



W.P. No. 1220 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 1220 of 2016

V.Dhanabagiyam

... Petitioner

-VS-

1. The District Collector/Inspector of Panchayats,
Namakkal District,
Namakkal.
2. The Assistant Director of Rural Development (Panchayats),
Namakkal.
3. The Block Development Officer,
Mallasamudiram Panchayat Union,
Namakkal District.
4. Kalaiyarasi
Respondents

...

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order dated 16.10.2015 made in Na. Ka. No. 855/2015/Vi.Admn./5 passed by the Second Respondent, quash the same and consequently directing the First to Third Respondents to pay the statutory dues of Rs. 73,600/- payable to the Petitioner for the post of President of Kuppichipalayam Village Panchayat for the period between 01.11.2011 and 21.09.2015 and also order recovery from the Fourth Respondent by considering



W.P. No. 1220 of 2016

her representation dated 28.09.2015.

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For Petitioner : Mr. N.Manokaran

For Respondents : Mr. P.Balathandayutham,
Special Government Pleader
(for R1 & R2)

Mr. R.Rajeswaran (for R3)

Mr. P.Muthusamy (for R4)

ORDER

Heard Mr. N.Manokaran, Learned Counsel for the Petitioner, Mr. P.Balathandayutham, Learned Special Government Pleader appearing for the First and Second Respondents, Mr. R.Rajeswaran, Learned Counsel for the Third Respondent and Mr. P.Muthusamy, Learned Counsel appearing for the Fourth Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner and the Fourth Respondent contested in the election for the post of President of Kuppichipalayam Village Panchayat in Namakkal District held on 17.10.2011 in which the Fourth Respondent was declared elected. Though the Principal District Judge, Namakkal by order dated 19.10.2012 dismissed the Election Petition in O.P. No. 103 of 2011 filed by the Petitioner



W.P. No. 1220 of 2016

challenging the said election of the Fourth Respondent, it was set aside by order dated 16.02.2015 in C.R.P. (NPD) No. 505 of 2013 passed by this Court. In the order dated 28.08.2015 in the Writ Petition in W.P. No. 15772 of 2015 filed by the Petitioner, it was held by this Court as follows:-

“7. In that scenario, it is undoubtedly the Petitioner who secured the maximum votes of 364 over and above 361 votes secured by the Fourth Respondent. Though, Mr. V.Bharathidasan, Learned Counsel for the Fourth Respondent would oppose for clarification, the factual position alone was reiterated by this Court and therefore, as per the earlier order passed by this Court in CRP(NPD) No.505 of 2013 dated 16.02.2015, this Court declares the Petitioner, having gained 364 votes, as successful candidate and declare as President of Kuppichipalayam Village Panchayat, Namakkal District, defeating the Fourth Respondent by a margin of 3 votes namely 361 votes. Therefore, the First to Third Respondents are appropriately directed to issue a Certificate of Election as President to the Petitioner, within a period of three days from the date of receipt of a copy of this order and the Second Respondent is directed to administer the



W.P. No. 1220 of 2016

oath to the Petitioner, within a period of two days thereafter.”

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The Petitioner had thereafter taken charge on 08.09.2015 to carry on the functions of the President of Kuppichipalayam Village Panchayat and had made a representation dated 28.09.2015 to the First Respondent to pay her the emoluments for holding that post during the period between 01.11.2011 and 30.08.2015, but it was rejected by Order in Na. Ka. No. 855/2015/Voo.Ni.5 dated 16.10.2015 passed by the Second Respondent, which is assailed in this Writ Petition.

3. It is accepted that the Government of Tamil Nadu by G.O. Ms. No. 54, Rural Development and Panchayat Raj Department (PR4) Department dated 29.06.2012 had fixed Rs. 1,000/- as monthly honorarium for the Presidents of Village Panchayats under the proviso to Section 82 of the Tamil Nadu Panchayats Act, 1994, with effect from the date of assumption of the elected representatives of the local bodies from 25.10.2011 onwards. As rightly contended by Learned Counsel for the Petitioner relying on the decision of this Court in ***P.Veludurai -vs- Tamil Nadu Legislative Assembly*** (Order dated 26.02.2019 in W.P. No. 30102 of 2011), it would follow as a necessary



W.P. No. 1220 of 2016

consequence of setting aside the election of the Fourth Respondent as the President of Kuppichipalayam Village Panchayat, that it would be incumbent upon the First Respondent to recover the emoluments that had been paid to the Fourth Respondent during the period that she had unlawfully held that post and to grant the same to the Petitioner, who had been illegitimately deprived of that benefit. However, the First Respondent has rejected that claim of the Petitioner in the impugned order on the specious plea that she had not actually held the post till the date on which she assumed charge of the same. Inasmuch as the Petitioner cannot be faulted for the time taken in the legal proceedings to set aside the election of the Fourth Respondent, she cannot be deprived of receiving the said benefit during that period and the impugned order, which cannot be sustained, is quashed and the First Respondent has to make payment of the honorarium of Rs. 1,000/- per month for the period of 46 months aggregating to Rs. 46,000/- by 31.12.2022 to her under written acknowledgment. However, the claim made by the Petitioner for sitting fees and traveling allowance during the said period under G.O. Ms. No. 54, Rural Development and Panchayat Raj Department (PR4) Department dated 29.06.2012 has to be declined as she had not performed those functions and the Fourth Respondent has already been paid for the same applying the principle of *quantum meruit* for the work done by her. If the Fourth Respondent, after affording full opportunity of personal hearing in



W.P. No. 1220 of 2016

consonance with the principles of natural justice, fails to reimburse the said sum of Rs. 46,000/- received towards honorarium, the First Respondent shall recover the said amount from her by appropriate legal proceedings in accordance with law.

4. In the upshot, the Writ Petition is ordered on the aforesaid terms. No costs.

09.11.2022

vjt

Index: Yes/No

Note: Issue order copy by 18.11.2022.

To

1. The District Collector/Inspector of Panchayats,
Namakkal District,
Namakkal.
2. The Assistant Director of Rural Development (Panchayats),
Namakkal.
3. The Block Development Officer,
Mallasamudiram Panchayat Union,
Namakkal District.



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W.P. No. 1220 of 2016

P.D. AUDIKESAVALU, J.

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W.P. No. 1220 of 2016

09.11.2022