

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.1530 of 2021

J.Shabana

... Petitioner

Vs

1. The District Collector,
Kallakurichi,
Kallakurichi District.
 2. The District Programme Officer,
Integrated Child Development Project,
Villupuram.
 3. The Child Development Project Officer,
Kallakurichi,
Kallakurichi District.
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified mandamus, calling for the records in respect of the impugned order in proceedings Na.Ka.No.1900/m1/2020, dated 27.10.2020 of the 1st Respondent, cancelling the petitioner's appointment as Anganwadi worker in Anganwadi Centre, Maadur-2, Kallakurichi Taluk and District, with effect from 02.11.2020, quash the same and direct the Respondents to appoint the Petitioner as Anganwadi worker in Anganwadi Centre, Maadur-2, Kallakurichi Taluk and District, with all attendant service benefits from 02.11.2020 till the date of reinstatement into service.

For Petitioner : Mr.R.Ramachandran

For Respondents : Mr.P.V.Selvakumar,
Additional Government Pleader

O R D E R

Petitioner has come up with this Writ Petition seeking to quash the impugned order dated 27.10.2020 vide Na.Ka.No.1900/m1/2020 passed by the 1st Respondent, cancelling her appointment as Anganwadi worker in Anganwadi Centre, Maadur-2, Kallakurichi Taluk and District, with effect from

02.11.2020, and for a direction to the Respondents to appoint her as Anganwadi worker in Anganwadi Centre, Maadur-2, Kallakurichi Taluk and District, with all attendant service benefits from 02.11.2020 till the date of reinstatement into service.

2. Learned counsel for the Petitioner contended that, the impugned order abruptly cancelling the Petitioner's appointment without any notice or affording an opportunity of hearing to her, is against the principles of natural justice. He further contended that, the way in which calculation was done by the hierarchy of officials on the day of oral test is based on the sound footing that, they considered 24 years, 11 months and 19 days as 25 years of the Petitioner's service, as there is no specific way to reckon the mere shortage of 12 days as the non-fulfillment of the required criteria. It is his further contention that, though the Petitioner scored more marks, for reasons best known to the Respondents, she was not at all eligible to make an Application and she is said to have been disengaged from service.

3. In reply, learned Additional Government Pleader appearing for the Respondents submitted that, since the Petitioner was not at all eligible to be appointed, there is nothing wrong on the part of the Respondents to have disengaged her from service. However, he submitted that, the Petitioner will be continued on temporary basis without any claim for regularization.

4. Since counter has been filed by the Respondents not to continue the Petitioner's services, without treating this as a precedent, this Court is of the view that, departmental action need to be taken against the Official, who appointed her.

5. In view of the above submissions, this Court holds that, the Petitioner shall be continued in service on temporary basis till regular appointment is made. It is made clear that, if the Petitioner is eligible, she can apply for permanent post on the ground that, she was a temporary worker. However, if the Petitioner seeks permanent status, the Respondent can deprive her employment from the date on which she seeks permanent employment, forthwith, based on this order. For this incident, the Officials will have to be shown the doors, rather than disturbing the persons who have been recruited.

6. In this regard, it is worth referring to the order passed by this Court in the case of S.Thangappan vs. The Government of Tamil Nadu reported in 1986 TLNJ 153, relevant portion of which, reads thus:

"If there had been any irregularity committed by the Appointing Authority, it is the Appointing Authority, who should be proceeded against. It is because of the failure of the concerned superior authority in not taking a stern action against irregular appointment made by the Appointing Authorities, it results in innocent persons, who secure employment against considerable stress and odds and later on their service dispensed with as if the Appointing Authority, would at any point of time, arbitrarily terminate their services. The second respondent, having found that the third respondent had appointed the petitioners contrary to the Rules, ought to have taken disciplinary proceedings against the third respondent. For errors and omissions committed by him, persons like that of the petitioners, who have secured the last grade post on permanent basis cannot be dealt with as if they could be dropped like hot cakes. Their future cannot be treated as light-heartedly. It is in this view, this Court, considering that even if the appointments had not been made through the Employment Exchange, or due to any other irregularity taking note of the difficulties to which the petitioners would be placed by throwing out of their employment arbitrarily, their Petitions are allowed; committed authority could have exercised its powers of exempting the rules which they do not satisfy. Such orders of exemption are not a rarity. Therefore, instead of taking action against the person who is responsible for passing orders he had been allowed to arbitrarily and contrary to rules terminate the services of the petitioners. There is no rule enabling the third respondent to terminate the service of a permanently recruited municipal servant. He does not touch upon any rule to justify his order. The rules do not confer upon him such a power. He had acted in a manner which cannot find acceptance. "

7. Departmental action initiated against the Officials and the punishment imposed shall be communicated to the Registrar General of this Court, within a period of six months from the date of this order.

This Writ Petition is disposed of with the above direction.
No costs. Consequently, connected W.M.P.Nos.1730 & 1731 of 2021
are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The District Collector,
Kallakurichi,
Kallakurichi District.
2. The District Programme Officer,
Integrated Child Development Project,
Villupuram.
3. The Child Development Project Officer,
Kallakurichi,
Kallakurichi District.

Copy To
The Registrar General,
High Court, Madras-104.

+1cc to the Government Pleader, S.R.No.13731

W.P.No.1530 of 2021

PL(CO)
CS/26/03/2021

सत्यमेव जयते

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