



W.P.Nos.24575 and 13596 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2024

CORAM :

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.Nos.24575 and 13596 of 2012

and

M.P.Nos.1 and 1 of 2012

R.Suresh Kumar

... Petitioner in both W.Ps

Vs.

- 1.The District Collector,
Nagapattinam,
Nagapattinam District.
- 2.The Assistant Director of Panchayat,
District Collectorate,
Nagapattinam,
Nagapattinam District.
- 3.The Assistant Auditor of Panchayat,
District Collectorate,
Nagapattinam,
Nagapattinam District.
- 4.The Block Development Officer,
Panchayat Union Office,
Kollidam Union,
Sirkazhi Taluk,
Nagapattinam District.



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5.The President,
Aalalasundharam Panchayat,
Aachchalpuram Post,
Sirkazhi Taluk,
Nagapattinam District.

6.P.R.Rajesh

... Respondents in both W.Ps.

Prayer in W.P.No.24575 of 2012: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned order in Na.Ka.No.1051/2010/A1/dated 18.05.2012 passed by the 4th respondent herein with knowledge of 1 to 3 respondents herein and to quash the same and to direct the respondents 1 to 3 to remove the 6th respondent name in the serial No.426 in the seniority list passed by the Personal Assistant (Development) The District Collector of Nagapattinam, Nagapattinam District in Na.Ka.No.5075/2011/U.va.7, dated 25.06.2012 and to appoint the petitioner as a Writer (Secretary) Aalalasundharam Panchayat, Kollidam Union, Sirkali Taluk, Nagapattinam District.

Prayer in W.P.No.13596 of 2012: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned order without any date and proceeding number passed by the 5th respondent herein with knowledge of 1 to 4 respondents herein the order received on 08.05.2012 through register post without acknowledgment card by the petitioner herein and to quash the same and to direct the respondents 1 to 5 to appoint the petitioner as a Writer (Secretary)



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Alalasundharam Panchayat, Kollidam Union, Sirkazhi Taluk, Nagapattinam
District.

For Petitioner : Mr.Dalit Tiger C.Ponnusamy
(in both W.Ps)

For Respondents : Mr.Vadivelu Deenadayalan
(in both W.Ps) Additional Government Pleader
for R1 to R3
Mr.D.Gopal
for R4 & R5
Mr.J.Vignesh
for R6

COMMON ORDER

The brief facts that are relevant for disposal of the writ petitions are as under:-

One S.Arivazhagan while working as Panchayat Writer in Aalalasundharam Panchayat suffered illness and could not attend his duties. In view of the same, the petitioner herein was appointed in the said leave vacancies as Panchayat Writer on 13.02.2008 and thereafter the fifth respondent herein passed a resolution appointing the petitioner on permanent basis after duly removing the said S.Arivazhagan from the post of Panchayat Writer. Thereafter, the fourth respondent herein issued proceedings in



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Na.Ka.No.3117/09/AA1 dated 18.03.2010 transferring one Mr.T.Saraboji as

Writer to the Aalalasundharam Panchayat in the place of the petitioner.

Aggrieved by the said proceedings dated 18.03.2010, the petitioner herein approached this Court by filing W.P.No.6111 of 2010. The said writ petition was dismissed by this Court vide order dated 22.07.2010 holding that the resolution that was passed by the fifth respondent on 05.03.2009 appointing the petitioner on permanent basis as Panchayat Writer by removing the Arivazhagan from the service as illegal. Relevant paragraphs from the said order which reads as under:-

“7. A perusal of the records would show that earlier Mr.Arivazhagan, the 5th respondent was appointed and he has been working as Assistant in Alalasundaram Panchayat. No doubt, the G.O.Ms.No.175, Rural Development & Panchayat (E5) Department, dated 05.12.2006 gives powers to the panchayat President to make an appointment and however, it is subject to the approval of the Block Development Officer. Page No.2 of Annexure attached to the aforesaid G.O.Ms.No.175, Rural Development & Panchayat (E5) Department, dated 05.12.2006 under Clause V speaks about the qualification for appointment of Assistant Clause V(M) states as follows:-

“எந்த ஊராட்சிக்கு பணி நியமனம் செய்யப்படுகிறதோ அந்த ஊராட்சியில் வசிப்பவராக இருக்க வேண்டும்.”



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8. The affidavit filed by the petitioner would reveal that he is residing at Kadaikan Vinayaga Nallur, Sirkazhi Taluk, Nagapattinam District, whereas the appointment relates to Alalasundaram Panchayat. Therefore, at the outset itself, the petitioner's alleged appointment is invalid, as he is from other village. Therefore, the appointment itself is contrary to Government Order.

9. Assuming for a moment that the petitioner has got a right to continue as Assistant, this Court has to see as to whether the person namely, the 5th respondent who was already in service, was validly removed. Counter Affidavit filed by the 4th respondent would show that the 5th respondent was unable to attend the work because of his ill-health and therefore, the 4th respondent appointed the 5th respondent. Before appointment, it is the bounden duty of the 4th respondent to remove the serving servant according to due process of law. Admittedly, no proceedings was taken against the 5th respondent to remove him from the post of Assistant. That is the reason why the impugned order of 2nd respondent recognises the 5th respondent as Panchayat Assistant. Even as per the counter affidavit filed by the 4th respondent, no such action was taken by the 4th respondent. Apart from that, there is no approval from the Block Development Office for the appointment of petitioner. The alleged appointment made in favour of the petitioner is alleged to have been sent by the 4th respondent to the 2nd respondent and



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no approval has been granted. The communication dated 30.11.2009 sent by the 2nd respondent regarding works in the Panchayat would not amount to approval of petitioner's appointment.”

2. Subsequently, the petitioner made a claim for regularization of the services as clerk in the fifth respondent/Panchayat and submitted a representation dated 29.12.2011 on the ground that the post of Writer in fifth respondent/Panchayat is vacant. Thereafter, the petitioner approached this Court by filing W.P.No.790 of 2012 complaining inaction on the part of the respondents on the representation dated 29.12.2011 submitted by the petitioner. This Court by an order dated 08.02.2012 disposed of the said writ petition directing the respondent 4 therein to dispose of the representation dated 29.12.2011 submitted by the petitioner and also granted liberty to the petitioner to submit a representation afresh along with a copy of the said order.

3. Pursuant to the said order passed by this Court, the claim of the petitioner for regularization in the post of Panchayat Writer was considered by the respondent 5 and by an order dated 08.05.2012 rejected the claim of the petitioner. Thereafter the respondent 4 herein passed another order in



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proceedings Na.Ka.No.1051/2010/AA1 dated 18.05.2012 intimating the petitioner about the rejection of his claim. Aggrieved by the said order dated 08.05.2012 and 18.05.2012, the petitioner approached this Court by filing the present writ petitions.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondents and also perused the materials available on record.

5. Though the petitioner was appointed on 13.02.2008 and continued to be in service for considerable period of time, the said service has come to an end by virtue of orders passed by this Court in W.P.No.6111 of 2010 dated 22.07.2010. The said order dated 22.07.2010 has become final. Therefore, the petitioner cannot make any claim based upon the service that was rendered by the petitioner prior to 22.07.2010. This Court has categorically recorded a finding that the appointment of the petitioner on 13.02.2008 and regularizing his service by passing a resolution on 05.03.2009 as the one not in accordance with law. However the claim of the petitioner was considered by the respondents 4 and 5 pursuant to the order dated 08.02.2012 passed by this Court and the same was rejected on three grounds:-



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(i) Firstly, on the ground that in terms of G.O.Ms.No.175 Rural Development and Panchayat Raj Department (E5) dated 05.12.2006, the petitioner is not qualified for being appointed to the post of Panchayat Writer, as he is not the resident of village in question.

(ii) Secondly, on the ground that the petitioner has already crossed the upper age limit of 32 years and

(iii) Thirdly, on the ground that the petitioner is not possessing the required educational qualification.

6. It is not in dispute that the petitioner is not the resident of the village, for which, the petitioner is seeking appointment. However, the learned counsel for the petitioner contended that, in case if there is no suitable candidate available within the village, the persons from other villages can also be appointed. It is also not in dispute that in case if suitable candidates are not available the person from other villages can also be appointed in terms of G.O.Ms.No.175 Rural Development and Panchayat Raj Department (E5) dated 05.12.2006. But the said question would arise only in case if the recruitment process is initiated in terms of the procedure prescribed under G.O.Ms.No.175



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Rural Development and Panchayat Raj Department (E5) dated 05.12.2006 by

duly calling for applications from the general public. But here is a case, where the claim made by the petitioner is being considered by the respondents 4 and 5 for appointing him as post of Panchayat Writer, by virtue of the orders passed by this Court. Therefore, it is incumbent on the part of the petitioner to satisfy that he fits into the qualification prescribed for the said post. But he cannot rely upon the alternative qualifications that are provided in the relevant Government Orders.

7. In view of the fact that the petitioner is not the resident of the village in question and admittedly not satisfied the qualification criteria under G.O.Ms.No.175 Rural Development and Panchayat Raj Department (E5) dated 05.12.2006, the contentions made by the learned counsel for the petitioner in this regard are liable to be rejected. As the petitioner is admittedly not satisfying the qualification criteria the question of appointing the petitioner to the post of Panchayat Writer on consideration of his representation does not arise. That is what is done by the respondents 4 and 5 by passing the impugned order. Therefore, this Court does not find any error or illegality in the orders dated 08.12.2012 and 18.05.2012 passed by the respondents 4 and 5



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respectively.

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8. Even otherwise, the petitioner who entered into service of fifth respondent/Panchayat by a back door method that to as a temporary employee claiming to regularize his service without following due process of law and procedure that is provided under G.O.Ms.No.175 Rural Development and Panchayat Raj Department (E5) dated 05.12.2006 for filling up the post of Panchayat Writer in an illegal manner and the said initial appointment itself was rightly declared as illegal by this Court vide order dated 22.07.2010. The said order also has become final. Therefore, the petitioner has no additional right or claim for being considered for appointment or regularization in the post of Panchayat Writer in the fifth respondent/Panchayat. But it is only by virtue of an order dated 08.02.2012 passed by this Court in W.P.No.790 of 2012, the claim of the petitioner was considered by the respondents 4 and 5. In the absence of any right for being appointed *de hors* the procedure that is contemplated for filling up of the said post, this Court does not find any violation of any fundamental right nor legal right of the petitioner, warranting jurisdiction of this Court under Article 226 of the Constitution of India.



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WEB COPY 9. In the light of the above, this Court does not find any merit in these writ petitions and the same is accordingly dismissed.

10. These Writ Petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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MUMMINENI SUDHEER KUMAR, J.

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