



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.02.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD) .No.17154 of 2018

and

W.M.P. (MD) .No.15086 of 2018

WEB COPY

M.Marimuthu

... Petitioner

Vs.

1.The District Collector cum Inspector of Panchayats,
Thoothukudi District,
Thoothukudi.

2.The Block Development Officer (Village Panchayats),
Kovilpatti Panchayat Union,
Thoothukudi District.

3.Thonugal Village Panchayat,
Kovilpatti Taluk,
Thoothukudi District,
Represented by its Special Officer

4.The Secretary to Government,
The Government of Tamil Nadu,
Rural Development and Panchayat Raj Department,
Fort.St.George,
Chennai - 600 009.

... Respondents

*(R-4 is suo motu impleaded vide Court Order dated 24.02.2022 in
W.P. (MD) .No.17154 of 2018)*

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent in connection with the impugned order of rejection passed by him vide his proceedings in Thi.3/600/2016 dated 11.08.2017 and quash the same as illegal and arbitrary and consequently direct the first respondent to accommodate the petitioner in the post of Panchayat Secretary in any one of the available vacancies in Kovilpatti Panchayat Union, Thoothukudi District by extending the benefit of Rule 5 of the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules, 2013 and to pay all service and attendant benefits within the time limit that may be stipulated by this Court.

For Petitioner	:	Mr.G.Thalaimutharasu
For R-1, R-3	:	Mr.P.Thambidurai,
and R-4	:	Government Advocate (Civil Side).
For R-2	:	No Appearance



ORDER

The petitioner was appointed on 01.08.2012 based on the seniority in the employment exchange. The respondents after following the recruitment process, the Appointment Committee interviewed the petitioner and three other persons and after being satisfied with the eligibility, the petitioner has been appointed. It is approved by the Panchayat Council Meeting also by resolution dated 30.07.2012. The petitioner joined the service as Secretary in the Village Panchayat and was getting salary. On 01.09.2013, the third respondent Panchayat failed to pay salary. Aggrieved over the same, the petitioner has submitted a representation dated 13.11.2013 which followed by several representations. The petitioner filed Writ Petition in W.P.(MD).No.996 of 2016 for Mandamus directing the respondents to pay salary. This Court vide order dated 19.01.2016 directed the respondents to consider the representation of the petitioner on merits. The then President of the Panchayat directed to pay the salary for the petitioner from 2013 to 2016. But, no salary was paid without assigning any reason or direction. Once again, the petitioner approached this Court in W.P.(MD).No.4115 of 2015 for Mandamus directing the respondents to pay salary from April 2013 to May 2017. Pending the aforesaid Writ Petition, the petitioner was not permitted to discharge his duty. Hence the petitioner approached this Court by way of filing another Writ Petition in W.P.(MD).No.9393 of 2017 directing the respondents to allow the petitioner to continue in service. On 24.05.2017, this Court dispose of the Writ Petition directing the second respondent to consider the representation of the petitioner dated 16.05.2017 on merits and pass orders. The second respondent vide proceedings dated 11.08.2017 has passed an impugned rejection order stating that the appointment as Panchayat Secretary is an irregular appointment, since the petitioner is over aged. As per G.O.(Ms).No.175, Rural Development and Panchayat Raj (C4) Department dated 05.12.2006, the petitioner ought to be 33 years of age and below. Since the petitioner age is 35 years, the appointment is irregular. Therefore, the petitioner resigned the post on 24.10.2013 and refunded his monthly salary received for the period from 01.08.2012 to 31.07.2013. Thereafter, the petitioner was allowed to continue the service.

2. The contention of the petitioner is that he was in service from 01.08.2012 to 15.05.2017. But the respondents did not pay any salary from 16.05.2017 onwards. The petitioner was not in service because of the impugned order. Aggrieved over the entire issue, the petitioner has preferred the Writ Petition to quash the impugned order and direct the respondents to allow the petitioner to join in any of the available vacancies by relaxing the age or by complying Rule 5 of the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules, 2013 and to pay all salaries and



3. The respondents had filed a counter stating that there is an alternative remedy to prefer an appeal before the first respondent. The Tamil Nadu Secretaries (Conditions of Service) Rules, 2013 came into effect in the year 2013. The said Act was framed under G.O.Ms.No.72 Rural Development and Panchayat Raj (E5) Department dated 09.07.2013. But, the said Government Order was stayed in W.P.(MD).No.16884 of 2013 and stay was granted in M.P(MD).No.2 of 2013 vide order dated 11.10.2013. Thereafter, the said stay was modified vide order dated 19.04.2019 by ordering that the earlier interim order is modified enabling the Special Officer appointed in the place of President of Panchayat to appoint Secretary / Secretary of Panchayat or any other persons who has to be appointed by the President Panchayat. The petitioner was appointed based on the resolution of the Village Panchayat Council and was paid salary at the rate of Rs.2000/- with an adhoc increase of Rs.80/-. Because of the age limit of 33 years, the petitioner was appointed in an irregular method. The petitioner was 35 years of age at the time of appointment. Therefore, he was directed to resign and his salary was recovered. The former President of the Village Panchayat with a view to favour the petitioner has violated the norms and rules and provided with the appointment and for the illegal committed by them, the erstwhile President was recalled from the post. Therefore, the petition is not maintainable because of the irregular appointment, hence the respondents prayed to dismiss the writ petition.

4. Heard the Mr.G.Thalaimutharasu, learned counsel for the petitioner and Mr.P.Thambidurai, learned Government Advocate (Civil Side) for respondents 1,3 and 4 and there is no appearance on behalf of the second respondent.

5. The sum and substance of the issue is that at the time of appointment the petitioner was over aged. The rule that is applicable at the time of appointment is G.O.Ms.No.135 where it has been prescribed, the candidate should be 33 years and below. Admittedly, at the time of appointment, the petitioner was 35 years old. The contention of the petitioner is he has declared his age as 35 years and it is not his mistake. Having appointed and having paid the salary, the petitioner ought not to have been punished by removing from the post. The said contention cannot be accepted. The petitioner ought to know the rules also and ignorance of law cannot be pleaded. But subsequently, the Tamil Nadu Secretaries (Conditions of Service) Rules, 2013 came into effect in the year 2013, where the age limit is prescribed as 35 years for the Scheduled Caste Community. The Government took up the policy decision to extend the age. The petitioner claim is such extension should be applicable to the petitioner also. The contention of the petitioner is that now he is 40 years of age and he cannot opt for the Government post, hence prayed for relaxing the age.



6. On perusing the records it is seen that the petitioner was appointed on 01.08.2012. Since the then President was in trouble because of the appointment of the petitioner, the petitioner was advised to resign, the petitioner resigned on 24.10.2013 and refunded his monthly salary received for the period from 01.08.2012 to 31.07.2013. Thereafter, the petitioner was allowed to continue in service. The contention of the petitioner is that he was in service from 25.10.2013 to 15.05.2017. The respondents did not pay any salary from 16.05.2017. The petitioner has disclosed his age as 35 at the time of appointment. Thereafter only the petitioner was appointed. Having served for more than one year the petitioner was directed to resign from the post, thereafter the petitioner was in service for more than four years and totally has put in service for more than five years.

7. Therefore, this Court is of the considered view that it is not the mistake of the petitioner and therefore the petitioner is entitled to appointment. Consequently, the petitioner is entitled to age relaxation. However, the respondents are not empowered to relax the age, only the Government is empowered to relax the age but government has not been averred as party. Therefore, this Court suo motu implead the Secretary to the Government of Tamil Nadu, Rural Development and Panchayat Raj Department, Fort. St. George, Chennai - 600 009 as 4th respondent.

8. For the reasons stated above this Court is passing the following order:

- a. *The respondents are directed to allow the petitioner to join duty from the date of receipt of the copy of the order.*
- b. *The 4th respondent Secretary to the Government of Tamil Nadu, Rural Development and Panchayat Raj Department is directed to grant age relaxation and the said exercise shall be carried out within a period of six weeks from the date of receipt of the copy of the order.*
- c. *The respondents are directed to disburse the salary and other monetary benefits from 01.08.2012 to 31.07.2013.*
- d. *On the principles of no work and no pay, the petitioner is not entitled to any monetary benefits for the period he has not worked i.e. from 16.05.2017.*
- e. *The petitioner is entitled to continuity of service from the date of his original appointment.*



9. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

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Sub Assistant Registrar(CS)

Nsr

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 cum Inspector of Panchayats,
Thoothukudi District, Thoothukudi.
- 2.The Block Development Officer (Village Panchayats),
Kovilpatti Panchayat Union,
Thoothukudi District.
- 3.The Special Officer,
Thonugal Village Panchayat,
Kovilpatti Taluk,Thoothukudi District.
- 4.The Secretary to Government,
The Government of Tamil Nadu,
Rural Development and Panchayat Raj Department,
Fort.St.George,
Chennai - 600 009.

+1 CC to M/s.G.THALAIMUTHARASU, Advocate (SR-8561[F] dated 25/02/2022)

+1 CC to M/s.SPL GP (SR-8699[F] dated 25/02/2022)

**W.P. (MD) .No.17154 of 2018
24.02.2022**

RD(23.03.2022) 5P 7C