

In the High Court of Judicature at Madras
Dated: 27-11-2008
Coram:
The Honourable Mr.Justice M.JAICHANDREN

W.P.No.9909 of 2003

K.Iyappan .. Petitioner.

Versus

1.The District Collector,
Cuddalore.

2.The Commissioner,
Kumaratchi Panchayat Union,
Kumaratchi, Cuddalore District.

3.M.S.Elangovan .. Respondents.

Prayer: Petition filed seeking for a writ of Certiorari, to call for the concerned records from the respondents and quash the order of the 1st respondent, dated 1.5.99, bearing Ref.No.Na.Ka.N.A7/2218/99, directing the second respondent to cancel the appointment of Applicant as a Driver as illegal, arbitrary, in violation of Section 53 of the Madras Panchayat act, 1958 and malafide.

For Petitioner : Mr.Balan Haridas

For Respondent : Mr.P.Muthukumar (R1)

Mr.P.Srinivas (R2)

Mr.M.V.Muralidaran (R3)

O R D E R

Heard the learned counsel appearing for the petitioner and the learned counsels appearing for the respondents.

2. The petitioner has filed the present writ petition, praying for a writ of certiorari, to quash the order of the first respondent, dated 1.5.99, bearing Ref.No.Na.Ka.N.A7/2218/99, directing the second respondent to cancel the petitioner's appointment as a Driver.

3. The petitioner had been appointed as a Driver in the Kumaratchi Panchayat Union, as per law, by an order of appointment, dated 19.3.99. The petitioner had registered his name in the District Employment Exchange, Cuddalore, in the year 1988. Based on the call letter from the second respondent, on 11.3.99, the petitioner had attended an interview, on 19.3.99, having been sponsored by the Employment Exchange, Cuddalore. Nearly 14 persons had attended the interview. After verification of the petitioner's Driving Licence, Service Certificate, Community Certificate, Nativity Certificate and his Income Certificate, the petitioner had been appointed as a Driver in the second respondent Panchayat by the order, dated 19.3.99.

4. Even though the appointment order had stated that he was appointed on a temporary basis, the petitioner had been paid in accordance with the pay scale fixed by the Government and as applicable to the permanent drivers. Pursuant to the order of appointment, dated 19.3.99, served on the petitioner, on 22.3.99, he had joined in the second respondent Panchayat, as a Driver, on 23.3.99. The petitioner was being paid a total amount of Rs.4,060/- per month in the Government scale of pay. Since then the petitioner has been discharging his duties without any blemish. While so, the third respondent had addressed a letter, dated 7.4.99, to the first respondent making certain unsustainable allegations against the selection of the petitioner as the Driver of the second respondent Panchayat.

5. Based on the said letter, the first respondent, without making any enquiry, had passed the impugned order, dated 1.5.99, addressed to the Commissioner of the second respondent Panchayat, directing him to cancel the appointment of the petitioner. The petitioner has stated that he had been appointed as a Driver of the second respondent Panchayat after having been sponsored by the District Employment Exchange, Cuddalore, and based on an interview conducted by the Appointment Committee. The decision to appoint the petitioner had been taken by the majority of the members of the Appointment Committee, as per section 53, of the Madras Panchayat Act, 1958. While so, it is illegal on the part of the first respondent to direct the second respondent to cancel the appointment of the petitioner as a driver of the second respondent Panchayat. The direction issued by the first respondent, by his order, dated 1.5.99, is arbitrary, contrary to Article 14 of the Constitution of India and in gross violation of the principles of natural justice.

6. In the counter affidavit filed on behalf of the first respondent the averments made by the petitioner have been denied. It has been stated by the first respondent that he had directed the second respondent, in his letter Rc.No.A7/2218/99, dated 1.5.99, to cancel the appointment of the petitioner and to proceed to make a fresh appointment, in furtherance of his enquiry into certain allegations received from the President of Kumaratchi Panchayat Union. Since the appointment of the petitioner was not fair and proper and as it was in violation of the procedures required to be followed, he had issued the direction, dated 1.5.99, in exercise of the powers vested in him, under Section 204(1) and Chapter X of the Tamilnadu Panchayats Act, 1994.

7. It has been further stated that the appointment of the petitioner made by the Appointment Committee is violative of the provisions of the Tamilnadu Panchayats Act, 1994, since the Chairman of the committee had been absent from the meeting and he had not participated in the proceedings culminating in the appointment of the petitioner as a Driver in the second respondent Panchayat. Further, several complaints had been received from the third respondent and some other members of the Council relating to the functioning of the second respondent Panchayat and the said complaints were under investigation. In the complaint, dated 9.4.99, a specific allegation had been made that the appointment of the petitioner was against the rules of appointment and it had been specifically pointed out that the tenure of Saravanan, a member of the Committee, had expired, on 17.3.99. The first respondent had called for an explanation from the second respondent which was given, in Rc.No.A1/5105/97, dated 17.4.99. Since the first respondent was not satisfied with the explanation submitted by the second respondent and as he had considered the appointment of the petitioner to be violative of the procedures required to be followed, he had issued the direction to the second respondent to cancel the appointment of the petitioner, as the Driver of the second respondent Panchayat.

8. It has also been stated that out of the three members in the Appointment Committee, one of them was not present and another member's term had expired, on 17.3.99. The resolution appointing the petitioner as the driver of the second respondent Panchayat had been made only on 19.3.99. The

Madras Panchayat Act, 1958, relied on by the petitioner has been repealed by the Tamilnadu Panchayats Act, 1994 (Tamil Nadu Act 21 of 1994). The procedure to be followed by the Appointment Committee has been prescribed in Section 96(1) of the Tamilnadu Panchayats Act, 1994. The petitioner's appointment as a Driver in the second respondent Panchayat is clearly in violation of the provisions of the said Act. As the Inspector of Panchayats, the first respondent has the power of controlling the functions of the Panchayats, under Chapter X of the Tamilnadu Panchayats Act, 1994. Accordingly, the order issued by the first respondent, on 1.5.99, directing the second respondent to cancel the appointment of the petitioner, as a Driver of the second respondent Panchayat, is sustainable as it is in accordance with law.

9. The learned counsel appearing on behalf of the petitioner had also submitted that even though the petitioner had been appointed on a temporary basis he had been appointed in a permanent post by calling for the names from the concerned District Employment Exchange and by conducting an interview. The appointment had been made by the appointment committee, in accordance with Section 53 of the Madras Panchayat Act, 1958.

10. In view of the rival contentions and on a perusal of the records available, this Court is of the considered view that the impugned order of the first respondent, dated 1.5.99, directing the second respondent to cancel the appointment of the petitioner, as a Driver in the second respondent Panchayat, cannot be sustained in the eye of law. The appointment of the petitioner having been made after calling for the names from the concerned District Employment Exchange and by conducting an interview, the appointment cannot be cancelled, without following the due procedures established by law.

11. It is seen from the records available that the appointment of the petitioner had been made by an Appointment Committee, in accordance with the provisions of the Tamilnadu Panchayats Act, 1994. Even if it was found that there were certain irregularities in the procedures followed by the Appointment Committee, the appointment of the petitioner, as a Driver of the second respondent Panchayat, cannot be held to be invalid per se. Even otherwise, it would not be open to the first and the second respondents to terminate the services of the petitioner, without following the principles of natural justice.

12. It is not in dispute that no notice had been issued to the petitioner before the impugned order, dated 1.5.99, had been passed by the first respondent. Since the first respondent had passed the impugned order, dated 1.5.99, directing the second respondent to cancel the appointment of the petitioner, as a Driver in the second respondent Panchayat, without following the principles of natural justice, the said impugned order of the first respondent, dated 1.5.99, bearing Ref.No.Na.Ka.N.A7/2218/99, stands quashed. The writ petition is ordered accordingly. No costs.

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1.The District Collector,
Cuddalore.

2.The Commissioner,
Kumaratchi Panchayat Union,

Kumaratchi,
Cuddalore District