



W.P.(MD)No.8716 of 2018

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.8716 of 2018

S.Arokia Jency

... Petitioner

Vs.

1. The District Collector,
Dindigul District,
Dindigul.
2. The Block Development Officer,
Sanarpatty Panchayat Union,
Sanarpatty,
Dindigul.
3. The President,
Madoor Panchayat Office,
Madoor,
Dindigul District.
4. A.Selvarani

... Respondents



W.P.(MD)No.8716 of 2018

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the first respondent vide Na.Ka.No.8866/201/Oo.Va.9, dated 22.02.2018 and quash the same as illegal and consequently, direct the respondents 1 and 2 to conduct an enquiry regarding forgery committed by the respondents 3 and 4 to secure job by depriving the petitioner's right to hold the post of Panchayat Clerk and may direct the respondents 1 and 2 to appoint the petitioner as Panchayat Clerk in any one of the Panchayat under them and pass appropriate orders in favour of the petitioner's representation.

For Petitioner : Mr.A.Balakrishnan
for Mr.K.P.Narayanakumar

For Respondents : Mr.G.V.Vairam Santhosh
Addl. Govt. Pleader for R1 and R2
Mr.R.Anand for R4
R3 - Tapal Returned

ORDER

This Writ Petition has been filed to call for the records of the impugned order passed by the first respondent vide proceedings in Na.Ka.No.8866/201/Oo.Va.9, dated 22.02.2018, quash the same as illegal and consequently, direct the respondents 1 and 2 to conduct an enquiry



W.P.(MD)No.8716 of 2018

regarding forgery committed by the respondents 3 and 4 to secure job by depriving the petitioner's right to hold the post of Panchayat Clerk and also direct the respondents 1 and 2 to appoint the petitioner as Panchayat Clerk in any one of the Panchayat under them and pass appropriate orders in favour of the petitioner's representation.

2. The case of the petitioner is that the third respondent has appointed the petitioner to do Panchayat clerical works due to superannuation of one Loganathan at Madoor Panchayat. On 08.09.2010, the petitioner made a representation to the respondents 2 and 3 to appoint her as Panchayat Clerk. By considering the service rendered by the petitioner, the third respondent recommended her name to the second respondent vide letter dated 10.09.2010. All the members of the third respondent Panchayat unanimously passed a resolution on 15.09.2010 and agreed to appoint the petitioner as Panchayat Clerk of Madoor Panchayat. But the third respondent did not prevent the petitioner to work after passing of resolution by all the members and allowed the fourth respondent to act as Panchayat Clerk without any legal sanctity. Challenging the appointment of



W.P.(MD)No.8716 of 2018

the fourth respondent, the petitioner has filed a Writ Petition before this Court in W.P.(MD)No.6714 of 2011. This Court by order dated 23.06.2011 dismissed the Writ Petition with liberty to the petitioner to work out the alternative remedy, as against which, the petitioner preferred Writ Appeal in W.A.(MD)No.490 of 2012 and the same was disposed on 20.07.2017. By complying the order of this Court, the petitioner made a representation to the first respondent on 18.08.2017 by annexing all the documents. In the meantime, on 04.12.2017, one of the ex-ward member also made a representation to the first respondent stating that most of the erstwhile ward members not put their signature in the resolution passed in favour of the fourth respondent. But the first respondent had not taken any steps to enquire the above mentioned members and mechanically passed the impugned order dated 22.02.2018, which is not sustainable. Challenging the same, the present Writ Petition has been filed.

3. The learned counsel appearing for the petitioner would submit that admittedly the then President made a recommendation to appoint the petitioner as Panchayat Clerk considering the length of service rendered by



W.P.(MD)No.8716 of 2018

her, however without considering the petitioner's candidature, appointing the fourth respondent as Panchayat Clerk, is not sustainable one and the said appointment is contrary to G.O.(Ms)No.175, dated 05.12.2006. He further submitted that the resolution was passed with forged signature of the members, for which, the members filed a Writ Petition before this Court and this Court issued a direction to the respondent / District Collector to conduct enquiry, however without conducting enquiry rejecting the petitioner's representation, is not sustainable one. Accordingly, he prayed for appropriate orders.

4. The learned Additional Government Pleader appearing for the official respondents would submit that on 10.09.2010, the President of Madoor Panchayat had only recommended the second respondent to appoint the petitioner as Panchayat Clerk, but not passed any order and that is only recommendation letter. Further, on 21.09.2011, one James, who was incharge of the Panchayat President had passed a resolution by appointing the petitioner as Panchayat Clerk. The said resolution was cancelled by the first respondent on 30.09.2011 by stating that a person who is incharge of



W.P.(MD)No.8716 of 2018

Panchayat President, has no power or authority to appoint any person, against which, they have not filed any appeal till now. Since the first respondent cancelled the resolution, the petitioner has no right to claim the posting of Panchayat Clerk. He further submitted that on 15.10.2010 itself, the third respondent Panchayat had passed a resolution to appoint the fourth respondent as Panchayat Clerk in the third respondent Panchayat and the said appointment was also confirmed by the second respondent. Hence, there is no illegality in the order passed by the first respondent.

5. Heard the learned counsel appearing for the parties and perused the materials placed before this Court.

6. The facts in the present case are not in dispute. Admittedly, in the earlier round of litigation, the petitioner challenged the appointment of the fourth respondent herein in W.P.(MD)No.6714 of 2011 and this Court by order dated 23.06.2011 dismissed the Writ Petition with liberty to the petitioner to challenge the same before the first respondent and the same was confirmed in W.A.(MD)No.490 of 2017, vide judgment dated



W.P.(MD)No.8716 of 2018

WEB COPY

20.07.2017. Thereafter, the enquiry was conducted by the District Collector and the same was negatived. Thereby, the present Writ Petition has been filed.

7. However, on perusal of the impugned order, it reveals that earlier the third respondent has made a recommendation to the second respondent on 10.09.2010 to appoint the petitioner as Panchayat Clerk, but the said recommendation was not accepted. On 21.09.2011, the incharge of the Panchayat President had passed a resolution by appointing the petitioner as Panchayat Clerk and the same was cancelled by the first respondent on 30.09.2011 by stating that a person who is incharge of Panchayat President has no power to appoint any person. It appears that the very same third respondent Panchayat had passed a resolution on 15.10.2010 to appoint the fourth respondent as Panchayat Clerk. Further the appointment of the fourth respondent was confirmed by the second respondent on 20.09.2011. However, the petitioner's appointment was made through recommendation letter dated 10.09.2010 and subsequent resolution dated 15.09.2010. Subsequently, the said resolution was not accepted by the first respondent



W.P.(MD)No.8716 of 2018

and the same was cancelled as early as on 30.09.2011. However, without challenging the earlier impugned order passed against the petitioner dated 30.09.2011, challenging the appointment of the fourth respondent is not advisable one and hence, the prayer that has been sought cannot be granted in the absence of any challenge made to the order dated 30.09.2011.

8. With the above observations, this Writ Petition is dismissed. No costs.

20.02.2023

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

vji



WEB COPY



W.P.(MD)No.8716 of 2018

To

1. The District Collector,
Dindigul District,
Dindigul.
2. The Block Development Officer,
Sanarpatty Panchayat Union,
Sanarpatty,
Dindigul.
3. The President,
Madoor Panchayat Office,
Madoor,
Dindigul District.



WEB COPY



W.P.(MD)No.8716 of 2018

M.DHANDAPANI,J.

vji

W.P.(MD)No.8716 of 2018

20.02.2023