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W.P.No. 3409 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2024

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.No. 3409 of 2017

and

W.M.P.No. 3396 of 2017

M.B. Jaganathan

... Petitioner

Vs.

- 1.The State of Tamil Nadu
Rep., by it's Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat, Chennai – 9.
- 2.The District Collector,
Namakkal District,
Namakkal.
- 3.The Personal Assistant to District Collector,
O/o., the Collector,
Namakkal District,
Namakkal.
- 4.The Block Development Officer,
Thiruchengode Panchayat Union Office,
Thiruchengode,
Namakkal District.
- 5.The Special Officer,
Anangoor Village Panchayat,
Thiruchengode Taluk,
Thiruchengode,
Namakkal District.
- 6.A. Ganesan,



W.P.No. 3409 of 2017

Panchayat Assistant,
Prithi Village Panchayat,
Thiruchengode Panchayat Union,
Namakkal District.

... Respondents

Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records relating to the impugned order passed by the fourth respondent in his proceedings in Na.Ka.No.147/2016/T1 dated 25.01.2017 and the impugned transfer order passed by the third respondent in his proceedings in Na.Ka.No.T1/2797/2017 dated 01.02.2017 and quash the same as illegal.

For Petitioner : Mr. S. Nambi Arooran,
for M/s. Ajmal Associates

For Respondents : Mr. M. Alagu Goutham, for R1 to R4
Government Advocate
No Appearance for R5 & R6

ORDER

This Writ Petition has been filed against the order passed by the fourth respondent in proceedings in Na.Ka.No.147/2016/T1 dated 25.01.2017 and the order passed by the third respondent in proceedings in Na.Ka.No.T1/2797/2017 dated 01.02.2017.

2. The case of the petitioner is that he was appointed as Panchayat Secretary on 07.04.2000 at Prithi Village Panchayat, Thiruchengode Panchayat Union, Thiruchengode Taluk, Namakkal District and after serving at various places, at present, he is working at Anangoor Village Panchayat, Thiruchengode Panchayat



Union, Namakkal District. The fourth respondent issued proceedings on 25.01.2017 transferring the petitioner from the post of Panchayat Secretary, Anangoor and one A. Ganesan, who is working as Panchayat Secretary at Prithi Panchayat was posted in the place of the petitioner. The fourth respondent directed them to relieve from the present post by 31.01.2017 in the afternoon and should join in the new place on the same day and to submit the joining report.

3. Admittedly in the said order, in which place the petitioner was posted is not mentioned. It is stated in the said order that transfer order will be issued later. Subsequently, the third respondent issued proceedings in Na.Ka.No.T1/2797/2017 dated 01.02.2017 posted the petitioner as Panchayat Secretary, Lathuvadi Panchayat, Elachipalayam Taluk. It is directed in the said order that the petitioner has to join in the new work place and the District Development Officer (VP) is directed to send the joining report of the employee to the third respondent. Against the proceedings dated 25.01.2017 issued by the fourth respondent and proceedings dated 01.02.2017 issued by the third respondent, the petitioner filed this writ petition.

4. Learned counsel for the petitioner would submit that the respondents 3 and 4 are not competent authorities who passed transfer orders. The fifth respondent alone is competent to pass such transfer orders. The learned counsel for the petitioner further contends that the order of transfer issued by the third and fourth respondents



are due to the political reasons, though there is no fault on the part of the petitioner.

The learned counsel for the petitioner further submits that the respondents 3 and 4 passed impugned transfer orders in view of the Tamilnadu Village Panchayat Secretaries (conditions of Service) Rules, 2013 issued under G.O.Ms.No.72, Rural Development and Panchayat Raj (E5) Department, dated 09.07.2013. But the respondents 3 and 4 are not supposed to pass the impugned orders, in view of the fact that the Go.Ms.No.72, Rural Development and Panchayat Raj (E5) Department dated 09.07.2013 was stayed by the Madurai Bench of Madras High Court in W.P.(MD) No.16884 of 2013 by order dated 11.10.2013. Under these circumstances, the learned counsel vehemently contends that the third and fourth respondents passed impugned orders of transfer of the petitioner without any authority under law and as such, the said orders are unsustainable and untenable in the eye of law and accordingly sought to set aside the same by allowing the writ petition.

5. On behalf of the respondents, counter affidavits have been filed by the respondents 3 and 4. Based on the averments in the counter affidavits, the learned Government Advocate appearing for the respondents would submit that the stay granted by the Madurai Bench of Madras High Court in W.P.(MD) No.16884 of 2013 is a case of appointment of the petitioner therein but in the present case, the issue is with regard to transfer. As such, the said order could not come in the way to pass impugned orders by the respondents 3 and 4.



W.P.No. 3409 of 2017

WEB COPY

6. Learned Government Advocate further contends that against the petitioner, the fourth respondent issued show cause notice and the petitioner did not respond to that. Under those circumstances, the fourth respondent passed the order dated 25.01.2017 and subsequently, the third respondent passed order on 01.02.2017 issuing posting order to the petitioner. Learned Government Advocate further submits that there is no irregularity or illegality in the orders of the respondents 3 and 4 and sought to dismiss the writ petition.

7. Having heard the contentions of the respective counsel and upon careful examination of the materials available of record, it appears that the fourth respondent passed order on 25.01.2017 transferring the petitioner from the post of Panchayat Secretary, Anangur and one A.Ganesan was appointed in his place. It is also directed the petitioner to relieve from the post of Panchayat Secretary, Anangur by 31.01.2017 in the afternoon. It is also mentioned in the said order that transfer order will be issued later to the petitioner. It is very strange to note that the third respondent without any authority to transfer the petitioner, directed him to relieve from the post of Panchayat Secretary, Anangur by 31.01.2017 and he also directed one Ganesan, Panchayat Secretary of Prithi to join in the post of Panchayat Secretary, Anangur by 31.01.2017.



8.

Thereafter, the respondent No.3 transferred the petitioner as Panchayat Secretary of Lathuvadi Panchayat, Elachipalayam Taluk. Admittedly, it is an admitted fact that the respondents 3 and 4 are not competent authorities to effect the transfers, as they are not the appointing authorities to the post of Panchayat Secretary. As rightly pointed out by the learned counsel for the petitioner that as the Tamilnadu Panchayat Secretaries (Conditions of Service) Rules, 2013 issued under G.O.Ms.No.72, Rural Development & Panchayat Raj (E5) Department dated 09.07.2013 are not in operation in the light of the stay order of Madurai Bench of Madras High Court dated 11.10.2013 in W.P.(MD) No.16884 of 2013, the third and fourth respondents are not having any jurisdiction or authority under law to pass the impugned orders. Under this factual position, there is no any substance in the contentions of the learned Government Advocate.

9.

On comprehensive examination of the entire facts of the case based on the materials available on record, this Court has no hesitation to hold that the third and fourth respondents without any authority passed impugned orders and as such, these orders would not sustain in the eye of law and accordingly, it is liable to be quashed.

10.

Accordingly, this Writ Petition is allowed and the orders dated 25.01.2017 of the fourth respondent in Na.Ka.No.147/2016/T1 and the order dated



W.P.No. 3409 of 2017

01.02.2017 issued by the third respondent in Na.Ka.No.T1/2797/2017 are hereby quashed.

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

12. It is made it clear that the petitioner is at liberty to ventilate his grievances for the loss sustained by him including monetary benefits due to the orders passed by the third and fourth respondents without any authority under law.

20.02.2024

Index :Yes/No
Neutral Citation :Yes/No
AT



W.P.No. 3409 of 2017

BATTU DEVANAND, J.

AT

WEB COPY

To

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State of Tamil Nadu,
Rural Development and Panchayat Raj Department,
Secretariat, Chennai – 9.

2.The District Collector,
Namakkal District,
Namakkal.

3.The Personal Assistant to District Collector,
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