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W.P.No.10266 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2024

CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.P.No.10266 of 2024
and
CMP.No.11290 of 2024

Y.T.Tajin Banu

... Petitioner

Vs.

1. The Registrar General,
High Court, Madras,
Chennai - 600 104.
2. The Principal District & Session Judge at Salem,
Combined District Court Complex,
Salem.
3. The Chief Judicial Magistrate,
Combined District Court Complex,
Salem.
4. The Judicial Magistrate No.II,
Attur,
Salem District.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records pertaining to proceedings of the 3rd respondent in ROC.No.3393 of 2019 dated 30.04.2019 discharging the petitioner from the post of Masalchi without jurisdiction and the order passed in ROC No.88297/2019/C1 dated 27.12.2021 of the 1st respondent confirming the order of the 3rd respondent to discharge the petitioner and consequentially reinstate the petitioner as Masalchi at the Office of the 4th respondent with continuity of service and all attendant benefits.

For Petitioner : Mr.S.Ilamuhil

For Respondents : Mr.M.Santhanaraman

ORDER

(Order of the Court was made by **S.M.SUBRAMANIAM, J.**)

The writ of mandamus has been instituted challenging the order relieving the petitioner from service by invoking Section 32 (3) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

2. The petitioner was appointed as Masalchi on 26.03.2018. Admittedly, she is under probation. She was nominated to criminal unit and the 3rd respondent/Chief Judicial Magistrate found that the public duties



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performed by the petitioner is not satisfactory. The Authorities competent found that the petitioner is not performing the public duties diligently and to the satisfaction of the superiors. Thus, the 3rd respondent invoked powers conferred under section 32 (3) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and relieved the petitioner from the services *vide* proceedings dated 30.04.2019. The petitioner preferred an appeal before the Registrar General of Madras High Court. The Registrar General obtained remarks from the learned Principal District Judge, Salem and verified connected material records. Certain instances referred by the learned Principal District Judge in his report about the poor performance of the petitioner was taken into consideration and the powers conferred under Section 32 (3) of the Service Conditions Act was invoked. The overall performance of the petitioner was taken into consideration for relieving him from service. The Appellate Authority namely, the Registrar General rejected the appeal filed by the petitioner. Thus, the present writ petition came to be instituted.



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3. Mr.S.Ilamuhil, the learned Counsel appearing on behalf of the petitioner would contend that the Chief Judicial Magistrate is an incompetent Authority to issue the order of relieving. As per the Rules, he is not the appointing Authority. Therefore, the order impugned is liable to be set aside. The second ground would be that allegations are raised against the petitioner and without conducting any enquiry petitioner was discharged from service. Therefore, the order impugned is penal in nature and liable to be set aside.

4. Mr.M.Santhanaraman, the learned Counsel appearing on behalf of the respondents would oppose by stating that as per the amended Tamil Nadu Judicial Ministerial Service Rules, the Chief Judicial Magistrate of Criminal Unit concerned is the appointing Authority to the post of Masalchi. The Government also issued orders amending the Rules in G.O.Ms.No.543, Home (Courts.V) Department dated 25.06.2002. Therefore, the contention of the petitioner that the 3rd respondent is not the appointing Authority is incorrect, in view of the amendment made to Section 33 of the Tamil Nadu Judicial Ministerial Service Rules, 1955 *vide* G.O.Ms.No.543 dated 25.06.2002. Even as per the Tamil Nadu Basic Service Rules, the post of Masalchi is found in Section 19 Category 44. As per Annexure to the Tamil



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Nadu Basic Service Rules, the District Magistrate concerned is the Appointing Authority. In this context, the Registrar General also issued clarifications as follows:

"The post of Record Clerks, Process Servers, Office Assistants, Sweepers, Watchmen and Masalchis available in both the Civil and Criminal Units are not governed by the Special Rules for Tamil Nadu Judicial Ministerial Service and hence in respect of these posts, the High Court had issued directions in its letter in R.O.C.No.9251/91/C1 dated 10.09.1996 stating that the District Judges shall maintain a consolidated seniority list for the posts of Record Clerks, Process Servers, Office Assistants, Sweepers, Watchmen and Masalchis available both in Civil and Criminal units and further directed that where there is provision of direct recruitment, the Chief Judicial Magistrate, after making appointment to these posts may report the seniority of the recruited persons to the District Judge for the purpose of maintaining a consolidated seniority list and in the event of filling up these posts by promotion, the Chief Judicial Magistrate may address the District Judge concerned for suggesting the senior most person from the consolidated seniority list and may thus fill up these posts. As such, the Chief Judicial Magistrate continues to be the Appointing Authority in respect of the post of Record Clerks, Office Assistant, Sweepers, Watchmen and Masalchis available in the Criminal Unit."



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5. The above communication and the Government Order issued was referred by the Division Bench of this Court in the case of ***M.Paul Durai Vs. The District and Sessions Judge*** dated 20.06.2007 in W.P.No.15094 of 2007. Para.5 reads as under:

"5. By communication dated 10.09.1996, the District Judges were all instructed to maintain a consolidated seniority list for the categories of posts available both in civil and criminal Units, namely (1) Attenders (record clerks) (2) process servers (Junior Bailiff) (3) Office Assistants (4) Sweepers (5) Watchman and (6) Masalchis. It is further stated that for the above posts where the provisions of direct recruitment is available, the Additional District Judge cum Chief Judicial Magistrate (as it stood then), after making appointment for the said posts should report the seniority of the recruited persons to the District Judge, for the purpose of maintaining a consolidated seniority list. It also stated that thereafter any higher post should be filled up from the consolidated seniority lists."

6. The petitioner was discharged from service by invoking Section 32 (3) of the Service Conditions Act on the ground that her job performance was not to the satisfaction of the Authorities competent. Therefore, we are



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not inclined to interfere, as there is no infirmity. Consequently, the Writ

Petition stands **dismissed**. No costs. Connected miscellaneous petition is closed.

[S.M.S., J.] [C.K., J.]
29.07.2024

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

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