

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2020

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.34216 of 2007 &
MP.No.2 of 2007

D.Jayakumar

... Petitioner

Vs.

1.District Collector,
Thiruvallur District,
Thiruvallur.

2.Block Development Officer (Village Panchayat),
Tiruttani Panchayat Union,
Tiruttani, Thiruvallur District.

3.President,
T.C.Kandigai Panchayat,
Tiruttani Taluk, Thiruvallur District.

4.S.Balaji ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records pertaining to the resolution passed by the 3rd respondent in Resolution No.29 dated 22.08.2007 and the consequential proceedings of the 3rd respondent in No. Nil dated 24.08.2007 and quash the same.

For Petitioner : Mr.P.Ganesan
for Mr.S.Mani

For Respondents 1 & 2 : Mr.K.Magesh
Special Government Pleader

For Respondents 3 : No appearance

For Respondent 4 : Mr.V.Vijay Shankar

ORDER

This writ petition has been filed by the petitioner challenging the Resolution No.29 dated 22.08.2007 passed by the 3rd respondent and the consequential proceedings of the 3rd respondent in No. Nil dated 24.08.2007.

2. It is the case of the petitioner is that the fourth respondent was appointed as a Part Time Clerk on consolidated sum in 1999 in the third respondent Panchayat. At that time, he got better job and hence, he resigned the present job. After passing resolution, the third respondent appointed one Murali to the said post. Thereafter, the said Murali has also resigned his Job. Subsequently, the petitioner was appointed in the said post on 01.11.2004. In such circumstances, the Government has issued orders in G.O.Ms.No.175, Rural Development Department Dated 05.12.2006 fixing the time scale to the Full time and Part time Panchayat Clerk. Thereafter, on 22.08.2007, the Panchayat passed a resolution whereby the fourth respondent was directed by the then President not to attend the office from 01.11.2004 and he was not properly relived and therefore, resolution whereby resignation of the fourth respondent accepted is liable to be cancelled and the fourth respondent is entitled for the reinstatement. On knowing this, the petitioner has filed this writ petition challenging the said resolution dated 22.08.2007.

3. Learned counsel for the petitioner would submit that the fourth respondent has not come forward with any such plea that he was forcibly sent out of the post. He himself has given resignation letter on 12.10.2004 and the same was accepted by way of due resolution on 19.10.2004. He has also submitted that insofar as petitioner's appointment is concerned, it was duly passed by the resolution and nobody has challenged the same and it has become final and now the petitioner is working as Secretary to the said Panchayat. He also submitted that insofar as fourth respondent is concerned, he has not put forward any such claim that he has not resigned the post and hence, passing of Resolution No.29 dated 22.08.2007 by the 3rd respondent and the consequential proceedings of the 3rd respondent in No. Nil dated 24.08.2007 are illegal and need to be set aside.

4. Learned Special Government Pleader appearing for the respondents 1 & 2 would submit that the petitioner was appointed by passing the resolution by the Panchayat. Learned Special Government Pleader has also submitted that the illegality committed by the then President of the third respondent i.e., relieving the fourth respondent by passing resolution, the third respondent conducted a council meeting on 22.08.2007 and by resolution No.29, the fourth respondent was appointed as Panchayat Assistant on Part time basis in consolidated payment.

5. Learned counsel for the fourth respondent would submit that the appointment of the petitioner is illegal and the fourth respondent did not give any resignation letter and he was forcibly removed from the duty as if he resigned the job. Therefore, appointment of the petitioner is illegal and hence, this writ petition is liable to be dismissed.

6. Heard learned counsel for the petitioner, learned Special Government Pleader appearing for the respondents 1 & 2 and the learned counsel for the respondent 4.

7. The petitioner was originally appointed as a Part Time Clerk (Assistant) in the year 2004 and after several promotion, now he is a Secretary to the said Panchayat. If at all the fourth respondent was forcibly removed from the duty, he neither challenged the resolution dated 19.10.2004 through which the Panchayat accepted his resignation nor challenged the resolution dated 01.11.2004 through which the Panchayat appointed the petitioner as a Part Time Clerk.

8. Considering the facts and circumstances of this case, Resolution No.29 dated 22.08.2007 passed by the 3rd respondent and the consequential proceedings of the 3rd respondent in No. Nil dated 24.08.2007 are liable to be set aside.

9. In view of the above, Resolution No.29 dated 22.08.2007 passed by the 3rd respondent is set aside and consequential proceedings of the 3rd respondent in No. Nil dated 24.08.2007 is quashed. Accordingly, this writ petition is allowed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Asst. Registrar (CS)

Sub Asst. Registrar

//True Copy//

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To

1.District Collector,
Thiruvallur District, Thiruvallur.

2.Block Development Officer (Village Panchayat),
Tiruttani Panchayat Union,
Tiruttani, Thiruvallur District.

3.President,
T.C.Kandigai Panchayat,
Tiruttani Taluk, Thiruvallur District.

+1CC TO The Government Pleader SR.No.38429/2020
+1CC to Mr.K.Magesh Special Government Pleader SR.No.38312
+1cc to MR. M.S.Palaniswamy, Advocate SR.No.38610/2020

W.P.No.34216 of 2007

SV(CO)
VC (19/12/2020)