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W.P.No.25619 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.25619 of 2012

and

M.P.No.1 of 2012

R.Jayalakshmi

...Petitioner

-Vs-

1.The District Collector and
Inspector of Panchayat,
Ariyalur District.

2.The Additional Director
(Panchayat Development),
District Collectorate,
Ariyalur District.

3.The President,
Vilandhai Panchayat Union,
Ariyalur District.

4.The Vice-President,
Vilandhai Panchayat Union,
Ariyalur District.

5.S.Gandhimathi

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India,
praying for the issuance of a direction in the nature of Writ of Certiorarified



W.P.No.25619 of 2012

Mandamus calling for the records relating to the order passed by the 1st respondent in Na.Ka.No.A7/2176/2010 dated 03.09.2012 and quash the same and further direct the respondents to permit the petitioner to continue as Village Secretary in the Vilandhai Panchayat Union and pass such further orders.

For Petitioner	:	Mr.S.Parthasarathy
For R1 & R2	:	Mr.M.Rajendiran, Additional Government Pleader
For R3 & R4	:	Mr.D.Gopal Government Advocate
For R5	:	Mr.K.Venkatraman Senior Counsel for Mr.M.Muthappan

ORDER

This writ petition is filed for issuance of a Writ of Certiorarified Mandamus to quash the impugned order dated 03.09.2012, passed by the 1st respondent in Na.Ka.No.A7/2176/2010, and further direct the respondents to permit the petitioner to continue as Village Secretary in the Vilandhai Panchayat Union.

2. The case of the petitioner is that she applied for the post of Village Secretary in the 3rd respondent Panchayat. After scrutiny of the



W.P.No.25619 of 2012

application by resolution in No.37.2010-2011 dated 22.11.2010 in the pay scale of Rs.2,500/- - Rs.5,000/- + Rs.500/-, her appointment was made in accordance with law.

3. Learned counsel for the petitioner would submit that the 5th respondent is not a qualified person. As per G.O(Ms)No.175 dated 15.12.2006, the maximum age prescribed for the Most Backward Class is 33 years, and her date of birth as per S.S.L.C certificate is 29.10.1976. Therefore, as on 28.10.2009, she had completed 33 years. Hence, on the date of her alleged appointment, she is over aged.

4. Learned counsel would further submit that the 5th respondent alleged that she was appointed based on Resolution No.54/2009 dated 30.12.2009. But no resolution was passed appointing the 5th respondent as Panchayat Assistant. Further, as a matter of fact, according to the 3rd respondent, Resolution No.54 deals with expenses to be incurred by the Panchayat Union towards street lights and other materials for the period of 2009-2010.



W.P.No.25619 of 2012

5. Further, it is the case of the 3rd respondent that the 5th respondent's husband, Mr.Sathyamurthy, entered the Panchayat Union Office on 19.07.2010, and took some blank papers signed by the erstwhile President. Immediately, a complaint was lodged to the Inspector of Police, Aandimadam Police Station. The said complaint was registered as C.S.R.No.398 of 2010. The 5th respondent's husband has manipulated and forged the resolutions and appointment order by using the blank paper signed by the erstwhile President.

6. Learned counsel would further submit that the 5th respondent filed W.P.No.16765 of 2010 before this Court for direction to respondents 3 and 4 to take back her duty, pursuant to the order passed by the 3rd respondent herein dated 17.06.2010. But the said writ petition was dismissed on 10.03.2011. Thereafter, the 5th respondent had filed another W.P.No.15590 of 2011 challenging the order of the appointment made to the petitioner and for further direction to permit her to continue as Panchayat Assistant in the 3rd respondent Panchayat Union and to grant all monetary benefits. This Court, by order dated 28.06.2012, directed the 1st respondent to conduct the investigation and pass orders within a period of twelve weeks



W.P.No.25619 of 2012

from the date of the order. Thereafter, the 1st respondent conducted a proper enquiry and passed the impugned order dated 03.09.2012 in Na.Ka.No.A7/2176/2010, setting aside the appointment of the petitioner and holding the appointment of the 5th respondent to be proper.

7. Learned counsel further submitted that, as far as the petitioner's appointment is concerned, it is made in accordance with law following the G.O.(Ms)No.175 dated 15.12.2006, by proper resolution and through proper appointment. Further, the petitioner has worked as Village Secretary for the past two years in the 3rd respondent Panchayat without making any bad remarks. All of a sudden, the cancellation of the appointment made to the petitioner is against the law and arbitrary.

8. It is the submission of the learned counsel for the petitioner that the petitioner is married, and for the alleged act of the 3rd respondent, the petitioner cannot be penalised, and the 1st respondent ought to have created a separate post for the 5th respondent, who have been appointed to the said post, according to the above order passed by the 1st respondent dated 03.09.2012. Aggrieved by the appointment of the 5th respondent, the



W.P.No.25619 of 2012

petitioner has come forward with the present writ petition.

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9. A counter affidavit was filed on behalf of respondents 1 and 2.

10. Learned Additional Government Pleader appearing for respondents 1 and 2 would submit that the 5th respondent was appointed and working as Village Assistant in the 3rd respondent Panchayat. As such, no passing of resolution will not affect the appointment of the 5th respondent in any way.

11. Learned Additional Government Pleader appearing for respondents 1 and 2 drew the attention of this Court by order dated 28.06.2012 in W.P.No.15590 of 2011, which reads as follows:

“5. Therefore, it is not possible for me to find out whether there was a genuine appointment or whether the allegations of the respondents are true. If the allegations of the respondents are true, I do not know how these records found a place in the office of the Assistant Director. Therefore, the proper course of action to be adopted in this case is to direct the first respondent to conduct an investigation into these matters. Therefore, this writ petition is disposed of, directing the 1st respondent to conduct a detailed investigation into the circumstances under which the alleged appointment of the petitioner took place, whether such an appointment really took place and whether the allegations of forgery and fabrication are true or not. Depending upon the outcome of the enquiry, the first respondent shall take appropriate action against the erring officials, whether it be the petitioner or the officials of the Panchayat. The enquiry shall be completed within twelve weeks. There shall be no order as to costs. Consequently,



W.P.No.25619 of 2012

M.P.No.2 of 2011 is closed.”

WEB COPY

12. Pursuant to the above order passed by this Court, the 1st respondent conducted a detailed enquiry and passed the impugned order dated 03.09.2012, holding that the appointment of the petitioner, namely, R.Jayalakshmi, is not done in accordance with the rules, and the appointment of the 5th respondent namely, S.Gandhimathi, is proper, and she is permitted to join the duty as Village Secretary.

13. Heard both sides and perused the materials placed on record.

14. In the case on hand, the petitioner, who was initially appointed as Village Assistant and worked for two years, pursuant to the order passed by this Court in W.P.No.15590 of 2011 dated 28.06.2011, the 1st respondent was directed to conduct a detailed enquiry regarding the appointment of the 5th respondent. After conducting a detailed enquiry, the 1st respondent passed an impugned order dated 03.09.2012, vide Na.Ka.No.A7/2176/2010, setting aside the appointment of the petitioner, holding the appointment of the 5th respondent as proper, and permitted her to join the duty as Village Secretary.

However, considering the fact that the petitioner has worked for two years



W.P.No.25619 of 2012

and has been abruptly removed from the service based on the enquiry.

WEB COPY

15. Having regard to the admitted fact, the petitioner worked for two years, and as on date, she is 41 years. The 1st respondent/District Collector, Ariyalur District, is directed to consider the case of the petitioner based on her +2 qualification to accommodate in any other post according to her qualification as per rules and regulations in force within a period of eight weeks from the date of receipt of a copy of the order.

16. In view of the above facts and circumstances of this case, this Court is not inclined to interfere with the order passed by the 1st respondent/District Collector in Na.Ka.No.A7/2176/2010 dated 03.09.2012, and the same is hereby confirmed.

17. In the result, the writ petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

12.02.2024

cda

Index : Yes/No

Speaking/Non Speaking order



WEB COPY



W.P.No.25619 of 2012

To

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WEB COPY



W.P.No.25619 of 2012

J.SATHYA NARAYANA PRASAD, J.

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W.P.No.25619 of 2012

12.02.2024