



W.P.No.26418 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 18.08.2023

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THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.26418 of 2021
and W.M.P.No.27882 of 2021

R.Selvarani

...Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary,
Revenue Department,
Chennai.

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,
Office of the Thasildhaar,
Sankarapuram Taluk,
Kallakurichi District-605 801.

...Respondents

Petition filed under Article 226 of the Constitution of India to



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issue a Writ of 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, Kallkurichi 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 : S.Buveneswari

For Respondents : Mrs.C.Meera Arumugam,
Additional Government Pleader

ORDER

This Writ petition has been filed seeking to call 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, Kallkurichi District as per the appointment order issued by the fifth respondent in his proceedings under Na.Ka.a3/3148/2020 dated 13.02.2021.



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2. The case of the petitioner is that the fifth respondent through his proceedings had proposed for filling up of seven vacancies for the posts of Village Assistants at Sankarapuram Taluk. Hence, the petitioner has applied for the said post and he was permitted to participate in the interview on 18.01.2021 and all the necessary certificate verifications were done. Thereafter, the fifth respondent has issued appointment order dated 13.02.2021, appointing the petitioner to the post of Village Assistant in Kaduvannur Village.

2.1. 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 petitioner was not permitted to join the duty at the allotted place. The Tamil Nadu General Assembly Election was held on 06.04.2021 and there was change of political party, who succeeded in the General Election and had formed the New Government.

2.2. After formation of the New Government, on allegations that there were irregularities in the selection of seven posts of Village Assistants,



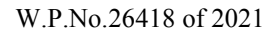
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explanations were called for from the successful candidates to whom appointment orders were already issued. Consequently, the impugned order dated 25.06.2021 came to be passed, cancelling the appointment order dated 13.02.2021 issued to the petitioner herein. Challenging the said order, the petitioner has come forward with the present writ petition.

3. Learned counsel for the petitioner submitted that earlier a batch of writ petitions have been filed before this Court in W.P.Nos.6220 of 2022 etc., batch. This Court after elaborate discussion, by order dated 12.07.2023 has allowed the writ petitions by giving directions to the authorities concerned.

4. Learned counsel for the petitioner further submitted that the directions issued by this Court in the said order is squarely applicable to the facts of the case on hand, therefore, similar relief may be granted in the present writ petition. For better appreciation, relevant portions of the order is extracted hereunder:

“7. On a bare perusal of the alleged irregularities from 1 to 5 are concerned, it could be seen that there was



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 direct the Government to regularize such irregular appointment 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 regularized, 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 a '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



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certain alleged irregularities in the selection process and not illegalities, the cancellation 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 closed. There shall be no order as to costs.”

5. Learned Additional Government Pleader appearing for the respondents has no objection for the said submissions made by the learned counsel for the petitioner.

6. In view of the above factual matrix of the case and in the light of the order passed by this Court in a batch of writ petitions in W.P.Nos.6220



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of 2022 etc., batch dated 12.07.2023, the impugned order passed by the fourth respondent vide Na.Ka.a1/938/2021 dated 25.06.2021 is hereby quashed and consequently, the fifth respondent is directed to permit the petitioner to join the duty in the post of Village Assistants, Kaduvannur Village, Sanakarapuram 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, within a period of six weeks from the date of receipt of a copy of this order.

7. In the result, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes/ No
Speaking Order : Yes/ No
Index : Yes/ No



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