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**(2014) 08 MAD CK 0206**

**In the Madras High Court**

**Case No :** W.P.(MD) No. 10483 of 2010 and M.P.(MD) No. 3 of 2010

M. Senthil Arumugam

APPELLANT

Vs

The District Collector

RESPONDENT

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**Date of Decision :** 19-08-2014

**Acts Referred:**

**Citation :** (2014) 08 MAD CK 0206

**Hon'ble Judges :** S. Nagamuthu, J

**Bench :** Single Bench

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## **Judgement**

S. Nagamuthu, J.—The dispute in this writ petition is in respect of appointment of the fourth respondent herein as Village Panchayat Clerk of Aanaikulam Village Panchayat, Radhapuram Taluk, Tirunelveli District. One Mr. Yovan was previously working as Village Panchayat Clerk of the said Panchayat. He retired on attaining the age of superannuation on 30.04.2010. As against the said vacancy, the Panchayat decided to appoint a competent person as Village Panchayat Clerk. In this regard, the third respondent ? Panchayat called for applications from eligible candidates. As many as eleven candidates submitted their applications. Those applications were scrutinised by the Appointment Committee constituted by the Panchayat on 26.04.2010. The said Committee processed all those applications and finally made a recommendation on 29.04.2010 recommending to appoint the fourth respondent as Village Panchayat Clerk. Based on the same, the Village Panchayat passed a Resolution on 30.04.2010 appointing the fourth respondent as Village Panchayat Clerk. Aggrieved over the said appointment of the fourth respondent, the petitioners herein have come up with this writ petition, claiming that they have got better marks.

2. I have heard the learned counsel for the petitioner, the learned Government Advocate appearing for the first respondent and the learned counsels appearing for the respondents 2, 3 and 4. I have also perused the records carefully.

3. Referring to the grounds raised in the writ petition, the learned counsel for the petitioner would submit that as per the Tamil Nadu Panchayats (Constitution of

Committees of Village Panchayats and Delegation of Functions to Such Committees) Rules, 1999, the Village Panchayat shall constitute a committee known as 'Appointments Committee'. As per Rule 4, the Appointments Committee shall consist of the President of the Village Panchayat and its two members elected from among its members annually. Every person for appointment to any of the posts sanctioned in the Village Panchayat as prescribed in Section 101 of the Act (except the post those which is specifically excluded from the purview of the provisions of the Act or the Rules made thereunder) and the pay of which is debitable to the funds of the Village Panchayat shall be selected by the Appointments Committee.

4. Referring to the said Rule, the learned counsel for the petitioner would submit that in the case on hand, the so-called Appointments Committee constituted by the Village Panchayat was not validly constituted. The learned counsel for the petitioner would submit that as per Rule 4, it is mandatory that there shall be three members in the Committee including the President of the Village Panchayat, but in the case on hand, the Committee was not constituted on annual basis, as required under Rule 4. Only there were two members by name Mohammed Aboobacker and Velammal as Appointments Committee members. Thus, according to the learned counsel for the petitioner, the Committee was not validly constituted.

5. Secondly, the learned counsel for the petitioner would submit that the members of the Committee shall be elected by the Village Panchayat Council and not to be nominated. But in this case, Mr. Mohammed Aboobacker and Velammal were only nominated and not elected. On this score also, the learned counsel for the petitioner submitted that the constitution of the Committee is not correct.

6. The learned counsel for the petitioner, would nextly submit that the so-called Committee did not follow any procedure to assess the comparative merits of the applicants so as to make the selection based on merits. Thus, the appointment of the fourth respondent is illegal, the learned counsel contended.

7. A detailed counter has been filed by the third respondent, wherein it is stated that the Appointments Committee was constituted by Resolution dated 26.04.2010, which consisted of two members by names, Mohammed Aboobacker and Velammal. It is also stated that the Committee made recommendations for appointment of the fourth respondent as Village Panchayat Clerk and that was accepted by the Panchayat. That is why, the appointment was made, which according to the third respondent, is not illegal.

8. The second respondent has also filed a counter taking a similar stand.

9. I have considered the above submissions.

10. As I have already pointed out, as rightly submitted by the learned counsel for the petitioner, it is mandatory that as per Rule 4 of the Tamil Nadu Panchayats (Constitution of Committees of Village Panchayats and Delegation of Functions to

Such Committees) Rules, 1999, the Committee shall be elected. But the records placed before this Court would show that there was no such election conducted for the members of the Appointments Committee. Secondly, the Committee should consist of three members of whom one should be the President of the Village Panchayat. But here, the President of the Village Panchayat was not a member of the Committee. Thus the Committee was not validly constituted. There were only two members. Therefore, the proceedings of the Committee cannot be countenanced.

11. A perusal of the records would go to show that the Committee submitted its report on 29.04.2010, which shows that applications were perused by the Committee and the fourth respondent was selected. Thus, in general terms, it is stated in the said report that in the matter of educational qualification, i.e., computer knowledge and previous experience, the petitioner was found better than the others. But nothing is stated as to what are all the qualifications of the other candidates and as to how the fourth respondent was found to be meritorious than the others. Thus, the Committee did not discharge its functions properly to assess the comparative merits of the candidates and to make its recommendations. For this reason also, I have to hold that the appoint of the fourth respondent is not correct.

12. The learned counsel for the fourth respondent would submit that the fourth respondent was not aware of the above provisions. He would submit that the fourth respondent was appointed, because the fourth respondent had previous experience and also had better qualification. In my considered opinion, since these facts are not reflected in the proceedings of the Committee and since the Appointments Committee itself had not been constituted validly, the said statement cannot be accepted.

13. In view of all the above, I find no option but to set aside the appointment of the fourth respondent. While so doing, I have to issue further directions to the Panchayat to constitute Appointments Committee validly as mandated under the Tamil Nadu Panchayats (Constitution of Committees of Village Panchayats and Delegation of Functions to Such Committees) Rules, 1999. Such Appointments Committee shall be constituted within four weeks from the date of receipt of a copy of this order. Thereafter, the Appointments Committee shall process the eleven applications submitted already, follow the valid procedure to assess the comparative merits of the candidates and then make recommendations to the Panchayat for appointment. Thereafter, it will be for the Panchayat to take a decision under Rule 16 of the Rules based on such recommendation. Until such exercise is completed, the Panchayat cannot run without a Clerk. Therefore, as an interim measure, I am inclined to permit the Panchayat to continue the fourth respondent as Panchayat Clerk on temporary basis.

14. In the result, the writ petition is allowed with the following directions:

1) The appointment of the fourth respondent as Village Panchayat Clerk is hereby

set aside;

2) The third respondent/Village Panchayat shall validly constitute an Appointments Committee as mandated under the Tamil Nadu Panchayats (Constitution of Committees of Village Panchayats and Delegation of Functions to Such Committees) Rules, 1999, and such exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order;

3) The Panchayat shall thereafter place the above stated eleven applications before the said Appointments Committee and the said Committee shall process the applications, follow the procedure to assess the comparative merits of the candidates and make its recommendations within a further period of four weeks thereafter;

4) On receipt of the report of the Appointments Committee, the Panchayat shall take a final decision as provided under Rule 16 of the Rules, within a further period of four weeks thereafter;

5) Until such exercise is completed, as an interim measure, the fourth respondent shall be allowed to work as Village Panchayat Clerk on temporary basis, however subject to the outcome of the above selection process.

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