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W.P.No.34616 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.34616 of 2012
and M.P.No.1 of 2012

A.Mohamed Ilyas

... Petitioner

Vs.

1.The District Collector,
Nagappatinam, Nagappatinam District.

2.The Block Development Officer,
Village Panchayat,
Kuttalam,
Nagappatinam District.

... Respondents

Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for records relating to Na.Ka.No.614/Uu.Va.7/2012 dated 27.11.2012 on the file of the first respondent and quash the same and consequently direct the respondents to reinstate the petitioner with all back wages along with the continuity of service and other benefits.



W.P.No.34616 of 2012

WEB COPY

For Petitioner : Mr.S.Arokia Maniraj

For Respondent 1 : Mr.M.Rajendiran,
Additional Government Pleader

For Respondent 2 : Mr.M.Murali,
Government Advocate

ORDER

The petitioner has filed this writ petition to call for records relating to Na.Ka.No.614/Uu.Va.7/2012 dated 27.11.2012 on the file of the first respondent and quash the same and consequently direct the respondents to reinstate the petitioner with all back wages along with the continuity of service and other benefits.

2. The case of the petitioner is that the petitioner was appointed as Panchayat Assistant by the second respondent based on the selection and recruitment processes by virtue of the resolution passed by the Arivalur Village Panchayat as per the provisions of the Tamil Nadu panchayat Act. The second respondent issued the appointment order on 05.12.2008, ordered the petitioner to join duty as panchayat Assistant on 05.12.2008 forenoon. In the appointment order it is clearly stated that the appointment was made on

Page No.2 of 17



W.P.No.34616 of 2012

the fulfillment of the eligibility criteria.

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2.1. The petitioner has completed SPM Course. SPM/MCE/SPVM in Malaysia is equivalent to HSC (+2) passed and the educational certificate of the SPM of Malaysia was duly endorsed and certified and ordered by the District Educational Officer, Mayladuthurai of his proceedings in O.Mu.No.474/A4/2010 dated 07.03.2011 as that of equivalent to +2 passed. The certificate also sent to the second respondent by the District Education Officer, Mayladuthurai, citing various orders of the Director of School Education and G.O.Ms.No.476 Education dated 30.03.1988 cited in the reference of the said order. The petitioner also completed his Diploma in Industrial Electronics Technician in Midas Institute of Engineering Technology, which is recognized under the Ministry of Education – Malaysia on 24.11.1998 after passed the SPM Course (+2) in Malaysia there.

2.2. The petitioner also joined the Bachelor Degree of Preparatory program (BPP) and he has passed in August 2010 from the Tamil Nadu Open University, Chennai. The Open University certificates should be treated as equivalent to the corresponding awards of the other universities in the State



W.P.No.34616 of 2012

under regular stream for the purpose of employment for the public services by vide G.O.Ms.No.21 (Personal and Administrative Reforms (K) Department) dated 08.09.2007.

2.3. Since the SPM Course passed by the petitioner is equivalent to passed in +2 course, the Annamalai University Chidambaram, Tamil Nadu has admitted the petitioner in B.A. History Degree which was for the academic year 2012-2013 which was confirmed by the Director of the Annamalai University on 26.11.2012. The first respondent prepared and published a comprehensive seniority list of working panchayat part time and full time clerks on 04.01.2010 in which the petitioner's name appeared in Serial No.422 in Column 5, stating that at the time of appointment of the petitioner the Educational qualification of the clerk is 12th pass. It is platemently seen in the seniority list for the several in service candidate's qualifications are mentioned as even from 5th standard and 9th standard and 10th standard as their educational qualification. One Mr.Ezhilvendan gave a complaint against the petitioner questioning the education qualification of the petitioner on 27.01.2012 based on the complaint, the first respondent passed the impugned order of dismissal of the petitioner on 27.11.2012. Aggrieved over the same



W.P.No.34616 of 2012

the petitioner has come forward with the present writ petition.

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3. Learned counsel for the petitioner would submit that in the impugned order it is stated that the Director of School Education recommended verifying the genuinity and equivalent of the education certificate shall be made referred to the concerned office of the Ambassador of the Malaysia Country. However the reference made by the Director of School education is not done in the petitioner's case by the first respondent. The eligibility criteria on the educational qualification of the petitioner to the post of panchayat secretary which is decided and determined in the year 2008 by the respondents and allowed the petitioner to work in the post from 05.12.2008 to 27.11.2012 for the period of more than 4 years, on the basis of third party complaint without any base or proof the first respondent without having the power passed the impugned dismissal order not complying the recommendation of the Director of School Education which is liable to be quashed.

4. Learned counsel for the petitioner would submit that dismissing the



W.P.No.34616 of 2012

petitioner from the service after four years accepting the educational qualification of the petitioner as equivalent to the prescribed one and declaring him eligible to the post at the time of appointment, after the four years the appointing authority later on stating the educational qualification is lower than the prescribed one based on the private complaint attracts promissory estoppel upheld by this Court on various judgments against the impugned order enable the impugned order to be set aside.

5. Learned counsel for the petitioner would submit that the Director of School Education by vide his order in Na.Ka.No.32080/R3/95, dated 18.05.1995, the Educational qualification of the petitioner is equivalent to 12th pass which is also confirmed and ordered by the District Education Officer, Myladuthurai, by her order dated 07.03.2011 hence the impugned order passed by the first respondent is illegal and to be quashed. The first respondent issued show cause notice/charge memo on 24.08.2012 to the petitioner sought for explanation questioning the educational qualification of the petitioner after four years of the appointment directly which is illegal and contra to the proviso of Tamil Nadu Panchayat Act, 1994 Since the first respondent being the Inspector of Panchayat is only the second appellate



W.P.No.34616 of 2012

authority and if at all any disciplinary proceedings are warranted, executive authority of the concerned panchayat alone can initiate departmental proceedings by issuing charge memo, followed by enquiry, which will culminate in the passing of order of punishment, if the charges are held proved in terms of Section 83. However, in the petitioner's case, the first respondent has straight away issued the charge memo/show cause notice to the petitioner and passed the impugned order of dismissal of the petitioner though he is the second appellate authority.

6. Learned counsel for the petitioner would submit that Section 84 of the Tamil Nadu Panchayat Act, 1994 clearly show that the executive authority has to carry into effect the resolutions of village panchayat. Again referring to Section 106 which empowers the executive authority alone may pass any order of punishment, suspend, remove or dismiss any officer or servant in the service of the village panchayat. Hence, a joint reading of the provisions of Section 83, 84 and 106 of Tamil Nadu Panchayat Act, 1994 goes to show that the executive authority in the present case is the president of then panchayat, as he was appointed under G.O.Ms.No.225, Rural Development Department dated 15.10.1996. While so, the charge memo and



W.P.No.34616 of 2012

the impugned dismissal order of the petitioner issued by the first respondent has to be set aside, as he has no authority to issue and to pass the same. So, the impugned order of dismissal is being improper and unlawful, is liable to be quashed. Which is contra to Section 83, 84 and 106 of Tamil Nadu Panchayat Act, 1994. Hence the petitioner prays to allow this writ petition.

7. The counter affidavit is also filed by the first respondent in the year 2013 and it has been stated that one Mr.Ezhilventhan of Arivalur Village of Kuthalam Panchayat Union, Nagapattinam District has sent an allegation petition to the first respondent stating that the appointment of the petitioner was irregular since the petitioner was not having the required qualification, the petitioner was directed to produce his educational certificate and from a perusal of the certificate produced by him, it was revealed that he studied in Malaysia and therefore, the Director of School Education was addressed to verify the genuineness and inform the educational status of the petitioner. The director of School Education, Chennai has observed in his letter No.K.Dis.29913/K/E2/2011, dated 21.06.2012 that the petitioner is eligible to study XI standard as exists in Tamil Nadu.



8. Learned Additional Government Pleader appearing for the first respondent would further submit that as per the guidelines prescribed in Government Order in G.O.Ms.No.175, Rural Development Department, dated 05.12.2006, the qualification prescribed for the appointment of Panchayat Assistant is +2 (higher Secondary Course). Hence, it was brought to notice that the petitioner has got the qualification of only X standard and not qualified for the post of Panchayat Assistant hence the petitioner was directed to appear for an enquiry before the first respondent on 07.06.2012. The petitioner has also appeared for the enquiry and stated that he has studied in malaysiain Sekolah Menengah Kebangsaan Sultan Ismail, Johor Baharu in 5th Form and that he further studied in Tamil Nadu Open University in Bachelor of Preparatory Programme (BPP). Thereafter, a show cause notice was issued to the petitioner vide Letter No.Rc.614/R.D.7.2012 dated 29.06.2012 as to why he should be terminated from service since he is not having the required educational qualification. The petitioner has also submitted his explanation vide his letter dated 10.10.2012. In the explanation, the petitioner has furnished some flimsy grounds. As there is no substantial evidence to prove the petitioner's qualification, it was decided that the appointment of the petitioner as Panchayat Assistant is irregular, since the



W.P.No.34616 of 2012

petitioner was not having the required qualification of +2 (Higher Secondary Course) as on the date of his appointment and therefore the petitioner was terminated from service as per the orders of the first respondent in proceedings in Rc.614/R.D./2012 dated 27.11.2012.

9. Learned Additional Government Pleader appearing for the first respondent would further submit that it is admitted that the petitioner has studied in Malaysia in 5th form as per the certificate produced by him, which is not equal to +2 (Higher Secondary Course) qualification as exists in Tamil Nadu, as reported by the Director of School Education Tamil Nadu vide his letter No.K.Dis.29913/K./E2/2011/ dated 25.04.2012. The alleged technical qualification of Diploma in Industrial Electronics Technician in Midas Institute of Engineering Studies in Malaysia will not amount to the General Educational Qualification of Higher Secondary Course in Tamil Nadu.

10. Learned Additional Government Pleader appearing for the first respondent would further submit that the petitioner was terminated from the post of Panchayat Assistant since he is unqualified. It is further submitted that action also being taken against officials, who have failed to supervise the



W.P.No.34616 of 2012

irregular appointment. According to the Head of the Department i.e., Director of School Education report the qualification of the petitioner is that he is eligible to study in XI Standard only in Tamil Nadu, the alleged proceedings of the District Educational Officer, Mayiladuthurai cannot hold good. The petitioner's admission in B.A. course in Annamalai University in the academic year 2012-13 cannot be taken as the recognition of the educational qualification of the petitioner as Higher Secondary Course.

11. Heard the learned counsel on either side and perused the materials available on record.

12. The educational qualification for the post of Panchayat Assistant is +2, but the petitioner was appointed to the said post only with +1 qualification and the same is contrary to the Government Order in G.O.Ms.No.175, Rural Development Department, dated 05.12.2006. According to which, the qualification prescribed for appointment to the post of Panchayat Assistant is +2 (Higher Secondary). It is admitted that the petitioner was appointed as Panchayat Assistant on 05.12.2008 by the



W.P.No.34616 of 2012

Panchayat President of Arivalur Village Panchayat, Nagapattinam District,

Kuttalam Block. Based on the petition of one Mr.Ezhilventhan of Arivalur Villag alleging that the petitioner does not possess the required educational qualification of +2 for appointment to the post of Panchayat Assistant, the petitioner was directed to produce the Educational qualification certificates and on perusal of the educational certificates, **it was found that the petitioner is only having the qualification of +1 as it exists in Tamil Nadu and not +2 (Higher Secondary), which is a required qualification for the said post. Hence, the petitioner was directed to appear for enquiry before the first respondent on 07.06.2012 and he appeared for the enquiry and submitted that he has studied 5th forum in Malaysia and further studied the course called Bachelor of Preparatory Programme (BPP) in Tamil Nadu Open University.**

13. The show cause notice was issued to the petitioner dated 29.06.2012 as to why he should not be terminated from service since he does not have the required educational qualification. The petitioner has submitted his explanation dated 10.10.2012. Since the explanation has not satisfactory and there is no substantial evident to prove that he is having the required



W.P.No.34616 of 2012

educational qualification of higher secondary course, it was decided that the appointment of the petitioner as Panchayat Assistant was irregular. Hence, he was terminated from service as per the order of the first respondent dated 27.11.2012.

14. It is also admitted that the petitioner has worked for four years from 05.12.2008 to 27.11.2012 and the action was taken against the petitioner for not having the required educational qualification of +2 (Higher Secondary Course) only based on the complaint given by one Ezhilventhan of same Arivalur Village. The respondents/authority ought to have verified the educational qualification, whether the petitioner has possessed the required qualification of +2 as per G.O.Ms.No.175, Rural Development Department dated 05.12.2006 and having failed to do so and due to lethargic attitude and negligence on their part, the petitioner was allowed to work for more than four years as Panchayat Assistant in Arivalur Panchayat Union Office.

15. It is also mentioned in the counter affidavit that action was also been taken against officials, who have failed to supervise the irregular



appointment. It is pertinent to note that the petitioner was appointed as Panchayat Assistant based on the resolution passed by Arivalur Panchayat Union and by the order passed by the President of Arivalur Panchayat Union and the order of termination of the petitioner from service was passed by the first respondent/the District Collector, Nagapattinam, who is also the Inspector of Panchayats. **The main contention of the petitioner is that the petitioner was not appointed by the first respondent and he was appointed only by the President and he only has got the authority or power to pass the order of punishment, suspension or dismissing any officer or servants from the service of the village panchayat under Section 106 of Tamil Nadu Panchayat Act, 1994.**

16. The aforesaid contention is unsustainable for the reason that the termination from service of the petitioner as Panchayat Assistant was on the ground that he does not possess the required educational qualification of +2 (Higher Secondary) as per G.O.Ms.No.175, Rural Development Department, dated 05.12.2006 and the said termination is not a punishment as defined in Section 106 of Tamil Nadu Panchayat Act, 1994. In the present case, no doubt the execute authority is the



W.P.No.34616 of 2012

President of the Arivalur Panchayat Union and not the District Collector

(Inspector of Panchayats)/the first respondent but the order of termination passed by the first respondent/District Collector is not a punishment for any misconduct committed by the petitioner while he was in service as Panchayat Assistant in Arivalur Panchayat Union. Hence, Section 83, 84 and 106 of the Tamil Nadu Panchayat Act, 1994 is not applicable to the present case on hand.

17. In view of the above factual matrix of the case, the order passed by the first respondent in Na.Ka.No.614/Uu.Va.7/2012 dated 27.11.2012 does not warrant any interference by this Court and the same is hereby confirmed.

18. In the result, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

28.03.2024

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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

Page No.15 of 17



WEB COPY



W.P.No.34616 of 2012

To:

- 1.The District Collector,
Nagappatinam, Nagappatinam District.
- 2.The Block Development Officer,
Village Panchayat,
Kuttalam,
Nagappatinam District.

J.SATHYA NARAYANA PRASAD,J.

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W.P.No.34616 of 2012

W.P.No.34616 of 2012

28.03.2024