



W.P.(MD)No.18432 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.09.2024**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

W.P.(MD)No.18432 of 2017

K.Maguthankani

... Petitioner

/Vs./

1.The District Collector,
Tenkasi.

(R1 cause title is corrected vide Court order
dated 16.03.2023 in WP(MD)No.18432 of 2017.)

2.The Block Development Officer,
(Panchayat Union),
Alangulam,
Tirunelveli District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order passed by the 2nd respondent in Na.Ka.No.Aa3/4973/2012, dated 24.01.2017, and quash the same as illegal, without jurisdiction and authority and consequently direct the respondents to grant all service, monetary and attendant benefits of the petitioner from the date of cancellation of appointment till the date of reinstatement.



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For Petitioner : Mr.R.L.Dhilipan Pandian
For Respondents : Mr.Veera Kathiravan
Additional Advocate General
Assisted by
Mrs.D.Farjana Ghoushia
Special Government Pleader

ORDER

The petitioner has challenged the impugned order dated 24.01.2017 passed by the second respondent terminating him from service as Secretary of Keelaveeranam Panchayat.

2. The second respondent has terminated the service of the petitioner on the ground that on the date of the appointment order issued in favour of the petitioner, there was no vacancy for the post of Panchayat Secretary in the said Panchayat. Despite the same, the Panchayat President, based on a resolution has illegally appointed the petitioner to the post of Panchayat Secretary.



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3. The petitioner has raised several grounds while challenging the impugned order passed by the second respondent in this writ petition. The grounds include the following:-

(a) The President of the Panchayat has got the power to appoint the petitioner as Secretary to the Village Panchayat under Section 83 of the Tamil Nadu Panchayats Act, 1994, in view of the fact that G.O.Ms.No.72, Rural Development Panchayat Raj (E5) Department, dated 09.07.2001 was stayed by this Court in WP(MD)No.16884 of 2013 and WP(MD)No.12032 of 2014.

The learned counsel appearing for the petitioner submits that subsequent to the grant of the interim stay, G.O.Ms.No.72, referred to supra was also quashed by a learned Single Judge of this Court;

(b) The second respondent is not conferred with the jurisdiction to pass the impugned order terminating the services of the petitioner under Section 83 of the Tamil Nadu Panchayats Act, 1994 and it is only the Government who is having the power;

(c) Only after the predecessor of the petitioner was terminated from service as Panchayat Secretary, the petitioner was appointed to the said post and therefore, the petitioner's appointment is legal and his



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services ought not to have been terminated by the second respondent under the impugned order. The petitioner's predecessor was relieved on 22.02.2013, while the petitioner was appointed to the very same post on 20.03.2013 and therefore, according to the petitioner, there is no illegality in his appointment.

4. A counter affidavit has been filed by the second respondent denying the contentions of the petitioner and they would reiterate that since there was no vacancy to the post of Panchayat Secretary on the date of the petitioner's appointment, the petitioner's appointment order based on a resolution passed by the Panchayat is illegal and that is the reason why the impugned order came to be passed by the second respondent.

5. However, as seen from the impugned order, the contentions of the petitioner as raised in this writ petition have not been considered. The petitioner categorically contends that on the date of his appointment to the post of Panchayat Secretary, there was a vacancy to the said post on account of the termination of service of the petitioner's predecessor and only in accordance with law, the petitioner was appointed, pursuant



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to the appointment order issued by the Panchayat President. The petitioner also claims that the second respondent is not a competent authority to issue the impugned termination order as per the provisions of Section 83 of the Tamil Nadu Panchayats Act, 1994 and it is only the Government, who can issue such an order.

6. The learned Special Government Pleader appearing for the respondents would submit that only in accordance with law, by following the due procedure and only due to the fact that on the date of the petitioner's appointment, there was no vacancy and despite the said fact, the Panchayat President had appointed the petitioner to the post of Panchayat Secretary, which is illegal, the second respondent has passed the impugned order terminating the services of the petitioner.

7. However, the contentions as raised in this writ petition in entirety have not been considered by the second respondent under the impugned order. Therefore, this Court, after giving due consideration to the fact that the petitioner was working for a period of almost four years as Panchayat Secretary and only thereafter was terminated from service



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under the impugned order and to give one more opportunity to the petitioner in the interest of justice, deems it fit to direct the respondents to re-consider the impugned order, after giving due consideration to the contentions of the petitioner as raised in this writ petition, within a time frame to be fixed by this Court. However, it is made clear that the impugned order is not quashed. But a direction is issued to the respondents only to reconsider the same on merits and in accordance with law, after giving due consideration to the contentions of the petitioner as raised in this writ petition.

8. It is also to be noted that subsequent to passing of the termination order issued against the petitioner's predecessor, the petitioner's predecessor preferred an appeal and the said appeal came to be allowed and he has now been reinstated in service on 06.01.2021 and he is now posted as Panchayat Secretary at Subbiahpuram.

9. The learned counsel appearing for the petitioner also submits that the post of Panchayat Secretary at Keelaveeranam is now vacant.



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10. For the foregoing reasons, this writ petition is disposed of by directing the first respondent to reconsider the impugned order in the light of the grounds raised by the petitioner in this writ petition as stated supra and the first respondent is directed to pass final orders with regard to the same, within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

03.09.2024

Index : Yes / No
NCC : Yes / No
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TO:

1.The Secretary to Government,
Department of School Education,
Secretariat, Fort St.George,
Chennai.

2.The Secretary,
P and AR Department,
Fort St.George,
Chennai.



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ABDUL QUDDHOSE, J.

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Order made in
W.P.(MD)No.18432 of 2017

Dated:
03.09.2024