



W.P.Nos.6220, 30530 & 30979 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	19.06.2023 & 21.06.2023
Pronounced on	12.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.Nos.6220, 30530 & 30979 of 2022
and
W.M.P.Nos.6280, 29959 & 30376 of 2022

In W.P.No.6220 of 2022

V.Sivakumar

... Petitioner

Vs.

1.The State of Tamil Nadu
rep. by its Secretary,
Revenue Department,
Chennai-600 009.

2.The Collector,
Kallakurichi,
Kallakurichi District-605 801.

3.The Sub Collector,
Kallakurichi,
Kallakurichi District-605 801.

4.The Revenue Divisional Officer (I/C),
Kallakurichi Division,
Kallakurichi District-605 801.

5.The Tahsildar,
O/o. The Tahsildar,
Sankarapuram Taluk,
Kallakurichi District-605 801.

... Respondents



W.P.Nos.6220, 30530 & 30979 of 2022

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, calling for all the connected and relevant records relating to the impugned order passed by the Revenue Divisional Officer (I/C), the fourth respondent herein in his proceedings Na.Ka.A1/938/2021 dated 25.06.2021 and quash the same and direct the fifth respondent to permit the petitioner to join the duty in the post of Village Assistants, Kaduvannur Village, Sankarapuram Taluk, Kallakurichi District as per the appointment order issued by the fifth respondent in his proceedings under Na.Ka.A3/3148/2020 dated 13.02.2021.

For Petitioner : Ms.S.Buvaneswari

For Respondents : Mr.P.Baladhandayutham, SGP

In W.P.No.30530 of 2022

K.Ramesh

... Petitioner

Vs.

1.The District Collector,
District Collector Office,
Kallakurichi District.

3.The Revenue Divisional Officer
/Sub Collector,
The Revenue Divisional Office,
Kallakurichi & District.

3.The Tahsildar,
Sankarapuram & Taluk,
Kallakurichi District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, calling for the impugned



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order dated 25.06.2021 Ref. No.Na.Ka.A1/938/2021 issued by the second respondent and quash the same and consequently directing the respondents to allow to join the petitioner as Village Assistant in Paramanatham Village as per the order dated 13.02.2021 Ref. No. Na.Ka.A3/3148/2020 issued by the third respondent.

In W.P.No.30979 of 2022

M.Jayabharathi

... Petitioner

(Petitioner's name amended vide Court order dated 21.06.2023 in W.M.P.No.31739 of 2023)

Vs.

1.The District Collector,
District Collector Office,
Kallakurichi District.

3.The Revenue Divisional Officer
/Sub Collector,
The Revenue Divisional Office,
Kallakurichi & District.

3.The Tahsildar,
Sankarapuram & Taluk,
Kallakurichi District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, calling for the impugned order dated 25.06.2021 Ref. No.Na.Ka.A1/938/2021 issued by the second respondent and quash the same and consequently directing the respondents to allow to join the petitioner as Village Assistant in Anaikaraihattalam as per the order dated 13.02.2021 Ref. No. Na.Ka.A3/3148/2020 issued by the third respondent.



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For Petitioner : Mr.V.Gunasekar

For Respondents : Mr.P.Baladhandayutham, SGP

COMMON ORDER

The cancellation of the appointment orders dated 25.06.2021 issued to seven Village Assistants, including the petitioners herein, are put under challenge in the present Writ Petitions.

2. Heard Ms.S.Buvaneswari and Mr.V.Gunasekar, learned counsel for the petitioners respectively and Mr.P.Baladhandayutham, learned Special Government Pleader appearing for the respondents.

3.The brief facts of the case are as follows:

3.1. The Tahsildar, Sankarapuram through his proceedings dated 10.11.2020, had proposed for filling up of seven vacancies for the posts of Village Assistants at Sankarapuram for seven villages. The District Collector, Kallakurichi herein through his proceedings dated 12.11.2020 had sanctioned permission to fill up these seven Village Assistant posts, by fulfilling the selection guidelines, including communal rotation. Based on the petitioners' applications, there were permitted to participate in



the interview on 18.01.2021 and 19.01.2021 and all the necessary certificate verifications were done. Thereafter, the Tahsildar, Sankarapuram had issued appointment orders dated 13.02.2021, appointing the petitioners to the posts of Village Assistants at Mogur, Paramanatham and Annaikarai Kottalam villages respectively.

3.2. At this stage, the General Assembly Election for the State of Tamil Nadu was declared and accordingly, the Model Code of Conduct came into force, whereby the petitioners were not permitted to join the duty at the allotted places. The Tamil Nadu General Assembly Election was held on 06.04.2021 and there was a change of political party, who succeeded in the General Election and had formed the New Government.

3.3. After formation of the New Government, on allegations that there were irregularities in the selection of seven posts of Village Assistants, explanations were called for from the successful candidates to whom appointment orders were already issued. Consequently, the impugned order dated 25.06.2021 came to be passed, cancelling the appointment orders dated 13.02.2021 issued to the petitioners herein. The cancellation of the appointment orders, is under challenge in the present Writ Petitions.



4. The learned counsel for the petitioners submitted that the entire process of cancellation is a political vendatta and has been made with an ulterior motive for removing them and replacing them with fresh candidates. According to the learned counsels, there were no irregularities at all in the selection process and therefore, the cancellation, is bad in law.

5. Per contra, the learned Special Government Pleader placed reliance on the averments made in the counter affidavit and submitted that, there were six irregularities in the selection process. In view of the *prima facie* evidence with regard to these irregularities, they had awaited for the declaration of the General Assembly Election and thereafter, enquiry was conducted by the Revenue Divisional Officer, Kallakurichi and when these irregularities were confirmed, the appointments were cancelled. Hence, he would submit that the Writ Petitions does not deserve consideration.

6. The only ground on which the cancellation of the appointments made through the erstwhile Government, is owing to certain alleged irregularities in the selection process. The counter affidavit filed by the respondents touches upon these irregularities which reads as under:



"1. The vacancy at Anaikaraikottalam is a created one. The village assistant working there has been transferred to Thirukanangur Village, by the Tahsildar, Sankarapuram in order to create a vacancy at Anaikaraikottalam and to do some favour under 135 General turn non priority (Women).

2. To create a vacancy at Arasampattu Village under communal roster 136 SC Priority (General) it was secondly placed next to Anaikaraikottalam.

3. Election Deputy Tahsildar at Sankarapuram is one of the team member who conducted interview and his relative by name Aruvanjam is one of the candidate to appear for interview for the post of village assistant at Arasampattu village. There is chances to grant more marks in favour of the candidate appeared for interview.

4. During interview all the candidates were given one and the same version in Tamil & English to test the writing skill of the candidates. Hence it leads to securing more marks among the candidates. It is also noticed out of the total 302 applications the call letter were sent by RPAD only for 284 candidates. The call letter for remaining 18 candidates were not sent.

5. The writ petitioner applied for the post of



Village Assistant at Su.Kulathur Village. He has attended interview on 18.01.2021. But he has been selected for Sankarapuram Village and that the interview for Sankarapuram Village was conducted on 19.01.2021.

6. The Tahsildar has not followed the communal roster system properly and the notification to call for applications was not properly done by the Tahsildar."

7. On a bare perusal of the alleged irregularities from 1 to 5 are concerned, it could be seen that there was no illegality in them. The alleged creation of vacancies for the purpose of favouring someone, the manner in which the interview was conducted though not attributed with any illegality and questioning the posting orders, are too flimsy reasons to term them as "irregularity". Even otherwise, they can never, by any stretch of imagination, be deemed to be an "illegality". The sixth irregularity was that the Tahsildar has not followed the communal roster system properly. However, such a claim is not backed by any reasons, as to how the communal roster system was deviated. Apart from the vague allegations, the counter affidavit does not spell out the alleged deviation. When this Court had specifically asked the learned Special Government Pleader, who was instructed by the officials from



the office of the respondents, he was also not in a position to point out any specific deviation of the communal roster system. In the absence of the same, an inference requires to be drawn that there was no deviation in the communal roster, which could be termed as a irregularity. Hence, the sixth irregularity does not stand substantiated.

8. The predominant question that arises in this case background is as to whether the selection process can be set aside on the ground of irregularity, when illegality is not pleaded. The Hon'ble Supreme Court in the case of **Secretary, State of Karnataka & Others Vs. Umadevi & Others** reported in **2006 (4) SCC 1** had held that, 'irregular appointments' would not render the appointments as "illegal" and thereby directed the Government to regularise such irregular appointments as a one time measure. In **B.N. Nagarajan & Others Vs. State of Karnataka & Others** reported in **1979 (4) SCC 507**, the Hon'ble Apex Court had categorically held that all irregularities can be regularised, but illegalities cannot be. Likewise, in the **State of Madhya Pradesh & Others Vs. Lalit Kumar Verma** reported in **2007 (1) SCC 575**, the Hon'ble Apex Court had made a distinction between "irregular appointment" and "illegal appointment" in the following manner:



"12.The question which, thus, arises for consideration, would be : Is there any distinction between 'irregular appointment' and 'illegal appointment'? The distinction between the two terms is apparent. In the event the appointment is made in total disregard of the constitutional scheme as also the recruitment rules framed by the employer, which is State within the meaning of [Article 12](#) of the Constitution of India, the recruitment would be an illegal one; whereas there may be cases where, although, substantial compliance of the constitutional scheme as also the rules have been made, the appointment may be irregular in the sense that some provisions of some rules might not have been strictly adhered to."

9. In ***Post Master General, Kolkata & Others Vs. Tutu Das*** reported in **2007 (5) SCC 317**, the Constitutional Bench of the Hon'ble Apex Court had upheld the ratio that when an 'irregular appointment' does not stand equated to that of an 'illegal appointment'. As such when irregular appointments can be ratified on the strength of all these decisions of the Hon'ble Supreme Court and by taking note of the fact that the respondents themselves have only claim certain alleged irregularities in the selection process and not illegalities, the cancellation



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of the appointment orders on account of such alleged irregular selection process, cannot be sustained. Even otherwise these alleged infirmities may not strictly termed to be as “irregularities” also for the reasons stated in the foregoing paragraphs of this order.

10. In the result, the impugned orders dated 25.06.2021 passed in Na.Ka.A1/938/2021 on the file of the Revenue Divisional Officer, Kallakurichi, are quashed. Consequently, there shall be a direction to the Revenue Divisional Officer, Kallakurichi to forthwith pass orders, permitting all the petitioners herein to join their respective places of appointments, pursuant to their appointment orders dated 13.02.2021 respectively, within a period of one week from the date of receipt of a copy of this order. All the Writ Petitions stands allowed. Consequently, the connected Miscellaneous Petitions are also closed. There shall be no order as to costs.

12.07.2023

Internet:Yes
Order :Speaking
Neutral Citation:Yes

DP/vsm



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To

- 1.The Secretary,
State of Tamil Nadu
Revenue Department,
Chennai-600 009.
- 2.The Collector,
Kallakurichi,
Kallakurichi District-605 801.
- 3.The Sub Collector,
Kallakurichi,
Kallakurichi District-605 801.
- 4.The Revenue Divisional Officer (I/C),
Kallakurichi Division,
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- 5.The Tahsildar,
O/o. The Tahsildar,
Sankarapuram Taluk,
Kallakurichi District-605 801.



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M.S.RAMESH,J.

DP/vsm

ORDER MADE IN

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