



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.10016 of 2023
and WMP No.10065 of 2023

Sundaram

... Petitioner

Vs.

1. The District Collector,
Salem, Salem District.

2. The Block Development Officer (VP)
Vazhapadi Union Officer,
Vazhapadi Taluk, Salem District 636 115.

3. The Village President,
Chinnamma Naicken Palayam Village Panchayat,
Vazhapadi Taluk, Salem District 636 104

4. P.Gowri

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of declaration declaring the appointment of the 4th respondent as a Panchayat Secretary to the Chinnamanaickenpalayam Panchayat, Vazhapadi Union, Salem District is null and void and consequently, direct the 1st respondent to appoint the petitioner as a Panchayat Secretary of Chinnamanaickenpalayam Panchayat, Vazhapadi Union, Salem District.



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For Petitioner : Mr.T.Ganesan

For Respondents : Mr.P.Balathandayutham
Special Government Pleader for R1
Mr.P.Anandhakumar
Government Advocate for R2 and R3
Mr.R.Balaramesh
for R4

ORDER

This writ petition has been filed for the issue of writ of declaration to declare the appointment of the 4th respondent as a Panchayat Secretary to Chinnamma Naicken Palayam Village, Vazhapadi, Salem District, as illegal and for a consequential direction to the 1st respondent to appoint the petitioner as the Panchayat Secretary.

2. The case of the petitioner is that the Panchayat Secretary of the Chinnamma Naicken Palayam Village Panchayat retired from service on 30.06.2013. The petitioner submitted an application for this post through the 1st respondent. The application made by the petitioner was rejected on the ground that the Village Panchayat Secretary post can be filled up only through the District Seniority maintained by the District Employment Office as per GO Ms.No.72 dated 09.07.2013.



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3. The grievance of the petitioner is that the 4th respondent made a back door entry and was appointed as the Panchayat Secretary only on the ground that she is the Panchayat President's brother's daughter in law. It is under these circumstances, the present writ petition has been filed before this Court.

4. The 2nd respondent has filed a counter affidavit. The 2nd respondent has taken a stand that initially the appointment of the 4th respondent was not confirmed / approved by the Block Development Officer by quoting GO Ms.No.72 dated 09.07.2023. Later, it was found that this Government Order will not apply and therefore, the power of Panchayat President to appoint Village Assistant was recognised and the 4th respondent was appointed to the said post. Therefore, the 2nd respondent has supported the appointment of the 4th respondent as Panchayat Secretary.

5. Heard Mr.T.Ganesan, learned counsel for the petitioner and Mr.P.Balathandayutham, learned Special Government Pleader for 1st respondent and Mr.P.Anandhakumar, learned Government Advocate for respondents 2 and



3 and Mr.R.Balaramesh for 4th respondent.

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6. The case in hand is a classic case of fraud committed on a public employment by utilising the innocuous order passed by this Court and turning it to the advantage of the 4th respondent.

7. It is an admitted case that the 4th respondent was appointed as a Panchayat secretary on 08.07.2013. The approval was not granted by the Block Development officer. The same became a subject matter of challenge before this Court in WP No.22249 of 2013. When this writ petition was pending, the 4th respondent filed WP No.10879 of 2017 by seeking for an innocuous prayer to dispose of her representation dated 27.03.2017. This Court by an order dated 09.12.2021 disposed of the writ petition and directed the representation to be considered on its own merits and in accordance with law within a period of four weeks.

8. Taking advantage of the above order, the Panchayat convenes a Special Meeting on 26.08.2022 and takes into account the order passed in WP



No.10879 of 2017 and appoints the 4th respondent to the post of Panchayat Secretary.

9. When WP No.22249 of 2013 came up for hearing on 30.08.2023, it was informed to this Court that the 4th respondent has already been appointed as a Panchayat secretary on 29.08.2022. Recording the same, the writ petition was closed.

10. There is no dispute that the appointment of the 4th respondent as a Panchayat Secretary on 08.07.2013 was not approved. Therefore, the 4th respondent could not have held on the said post in the eye of law. When that is the case, the 4th respondent makes some representation in the year 2017 and based on an order passed by this Court, the panchayat passes a resolution. On carefully going through the resolution passed by the Panchayat, it is seen that the panchayat has recorded as if the 4th respondent had gone on maternity leave and thereafter, she was not allowed to join service and therefore, she filed WP No.10879 of 2017 before this Court and since the order has been passed in this writ petition, the 4th respondent has to be appointed as the Panchayat Secretary.



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11. In the first place, the 4th respondent going on a maternity leave is completely irrelevant to the facts of the case. This in view of the fact that the appointment of the 4th respondent as panchayat president on 08.07.2013 was not even approved. Therefore, there is no question of the 4th respondent continuing in the post of Panchayat President thereafter. However, a situation is created by the 4th respondent as if she continued to work as Panchayat President and she went on a Maternity leave and thereafter, she was not allowed to rejoin. On the basis of the order passed in WP No.10879 of 2017, the panchayat passes a resolution and a fresh appointment order is given to the 4th respondent dated 29.08.2022. Therefore, for the so called selection that was made in the year 2013, by misusing the order passed by this Court in the year 2021, a fresh appointment order is granted in favour of the 4th respondent on 29.08.2022. The counter affidavit filed by the 2nd respondent seems to support this appointment on the ground that GO Ms No.72 dated 09.07.2013 will not apply in the case of the 4th respondent. Assuming without admitting that the stand taken by the 2nd respondent is correct, the same reasoning must apply even for the petitioner who applied for the said post and which was rejected on the ground that the petitioner



was not registered with the District Employment Exchange. Therefore, GO Ms.No.72 dated 09.07.2013 is interpreted by the respondents differently for the petitioner and for the 4th respondent. For the petitioner, it was held that it will apply and for the 4th respondent, it was decided that it will not apply.

12. In the considered view of this Court, a fraud has been played in the appointment of the Panchayat Secretary to Chinnamma Naicken Palayam Village panchayat. The orders passed by this Court has been misused and the appointment which was illegal, has been attempted to be revived through an innocuous order passed by this Court. A public office cannot be filled up in this manner and it is quite unfortunate that all the official respondents have come together to some how safeguard the employment of the 4th respondent as a Panchayat Secretary. This Court cannot turn a blind eye and the appointment of the 4th respondent has to be necessarily interfered by this Court.

13. In the light of the above discussion, this Court holds that the appointment of the 4th respondent as the Panchayat Secretary at Chinnamma Naicken Palayam, Village panchayat is illegal and consequently, non est in the



eye of law. There shall be a direction to the respondents to undertake the process of fresh selection to the post of Panchayat Secretary strictly in accordance with law. This process shall be started / commenced within a period of four weeks from the date of receipt of a copy of this order.

14. In the result, this writ petition is allowed with the above directions.

No costs. Consequently, the connected miscellaneous petition is closed.

03.09.2024

Internet : Yes
Index : Yes
Speaking Order / Non Speaking Order
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N. ANAND VENKATESH, J.

rka

To



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Salem, Salem District.
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