



W.P.No.10298 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2023

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.10298 of 2020
and
W.M.P.Nos.12516 & 12518 of 2020

M.Pavithra

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by the Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat,
Chennai – 600 009.
- 2.The District Collector/Inspector of Panchayats,
Salem District,
Salem.
- 3.The Personal Assistant to District Collector,
Development,
Salem District,
Salem.
- 4.The Block Development Officer,
Village Panchayat,
Mecheri Panchayat Union,
Mecheri – 636 453,
Salem District.



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5.The Panchayat President,
Vellar Village Panchayat,
Mecheri Panchayat Union,
Vellar Post,
Mettur Taluk,
Salem District.

... Respondents

Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records of the impugned order dated 21.07.2020 in Na.Ka.No.81/2016/Thi2 passed by the 4th respondent in respect of cancellation of notification dated 11.11.2019 and quash the same, consequently direct the fifth respondent to appoint petitioner as Village Panchayat Secretary of the fifth respondent Panchayat as per the selection dated 01.07.2020.

For Petitioner : Mr.M.R.Jothimanian

For Respondents 1 to 3 : Mr.D.Gopal,
Government Advocate

For Respondents 4 & 5 : Mr.L.S.M.Hasan Fizal

ORDER



The relief sought by the petitioner in this writ petition is to call for the records of the impugned order dated 21.07.2020 in Na.Ka.No.81/2016/Thi2 passed by the 4th respondent in respect of cancellation of notification dated 11.11.2019 and quash the same, consequently direct the fifth respondent to appoint petitioner as Village Panchayat Secretary of the fifth respondent Panchayat as per the selection dated 01.07.2020.

2. The case of the petitioner is that the petitioner has studied and completed B.E. Electronics and Communication Engineering and her studies are under the pattern of 10 + 2 + 3 and belongs to Scheduled Tribe (ST) Community. On 11.11.2019, the second respondent issued letter to the fourth respondent to take steps to appoint Village Panchayat Secretary of the fifth respondent Panchayat and on the same day, the fourth respondent issued a notification in Na.Ka.No.81/2016/Thi2, inviting applications from the eligible candidates for direct recruitment to the post of Village Panchayat Secretary of the fifth respondent Panchayat. Therefore, the petitioner has applied for the said post and he satisfied all conditions, as per the impugned notification dated 11.11.2019 issued by the fourth respondent. On



01.07.2020, interview was conducted by the selection committee and the fourth and fifth respondents were headed the selection committee and finally, the petitioner was selected. Subsequently, the selection list was published on the same day i.e., on 01.07.2020 in the notice board of the fifth respondent office. This being so, on 21.07.2020, the fourth respondent issued an order stating that the aforesaid notification dated 11.11.2019 in Na.Ka.No.81/2016/Thi2 has been cancelled for the administrative reasons. Aggrieved over the same, the petitioner has come forward with the present writ petition.

3. Learned counsel for the petitioner submitted that on 11.11.2019, the second respondent/Inspector of Panchayat has issued a proceedings to initiate action to fill up the post of Village Panchayat Secretary. Hence, the fourth respondent has issued a notification to fill up the said post in Vellar and Sathapadi Panchayat Unions and in the proceedings, it is mentioned that the person who is applying for the post of Village Panchayat Secretary should reside in the same panchayat or in the next panchayat. The post of Village Panchayat Secretary in the Vellar region is under rotation and belongs to



Scheduled Tribes Community. The petitioner, who belongs to Scheduled Tribes community has applied for the post of Village Panchayat Secretary in the Vellar region on 25.11.2019.

4. Learned counsel for the petitioner further submitted that on 15.06.2020 vide proceedings in Na.Ka.No.30413/2019/thi3, the second respondent issued directions to the respondents 4 & 5 to proceed based on the notification dated 11.11.2019 and also authorized the fifth respondent as appointing authority under the Rules and therefore, the fifth respondent has issued a interview letter on 18.06.2020 in Na.Ka.No.926/2018/Thi2 stating that the interview was scheduled to be held on 01.07.2020 at fifth respondent Panchayat Office. Thereafter, the petitioner has attended the interview and submitted her SSLC mark sheet, ration card and community certificate and other certificate etc., before the selection committee and finally, she was selected by the selection committee and subsequent to the same, the selection list was affixed in the notice board of the fifth respondent office, wherein, it is mentioned that the petitioner has better knowledge about the village Panchayat administration. Moreover, the selection list was signed by five



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persons viz., Panchayat Secretary, Zonal Deputy Block Development Officer, Mechery, Deputy Block Developmental Officer, Mechery, Block Developmental Officer, Mechery, Panchayat president of Vellar Panchayat Union.

5. Learned counsel for the petitioner further submitted that the fourth respondent has issued an order dated 21.07.2020 in Na.Ka.No.81/2016/Thi2 by cancelling the notification dated 11.11.2019 for administrative reason, which is without any authority or power, contemplated under the Tamil Nadu Village Panchayat Secretaries (conditions of service) Rules, 2013 or Tamil Nadu Panchayat Act. Therefore, the impugned cancellation order dated 21.07.2020 passed by the fourth respondent is totally illegal and violation of the above rules.

6. Learned counsel for the petitioner contended that the selection and appointment of the petitioner was cancelled by the fourth respondent for political reasons and the third respondent is the competent authority to recruit the Village Panchayat Secretary as per the Rules of the Tamil Nadu Village



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Panchayat Secretaries (Conditions of Service) Rules, 2013 and the said rule was challenged before the Madurai Bench of this Court in W.P.(MD)No.16884 of 2013 and got interim order in respect of appointing authority and therefore, the fifth respondent is the authority/jurisdiction to appoint Village Panchayat Secretary. Now, the second respondent has issued the directions to the fourth and fifth respondent dated 15.06.2020 to authorize the fifth respondent as appointing authority. But, contrary to the same, impugned order was passed by the fourth respondent and the same is liable to be set aside.

7. Learned counsel for the petitioner further contended that the fourth respondent has no jurisdiction to cancel the notification dated 11.11.2019 under any rules. However, the fourth respondent has issued the said notification as Special Officer of the fifth respondent Panchayat and thereafter, the fifth respondent was elected as President/Executive authority of the Panchayat and therefore, the second respondent has issued directions to continue the process of selection vide proceedings dated 15.06.2020. Hence, the fourth respondent has no authority to cancel the notification by



citing administrative reasons and he ought to have been forwarded the selection of the petitioner to the second respondent for approval. But, the fourth respondent has acted against the directions of the second respondent dated 15.06.2020. Therefore, the impugned order dated 21.07.2020 is illegal and against the selection of the petitioner by the selection committee mandated under Rule 3 of the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules, 2013.

8. Learned counsel for the petitioner further submitted that as far as the post of Village Panchayat Secretary is concerned, the fifth respondent is the competent and appointing authority, after consulting the second respondent. Hence, the impugned order issued by the fourth respondent is liable to be set aside. Moreover, the fourth respondent has not issued any notice to the petitioner before cancellation of the notification dated 11.11.2019 and also failed to consider that she is fully qualified and selected by the selection committee, which was consisting of fourth respondent also. Therefore, the appointment of the petitioner was cancelled only due to political reasons and has no valid reasons. Thus, the action of the fourth respondent is against



Article 14, 16 and 21 of the Constitution of India. Hence, the impugned order dated 21.07.2020 passed by the fourth respondent is liable to be quashed.

9. Learned counsel appearing for the respondents has filed a counter affidavit on behalf of the respondents 2 to 4. For better appreciation, the relevant paragraphs are extracted hereunder:

“7. It is submitted that for the purpose of selecting the candidates, a Selection Committee was constituted consisting of five members, including the 4th & 5th respondents herein. After scrutiny of the applications received, it was found that out of the 32 applications received, 8 candidates have fulfilled the eligibility criteria and therefore, the 8 candidates were called upon to attend an interview on 01.07.2020. After conducting interview, on the same day, a selection list was published selecting the Writ Petitioner as Panchayat Secretary.

9. It is submitted that as regards the power of the fourth respondent to cancel the selection process, the second respondent/District Collector had delegated the power of commencing, counting and completing the recruitment process vide Proceedings dated 11.11.2019. The petitioner herself has admitted that as per the proceedings of the second respondent, the fourth respondent had published the recruitment notification dated 11.11.2019 and her application was also received thereof. It is true that the fourth respondent also presided over the Selection committee along with other members. However, the



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selection process culminating in the issuance of an Order of Appointment, had not been completed to its logical end due to administrative reasons.

10. It is submitted that in any recruitment process, if a candidate is selected, it will be intimated to the candidate concerned. But when the selection process itself has been cancelled due to administrative reasons, the petitioner cannot be put on notice regarding the same. When the fourth respondent was delegated the power to conduct the selection process by the second respondent on 11.11.2019 based on which the selection process was resorted to, then equally, the fourth respondent has got the power to recall, cancel or annul the selection process, before it could be completed in its logical end. Therefore, the fourth respondent has right, authority and jurisdiction to recall or cancel the selection process. The contrary delegations of the petitions are vehemently denied as misleading. In any event, due to administrative reasons, the selection process could not be completed by issuing the order of appointment to the petitioner. Therefore, no motive or malafide reasons could be attributed as against the fourth respondent. The reliance placed by the petitioner to the pendency of the writ petition (MD) No.16684 of 2013 or the interim order passed thereof has got nothing to do with the present case.”

10. Learned counsel appearing for the respondents has filed another counter affidavit dated 25.08.2020 on behalf of the fifth respondent. For better appreciation, the relevant paragraphs are extracted hereunder:



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“9. I respectfully submitted that the fourth respondent has issued notification as Special Officer of 5th respondent Panchayat and thereafter, the 5th respondent was elected as President/Executive Authority of the Panchayat and thereof, the second respondent has issued directions to continue the selection process vide proceedings dated 15.06.2020. Hence, the selection was made on 01.07.2020 and the petitioner was selected as Village Panchayat Secretary of 5th respondent Panchayat. But the notification was cancelled by the fourth respondent vide order dated 21.07.2020. The fifth respondent is the Executive Authority under section 84 of the Tamil Nadu Panchayat Act and therefore the order issued by the fourth respondent is illegal and against the proceedings of the second respondent dated 15.06.2020.

10. I respectfully submit that the fourth respondent has issued an order without any authority and jurisdiction, since the fifth respondent was authorized by the second respondent/Inspector of Panchayats to continue the selection process vide order dated 15.06.2020. Subsequently the selection was held on 01.07.2020 by the selection committee and thereafter the petitioner was selected and sent to the second respondent for approval. But the same was cancelled by the fourth respondent by citing administrative reasons. Now the fourth respondent is interfered the powers of the fifth respondent by cancelling selection of the petitioner.”

14. Heard the learned counsel on either side and perused the materials



available on record.

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15. On perusal of the records, it can be seen that the notification was issued on 11.11.2019 for selection to the post of Village Panchayat Secretary, Vellar Panchayat Union, which is coming under the rotation of Schedule Tribes community. Hence, the petitioner, who belongs to the said community has applied for the aforesaid post. Pursuant to the direction of the second respondent, the fifth respondent has sent a interview letter dated 18.06.2020 stating that the interview is scheduled to be held on 01.07.2020 at the fifth respondent office. Thereafter, interview was conducted by the selection committee, which was headed by fourth and fifth respondent. Finally, the petitioner was selected and the selection list was published on the same day i.e., 01.07.2020 in the notice board of the fifth respondent office. This being so, without any notice to the petitioner, the fourth respondent issued an order in Na.Ka.No.81/2016/Thi2 dated 21.07.2020 by cancelling the notification dated 11.11.2019 for administrative reasons. Even though the fourth respondent was part of the selection committee, he himself cancelled the notification dated 11.11.2019.



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16. According to the notification dated 11.11.2019, the aforesaid post is mandated for persons belongs to Scheduled Tribes community and the petitioner herein is also belongs to the said community. Hence, there is no dispute in this regard. Moreover, in the said notification, one of the conditions stipulated by the second respondent is that the applicant should reside in the same panchayat or if there is no eligible person found in the said panchayat, the persons residing in the next village panchayat will be considered for appointment. In the present case on hand, the petitioner belongs to the same panchayat i.e., Vellar Panchayat and she was found to be eligible in all aspects. Hence, she was selected by the selection committee and the selection order was affixed in the notice of the fifth respondent on the same day itself i.e., 01.07.2020.

17. The contention of the learned counsel appearing for the respondents 4 & 5 is that the selection order was not affixed in the notice board of the fifth respondent. **But, the petitioner has categorically stated in paragraph 6 of the affidavit that in the notice board of the Vellar**



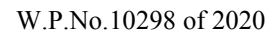
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Panchayat Union office, the selection list was affixed on 01.07.2020, i.e., on the same date of interview. Moreover, the selection list was signed by five persons viz., Panchayat Secretary, Zonal Deputy Block Development Officer, Mechery, Deputy Block Developmental Officer, Mechery, Block Developmental Officer, Mechery, Panchayat president of Vellar Panchayat Union.

18. On perusal of the proceeding in Na.Ka.No.30413/2049/Thi3 dated 15.06.2020 issued by the second respondent/District Collector, clause 8 & 9 clearly shows the conditions to be followed in conducting the interview for the selection and appointment to the post of Village Panchayat Secretary in the Vellar Panchayat Union. For better appreciation, the aforesaid clause 8 & 9 are extracted hereunder:

“8. கிராம ஊராட்சித் தலைவர் நியமன அலுவலராக இருந்து நேர்முகத் தேர்வு நடத்தப்பட வேண்டும்.

9. நேர்முகத் தேர்வு நடத்துதல், துகதியான நபர்களை தேர்வு செய்தல் மற்றும் நியமன ஆணை வழங்குதல் உள்ளிட்ட நடைமுறைகளை பின்பற்றுவதில் சம்மந்தப்பட்ட மண்டல துணை வட்டார வளர்ச்சி அலுவலர், கிராம ஊராட்சி மன்றத் தலைவருடன் ஒருங்கிணைந்து செயல்பட வேண்டும்.”



19. It is pertinent to note that the petitioner having been selected by the selection committee consisting of five persons and the cancellation order was issued by the fourth respondent, who has no authority to cancel the notification for the reason that as per the clause 8 of the bye-laws of the second respondent/District Collector dated 15.06.2020, the Village Panchayat President is the appointing officer/authority to conduct the interview. Once the Village Panchayat President is appointed as the appointing authority, only he has got the powers to cancel the notification. Hence, the cancellation order passed by the fourth



respondent, which is impugned herein is without jurisdiction. Therefore, the impugned order dated 21.07.2020 passed by the fourth respondent is liable to be set aside for the following reasons:

(i) The impugned order was issued by the fourth respondent without jurisdiction and as per the proceedings of the second respondent/District Collector dated 15.06.2020, the fifth respondent/Village Panchayat President is the appointing authority and only he can cancel the above notification dated 11.11.2019.

(ii) The notification was cancelled without giving any prior notice or opportunity to the petitioner.

(iii) Being one of the members of the selection committee, the fourth respondent himself cannot issue the impugned order dated 21.07.2020 by cancelling the recruitment notification dated 11.11.2019.

(iv) The order passed by the fourth respondent is without any authority or power, which is contemplated under Tamil Nadu Panchayat Secretaries (Condition and Service) Rules, 2013 or Tamil Nadu Panchayat Act.



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20. In view of the above factual matrix of the case, this Court is of the considered view that the order passed by the fourth respondent in Na.Ka.No.81/2016/Thi2 dated 21.07.2020 by cancelling the notification dated 11.11.2019 for appointment to the post of Village Panchayat Secretary in Vellar Panchayat Union is liable to be quashed and the same is hereby quashed.

21. In the result, this writ petition is allowed and the fifth respondent is directed to appoint the petitioner as Village Panchayat Secretary of the fifth respondent panchayat i.e., Vellar Panchayat Union as per the selection dated 01.07.2020, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes/No

Speaking Order : Yes/No



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To:

- 1.The Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat,
Chennai – 600 009.
- 2.The District Collector/Inspector of Panchayats,
Salem District,
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- 3.The Personal Assistant to District Collector,
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5.The Panchayat President,
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J.SATHYA NARAYANA PRASAD,J.

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