
(2010) 10 MAD CK 0163

In the Madras High Court

Case No : Writ Petition No. 6408 of 2010 and M.P. No's. 1 and 3 of 2010

S. Chellaiah

APPELLANT

Vs

The District Collector and Others

RESPONDENT

Date of Decision : 21-10-2010

Acts Referred:

Citation : (2010) 10 MAD CK 0163

Hon'ble Judges : K.B.K. Vasuki, J

Bench : Single Bench

Advocate : T. Chellapandian, for S. Mani, for the Appellant; V. Viswanathan, AGP for R1 and V.R. Rajasekaran, for R2 to R7, for the Respondent

Judgement

K.B.K. Vasuki, J.—The writ petition is filed against the order of the first respondent in Na. Ka.2889/2010/PD1 dated 23.03.2010 to quash the same and to direct the 1st respondent to reinstate the petitioner in service with all consequential service and monetary benefits.

2. The petitioner is a B.A., degree holder. During 2008 one post of Village Panchayat Assistant in Anandheri Village Panchayat fell vacant and applications are invited to fill up the post. The petitioner is one among the four persons applied for and as the petitioner was highly qualified among the four persons, his name was recommended by the president of the Village Panchayat and by the Block Development Officer, Poondi Panchayat and based on the recommendation, the 1st respondent herein appointed the petitioner as Village Panchayat Assistant-Grade-II in his proceedings dated 29.05.2009 and since the date of his appointment the petitioner had been discharging his duties satisfactorily.

3. While so, the first respondent/District Collector has cancelled the petitioner's appointment by his order dated 23.03.2010 signed on 25.03.2010 on the ground that his appointment is contrary to G.O. Ms. No. 175, Rural Development Department dated 05.12.2006. Aggrieved against the same the petitioner has come forward with this writ petition questioning the legality and validity of the

cancellation order.

4. The learned Counsel for the petitioner has questioned the impugned order of the cancellation mainly on the ground that same is passed without any notice and without any enquiry and is unfair, arbitrary, mala fide and is in violation of the principles of natural justice and the procedure laid down under law.

5. It is the further case of the petitioner, that as the appointment of the petitioner is by the 1st respondent/District Collector based on the recommendation of the Panchayat President who was by the 1st respondent/District Collector delegated the powers of the Village Panchayat for a period of 6 months u/s 204(3) of Panchayat Act and the recommendation of the Block Development officer, as such the cancellation of the same by the 1st respondent/District Collector is per se illegal and without jurisdiction.

6. Per contra, the learned Counsel for the official respondent as well as individual respondents who are the vice President and ward councillors of Anandheri Village Panchayat would defend the action of the 1st respondent in cancelling the petitioner appointment on the strength of G.O. Ms. No. 175, Rural Development Department dated 05.12.2006.

7. I have heard and considered the rival submissions made on both sides.

8. The issue involved herein is in respect of the appointment of the petitioner to the post of Village Panchayat Assistant in Anandheri Village Panchayat having the duly elected President and Vice President and other ward councilors. The facts that the petitioner is a B.A., degree holder and he was selected for the post of Village Panchayat Assistant from among four applicants and his name was recommended by the Panchayat President and Block Development officer and the recommendation was accepted and the selection was also approved by the 1st respondent/District Collector and the petitioner was appointed as Village Panchayat Assistant since May 2009 and he had been till the order of cancellation discharging his duties without any complaint are not denied.

9. The petitioner's appointment is subsequently cancelled by the impugned order mainly on the ground that the petitioner's appointment is contrary to the procedure laid down in G.O. Ms. 175, rural development Department dated 05.12.2006 for want of approval of Village Panchayat who is according to the respondent the competent authority to make appointment to the post of Village Panchayat Assistant.

10 In this connection, the two G. Os to be looked into are G.O. Ms. No. 102, dated 12.7.2005 and G.O. Ms. No. 175, dated 05.12.2006 the copies of which are enclosed at pages 1 to 8 of the typed set of papers. As per the first G.O. Ms. No. 102, dated 12.07.2005 every Village Panchayat shall constitute different committee consisting of the President and one or more members and one among which is the appointment committee consisting of the President of the Village Panchayat and of its members who shall be competent to select candidate for

appointment to any of the post sanctioned to Village Panchayat. Secondly, G.O. Ms. No. 175, dated 05.12.2006 prescribes time scale of pay, service conditions, duties and responsibilities of permanent Village Panchayat Assistant and part time Assistants. As per G.O. No. Ms. 175 the two posts above referred to are brought under time scale of pay from 01.09.2006.

11. During 2008, there was some misunderstanding arose between President on one hand and the other members of Ananthaneri Village Panchayat on the other hand and the same compelled the Village Panchayat President to approach the High Court in W.P. No. 16592 of 2008 and the same was disposed of by our High Court by directing the District Collector to conduct an enquiry in this regard. The District Collector has in compliance with the same held an enquiry and has after holding such enquiry, and on the basis of the recommendation of the Block Development Officer in exercise of his power u/s 204(3) of the Panchayat Act issued one notification on 19.12.2008 published in the Government Gazette on 07.01.2009 in and under which the Village Panchayat President is authorised to perform subject to the control of the District Collector such of the duties imposed upon the Village Panchayat by law and for such period not exceeding 6 months as may be specified in such notification without holding any meeting of the Village Panchayat the copy of such notification is enclosed at pages 5 and 6 of the typed set of papers. The notification is also followed by an independent order dated 09.01.2009 as per which the notification is given effect to from 07.01.2009 and it is specified for 6 months.

12. It is noteworthy to recollect at this juncture that the selection of the petitioner as Village Panchayat Assistant by the President of Village Panchayat is made on 25.02.2009 and the same was forwarded along with the recommendation of the Village Panchayat President to the 1st respondent/District Collector through Block Development Officer on 25.02.2009 the Block Development Officer has in his proceedings of the same dated forwarded the same to the 1st respondent/District Collector along with his recommendation based on the recommendation of both. The 1st respondent/District Collector has in his proceedings dated 25.09.2009 approved the selection of the petitioner on the basis of the recommendation of the Village Panchayat President and Block Development Officer and has issued the appointment order and the same is signed by the District Collector on 03.06.2009 and the copy of the appointment order is served upon the petitioner on 05.06.2009. Thus the entire selection of the petitioner as Village Panchayat Assistant by the District Collector on the basis of the recommendation of the Village Panchayat President and Block Development Officer is within six months from 07.01.2009 during which period the President is authorised to do all such duties of the Village Panchayat as prescribed under law without convening any meeting of the Village Panchayat.

13. It cannot be disputed that the competent authority in G.O. Ms. No. 175 to fill up the vacancies for the post of permanent Village Panchayat Assistant is the Village Panchayat and the appointing authority is the Village Panchayat President.

If that is so, the Village Panchayat President is on the strength of the notification dated 07.01.2009 issued by the District Collector in exercise of the power conferred on him under the relevant provisions of the Panchayat Act is also empowered to make appointments to the post of Village Panchayat Assistant independently on behalf of the Village Panchayat without reference to Village Panchayat, however subject to the control of the District Collector. The Village Panchayat President has on the strength of such authorisation selected the petitioner and forwarded the same to the District Collector and the District Collector has only duly passed the appointment order. In my considered view, the mode of selection as discussed above is certainly in the manner prescribed under the relevant G.O. That being the mode of and the circumstances under which the appointment made, the action of the 1st respondent who issued the notification dated 19.12.2008 and who made the same appointment in cancelling the same on the ground that the same is not made by the Village Panchayat and is contrary to G.O. Ms. No. 175 and the impugned order passed by the District Collector is contrary to the very notification issued by the District Collector u/s 204(3) of Panchayt Act.

14. As rightly argued by the learned Counsel for the petitioner, any act done by the Panchayat president within six months period mentioned in the notification which was not challenged by the Vice President or any of the members of the panchayat is in exercise of the powers vested upon him under the statute by the competent authority and cannot be held to be invalid and illegal. It is nobody's case that the petitioner is any other manner disqualified to be appointed to the post of Village Panchayat Assistant. The only ground on which the validity of his appointment questioned and cancelled is that it is independently made by the Village Panchayat President and not by the Village Panchayat and such ground is factually and legally untenable by virtue of the authorisation given to the President u/s 204(3) of the Panchayat Act.

15. As the appointment of the petitioner is on the date of the appointment valid and legal the question of subsequent ratification on the same by the Village Panchayat does not arise herein. As such the action of the 1st respondent in passing the impugned order of cancellation without considering the legal effects of the notification issued by him and the nature of the powers vested upon the president on the strength of such notification is unfair, arbitrary, illegal, improper and without jurisdiction and warrants interference.

16. It is now brought to the notice of this Court that the petitioner is in pursuance of the interim order of stay of the operation of the cancellation order permitted to re-join duty as Anantheri Village Panchayat Assistant and has been continuing so.

17. In the result, the order of the first respondent in his Na. Ka.2889/2010/PDI dated 23.03.2010 is set aside and the first respondent is directed to allow the petitioner to continue as Anantheri Village Panchayat Assistant with all consequential service and monetary benefits.

18. The writ petition is ordered accordingly. No costs. Consequently, connected miscellaneous petitions are closed.