The Constitution of India praying for issuance of a Writ of Certiorari to call for the records pertaining to the order bearing Na.Ka.No.1838/2017/A4 dated 26.06.2019 passed by the respondent and quash the same.

For Petitioner .. Ms.T.Hemalatha

For Respondent .. Mrs.R.Janaki, AGP

ORDER

This writ petition has been filed seeking for issuance of a Certiorari to call for the records pertaining to the order bearing Na.Ka.No.1838/2017/A4 dated 26.06.2019 passed by the respondent and quash the same.

2. When the matter is taken up for hearing today, the learned counsel appearing for the petitioner would submit that the suspension order dated 26.06.2019 is not passed by the respondent /competent authority under the relevant Rules and therefore, the suspension order suffers from want of jurisdiction. The learned counsel would draw the attention of this Court to the Tamilnadu Village Panchayat Secretaries (Conditions of service) Rules 2013. She would further submit that as per Rule 4, the appointing authority to the post occupied by the petitioner is Personal Assistant (Development) to the Collector. Under Rule 17 of the Rules, when the appointing authority alone is empowered to pass the order of suspension in respect of the petitioner's post, the suspension

order passed against the petitioner by the respondent who is not competent, is without jurisdiction and the same is liable to be interfered with.

3. At this, the learned Additional Government Pleader appearing for the respondent has filed counter affidavit, in which a reference is made to the instructions issued on 21.03.2018 modifying the position of the appointing authority by including some other official and she would therefore, submit that the order passed by the respondent is valid since the respondent has been made as a competent authority.

4. This Court is unable to countenance such arguments advanced on behalf of the respondent for the simple reason that the rule position is otherwise, denoting that the competent authority in respect of the petitioner to exercise the power of suspension, is Personal Assistant (Development) to the Collector, whereas, the respondent who passed the impugned order of suspension, being Block Development Officer, is not competent authority. However, the learned learned Additional Government Pleader appearing for the respondent would submit subsequently, the appointing authority has been modified by way instructions dated 21.03.2018 substituting the other official in the place of Personal Assistant (Development) to the Collector and thereby, the respondent/Block Development Officer (Village Panchayat) is also the competent authority, who can pass suspension order. A statutory provision as contained in the Rules cannot be altered or amended by passing any executive orders by the Government in substituting the respondent herein in the place of Personal Assistant (Development) to the Collector. The authority who is empowered to pass suspension order in respect to the post held by the petitioner as per the Rules alone is competent to pass the order of suspension and no other authority can be empowered unless the Rules are amended. Therefore, this Court is of the considered view that the impugned order of suspension suffers from want of jurisdiction and the same is liable to be interfered with.

5. In view of the above, the writ petition is allowed and the order of suspension in Na.Ka.No.1838/2017/A4 dated 26.06.2019 passed by the respondent, is hereby quashed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

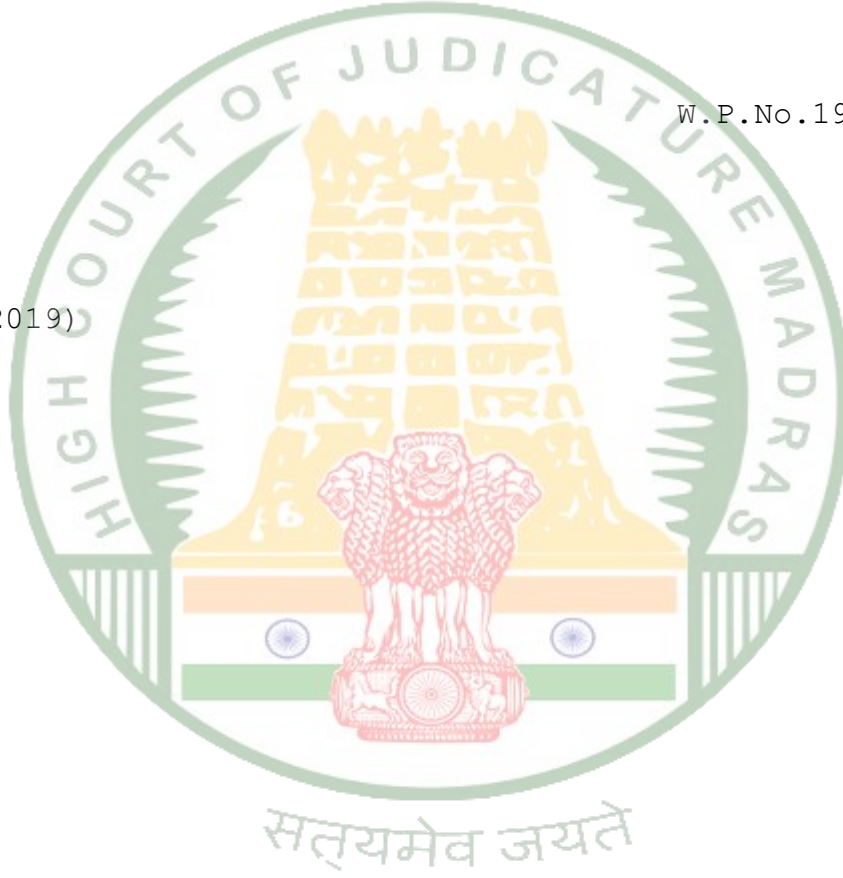
To

The Block Development Officer(Village Panchayat),
Gudimangalam Block,
(Special Officer Virugalpatti Village Panchayat)
Tirupur District.

+1 CC to Mr.V. Suthakar, Advocate sr 71505.

W.P.No.19413 of 2019

RP (CO)
SP (28/08/2019)



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