

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P. No.15936 of 2020 and
W.M.P. No.19815 of 2020

1.M.Ranjithkumar
2.J.Ponnaiyan
3.S.Vijayapritha
4.K.Vigneshwaran

... Petitioners

vs.

1. The District Adi Dravidar Welfare Officer
Salem District, Salem 636 001
2. The District Tribal Welfare Officer
Salem District, Salem 636 001
3. The Special Tahsildar (ADW)
Attur Taluk
Salem District 636 102

... Respondents

Writ petition filed under Article 226 of the Constitution of India for a writ of mandamus directing the respondents to pass orders for disbursement of salary to the petitioners from the date of appointment in the post of Cook from 01.08.2018, with all consequential and other attendant benefits including arrears of salary along with interest by considering the representations submitted by the petitioners dated 03.02.2020 & 13.10.2020 within a time frame to be fixed by this court.

For Petitioner : Mr.G.Sankaran

For Respondents: Mr.J.Pothiraj,

Special Government Pleader

O R D E R

The petitioner has come forward with the present writ petition for a writ of mandamus, directing the respondents to pass orders for disbursement of salary to the petitioners from the date of appointment in the post of Cook from 01.08.2018, with all consequential and other attendant benefits, including arrears of salary along with interest by considering the

representations submitted by the petitioners dated 03.02.2020 within a time frame to be fixed by this court.

2. Before going in to the various aspects in the matter, this court would like to extract below the previous interim orders passed by this court on various dates:

Order dated 08.12.2020:

Mr.G.Sankaran, learned counsel appearing for the petitioners would submit that these Writ Petitioners who have been working as Cooks under the control of the respondents have not been paid salaries for the last two years despite extracting work from them.

2. Mr.V.Kathirvelu, learned Special Government Pleader entered appearance on behalf of the respondents and seeks time to get instructions.

3. In any case, this Court is surprised to find that the work has been extracted from the very poor workers without paying any salaries to them, all these months. Therefore, the District Collector, Salem District is directed to appear before this Court to explain as to why salaries have not been paid to all of them in the past.

4. At this, Mr.Kathirvelu, learned Special Government Pleader would submit that he would instruct the District Collector, Salem District to make payments due to the petitioners and has requested a reasonable time for reporting compliance.

5. Post the matter on 18.12.2020 for personal appearance of the District Collector, Salem District. In the meanwhile, if any payments being made to the petitioners, personal appearance of the District Collector, Salem District need not be insisted upon.

Order dated 18.12.2020:

Today when the matter is taken up for hearing, it is represented by the learned counsel for the petitioners that despite the advise given by the first respondent to pay salary that are due to be paid to some of the petitioners for considerable time, the third respondent has not obeyed the advise given by the first respondent.

2. The learned counsel for the petitioners read out the passage in the counter affidavit supporting the fact of advise given by the first respondent to the third respondent.

3. When Mr.V.Kathirvelu, learned Special Government Pleader appearing for the respondents was confronted by this Court as to why the third respondent has not comply with the advise given by the first respondent, he submitted that he need to get instructions in that regard.

4. This Court however finds that the petitioners cannot suffer in view of the non-compliance by the third respondent. In this case, the third respondent is under obligation to explain to this Court as to why the salary was not paid to some of the petitioners for some time.

5. The learned Special Government Pleader is directed to ensure the presence of the third respondent through Video Conferencing on 22.12.2020. The third respondent has to explain why an exemplary cost should not be imposed on her for not promptly settling the dues to the petitioners without any valid reasons forthcoming from her.

6. Post the matter on 22.12.2020, for further hearing.

Order dated 19.01.2021:

Admittedly, the salary has not been paid to the petitioner and this Court has passed a detailed order questioning the explanation for non payment of salary to the petitioners on 18.12.0202 and directed the 3rd respondent to appear before this Court through video conferencing. But the 3rd respondent did not comply with the said order and has not appeared before this Court.

2. In order to give one more opportunity to the 3rd respondent to appear before this Court, post the matter on 03.02.2021. In case, the 3rd respondent fails to appear before this Court on the said date, this Court will issue Non Bailable Warrant.

3. The 2nd respondent shall also appear on the same day i.e. on 03.02.2021.

4. Post the matter on 03.02.2021.

3. The petitioners herein have sought for disbursement of salary from the date of appointment in the post of Cook, from 01.08.2018. According to the petitioners, all the persons have been properly and duly appointed, pursuant to a proper selection in a notified vacancy. Even though they are regular appointees, their salaries have not been paid. According to the petitioners, beyond the notified vacancies, extra hands have been appointed, and they have been relieved from the services.

4. The respondents would contend that, the then Special Tahsildar has relieved three persons from 23.12.2017 to 19.01.2018 and they are not in service. That apart, enquiry of the Department of Vigilance and Anti-corruption, has been set in motion with regard to the appointment of those persons. According to the respondents, some of the Cooks, who have approached this court, have already been relieved, as they were illegally appointed and they have entered through back door. Since their appointments are against the rules and that the persons, who have been already been relieved, have been given re-appointment, which is contrary to the guidelines, they are not entitled to any relief much less the one sought for in the present writ petition. The respondents further state that instructions have been given to the District Tribal Welfare Officer, Salem, Special Tahsildar, Attur, Special Treasury Officer, to consider the representation of the petitioners to take further action to pay salary to them.

5. Mr.G.Sankaran, learned counsel appearing for the petitioners states that, if there is any illegal appointment, there is no hurdle on the part of the respondents from proceeding further. The petitioners are duly appointed in a notified vacancy, after proper selection process. According to him, the total vacancy was 80 and 101 persons have been appointed and instead of taking action against the excess persons beyond 80, the salaries of the persons, who have been duly appointed, have also been stopped and which made them to approach this court for necessary redressal.

6. Mr.J.Pothiraj, learned Special Government Pleader, appearing for the respondents, would submit that enquiry under Department of Vigilance and Anti Corruption has already been set in motion, as there are illegal appointments in the post of Cook and a full-fledged enquiry is going to be conducted and if there are any illegal appointments, those persons will be divested of the duties and some of them have already been relieved.

7. Heard both sides and perused the materials available on record.

8. The facts mentioned supra are not in dispute. This court has no hesitation in holding that illegal appointments have got to be curbed, if there are any back door entries, contra to the rules or notification prescribed based on the rules, those persons will have to be shown the doors. It does not mean that the persons, who have been duly recruited, will have to be divested of the duties. In any event, it is for the vigilance and anti-corruption that has been set in motion to come to a conclusion and appropriate action need to be taken against the

officers who have illegally appointed those persons. Even assuming that there are illegal appointments, the services rendered by them to that date, they are entitled to wages. Having extracted work from them, they have to be paid salary, but merely because they are paid salary, it does not mean that there is an automatic recognition of their illegal appointment as one of legitimate appointment.

9. As stated supra, since it is represented that enquiry by the Department of Vigilance and Anti Corruption has already been initiated, it is needless to mention that the issue has got to be taken to a logical end. If there are any illegal appointments they have to be sent out. Apart from that, the persons who are responsible for the illegal appointments need to be taken to task and the amount paid by the government by way of salary to those illegal appointees, can be recovered from the officer including attachment of his/her/their personal property.

10. In view of the foregoing discussions, the eligible petitioners have to be paid their salary from 01.08.2018, if not already disbursed within a period of one month from the date of receipt of this order. This court also makes it very clear that, if any of the petitioners, is an illegal appointee, it is open to the government to disengage him/her and instead of repeating the directions mentioned supra, this court expects a finality by Department of vigilance and Anti-Corruption and it should give a strong signal to all the departments in the State that there shall be no illegal appointment and back door entry, as there are several educated candidates, are waiting in the queue for employment. The presence of the Special Tahsildar (ADW), Attur Taluk, is dispensed with.

11. With the above observation, the writ petition is disposed of. However, there shall be no order as to costs. Consequently, the connected writ miscellaneous petition is closed.

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Sd/-

Assistant Registrar

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Sub Assistant Registrar

(Asr)

To

1.The District Adi Dravidar Welfare Officer
Salem District, Salem 636 001

2.The District Tribal Welfare Officer
Salem District, Salem 636 001

3.The Special Tahsildar (ADW)
Attur Taluk
Salem District 636 102.

+1 cc to The Government Pleader, Sr.No. 5931
+1 cc to M/s.G.Sankaran, Advocate Sr.No. 5876

W.P. No.15936 of 2020 and
W.M.P. No.19815 of 2020

PA(CO)
RMP(11/03/2021)



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