



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.11031 of 2020

and

W.M.P. (MD) .Nos.9673 to 9675 of 2020

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S.Mariappan

... Petitioner

Vs.

1) The District Collector,
Virudhunagar District.

2) The Revenue Divisional Officer,
Aruppukottai.

3) The Tahsildar,
Virudhunagar.

4) R.Vivek

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order passed in M.3/393/2020 by the third respondent, dated 18.08.2020 along with the list of counselling for posting Village Administrative Officers in A & B Villagers within Virudhunagar Taluk through Form II & III and quash the same and further direct the respondent to include the name of the petitioner in the list of counselling for posting Village Administrative officers in 'A' & 'B' villages within Virudhunagar Taluk through Form II & III.

For Petitioner

: Mr.T.S.Mohamed Mohideen

For R-1 to R-3

: Mr.S.Dhayalan

Government Advocate

O R D E R

The prayer sought for in this writ petition is for a Writ of Certiorarified Mandamus, calling for the records relating to the order passed in M.3/393/2020 by the third respondent, dated 18.08.2020 along with the list of counselling for posting Village Administrative Officers in A & B Villagers within Virudhunagar Taluk through Form II & III and quash the same and further direct the respondent to include the name of the petitioner in the list of counselling for posting Village Administrative officers in 'A' & 'B' villages within Virudhunagar Taluk through Form II & III.

2.Heard Mr.T.S.Mohamed Mohideen, learned counsel for the petitioner and Mr.S.Dhayalan, learned Government Advocate appearing for the respondents 1 to 3.



3. With the consent of the learned counsel on both sides, this writ petition is taken up for final hearing and disposed of at the admission stage itself. In view of the order going to be passed in this writ petition, notice to the fourth respondent is dispensed with.

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4. The petitioner is working as a Village Administrative Officer against whom some complaint seems to have received from the Village Administrative Officer association and accordingly some enquiry is pending. In view of the pendency of the enquiry, in an order dated 18.08.2020, issued by the third respondent, the name of the petitioner has not been included in the list of the officers fit for consideration for the purpose of general counselling for transfer. In this regard, the name of the petitioner has not been included only because of the enquiry is pending against him. However, it is the case of the petitioner that, some of the Village Administrative Officers lodged complaint against the petitioner and therefore disciplinary proceedings is initiated pursuant to which the petitioner was suspended. Subsequently, without prejudice to department proceedings the suspension order was revoked. Eventhough, the suspension was revoked, such persons were not considered for transfer from Group "B" village to Group "A" village. Therefore, insofar as the petitioner is concerned, according to him, the petitioner was discriminated, challenging the non inclusion of his name in the list of general counselling, the petitioner has approached this Court by filing this writ petition.

5. Mr. T. S. Mohammed Mohideen, learned counsel for the petitioner has reiterated the aforesaid facts and would submit that, so far as the petitioner is concerned, the complaint against the petitioner has been preliminarily enquired for which response has been given by the petitioner. No disciplinary proceedings has been initiated and no charge memo has been served on the petitioner and that being so, since the law does not permit the respondent for excluding the petitioner without issuance of charge memo, such a non inclusion of the name of the petitioner on the part of the respondent is impermissible. Therefore, on that ground, the interference of this Court is sought for.

6. Heard the learned Government Advocate appearing for the respondent, who, on instructions, would submit that, there has been a complaint by the Village Administrative Officer's association against the petitioner. The said complaint is being enquired and after enquiry, the respondent would decide to take disciplinary action against the petitioner and that is the reason why the name of the petitioner not been included for the general counselling for the purpose of transfer and posting of Group "A" village and Group "B" village.

7. I have considered the submissions on either side and perused the materials placed before this Court.

<https://hcmr.cemtro.gov.in/lcservices>



8.As has been rightly pointed out by the learned counsel for the petitioner, unless and until the disciplinary proceeding is initiated by setting the law in motion by way of issuing a charge memo, it cannot be considered as a disciplinary proceeding is pending against an employee. Here is the case of the petitioner that, admittedly there is no charge memo filed and disciplinary action is pending. Hence, the non inclusion of the name of the petitioner in the list of general counselling is unjustifiable.

9.The learned Government Advocate on instructions would submit that, soon after the completion of preliminary enquiry, a decision would be taken for the initiation of the disciplinary proceedings. He would also submit that, pursuant to the impugned list of Village Administrative Officers, the general counselling for transfer was over by 31.08.2020 and orders were issued and the transferred Village Administrative Officers have already joined in the transferred place.

10.Be that as it may, admittedly, since there is no charge memo is issued against the petitioner, it cannot be considered that disciplinary proceeding has been initiated against the petitioner. Therefore, this Court is inclined to pass the following orders;

"it is open to the respondents to initiate disciplinary proceedings against the petitioner if they are advised to do so, provided, once the respondents decided to initiate disciplinary action by issuance of charge memo, the same shall be issued within a period of four weeks from the date of receipt of a copy of this order. If not, it can easily be construed that there is no disciplinary action against the petitioner and the petitioner is entitled to consider his name for the purpose of transfer from Group "B" village to Group "A" village. Eventhough the general counselling has already been over by 31.08.2020, still the petitioner's name can be considered for posting in any of the Group "A" village from the Group "B" village based on the availability of vacancy in the Group "A" village at the Taluk or Division level".

11.With this direction, this Writ Petition is disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

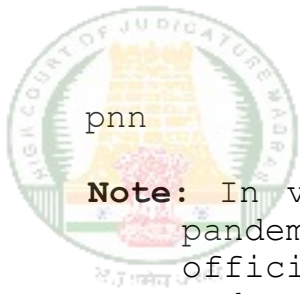
Sd/-

Assistant Registrar (CSII)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

- 1) The District Collector,
Virudhunagar District.
- 2) The Revenue Divisional Officer,
Aruppukottai.
- 3) The Tahsildar,
Virudhunagar.

+1 CC to M/s.T.S. MOHAMED MOHIDHEEN, Advocate (SR-16049[F] dated 07/09/2020)

+1 CC to M/s.SPL GP (SR-16206[F] dated 08/09/2020)

Order made in
W.P. (MD) No.11031 of 2020
07.09.2020

SRK(CO)
KB(29.10.2020) 4P 6C