

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.02.2008

CORAM:

THE HONOURABLE MRS. JUSTICE PRABHA SRIDEVAN

Writ Petition Nos.193, 572 to 575, 586 to 588, 780 to 784, 1883, 2105,  
2200, 2272 and 2677 of 2008 and  
M.P.Nos.1 of 2008

M.Anandhi	.. Petitioner in WP.193/08
V.Sagunthala	.. Petitioner in WP.572/08
Y.R.Aswathamma	.. Petitioner in WP.573/08
M.Manjula	.. Petitioner in WP.574/08
K.Shoba	.. Petitioner in WP.575/08
R.Meenakshi	.. Petitioner in WP.586/08
R.Seetha	.. Petitioner in WP.587/08
S.Lakshmi Devi	.. Petitioner in WP.588/08
G.Lakshmi	.. Petitioner in WP.780/08
V.Bharathi	.. Petitioner in WP.781/08
R.Manjula	.. Petitioner in WP.782/08
A.Manju	.. Petitioner in WP.783/08
Muthamma	.. Petitioner in WP.784/08
M.Vasundhara Devi	.. Petitioner in WP.1883/08
R.Jyothi	.. Petitioner in WP.2105/08
S.Kavitha	.. Petitioner in WP.2200/08
S.Sujatha	.. Petitioner in WP.2272/08
G.Dhanalakshmi	.. Petitioner in WP.2677/08

-Vs-

The Collector,  
Krishnagiri, Krishnagiri District...1st Respondents in all the petitions

The District Programme Officer,  
Integrated Child Development Schemes,  
Krishnagiri,  
Krishnagiri District.

.. 2nd Respondent in WP.193, 572  
to 575, 586 to 588, 2200/08, 780  
to 784 & 1883/08, 2272/08

The District Planning Officer,  
Krishnagiri District,  
Krishnagiri.

..2nd Respondent in WP.2105/08

Children Development Programme Officer,  
Thottadhimmanahalli Anganvadi Centre,  
Kelamangalam, Krishnagiri District.

.. 2nd Respondent in WP.2677/08

PRAYER.: Petitions filed under Article 226 of the Constitution of India for the issuance of a writ of Certiorarified Mandamus to call for the records relating to the impugned order of the first respondent in Na.Ka.No.156/A1/2006 dated 12.12.2007 and quash the same and direct the respondents to reinstate the petitioner in service with all attendant benefits. WP.Nos.193, 572 to 575, 586 to 588, 780 to 784, 1883, 2105, 2200, 2272 of 2008.

WP.2677/08 :

Petition presented to this Court to issue a Writ of Certiorarified Mandamus to call for the records from the file of the 1st respondent herein in Na.Ka.No.156/A1-2006 dated 12.12.2007 quash the same and for a Mandamus directing the respondents to permit the petitioner to continue as an Anganvadi Thottadhimmanahalli, Denganikottai Taluk, Krishnagiri District.

For Petitioner : Mr.P.Rajendran  
in WP.193, 572 to 575,  
586 to 588, 780 to 784, 1883/08,  
2200, 2272/08  
For Respondents : Mr.T.Seenivasan, AGP  
in all Writ petitions  
For Petitioner : R.Karthikeyan in WP.2105/08  
For Petitioner : H.Balaji in WP.2677/08

#### C O M M O N O R D E R

All these writ petitions are disposed of by consent by a common order.

2. The petitioners were all aggrieved that by a cyclostyled order stating that 1) interview for the posts of Anganwadi workers were not conducted 2) selection committee recommendation was not obtained 3) Government norms in eligibility, distance between centres have not been adopted and 4) no concurrence of the District Collector, their services were terminated. Since all the orders were obviously cyclostyled orders, it indicated non application of mind and therefore, interim stay was granted. Immediately after notice was taken by the learned Government pleader, the learned Government Pleader produced the files on 07.02.2008, which showed that 54 Anganwadi workers had been appointed illegally by the District Welfare Officer and Programme Officer, against

whom disciplinary proceedings were also proposed to be initiated. The learned Government Pleader therefore submitted that stay shall not be continued, since appointment itself is illegal. However, since the workers were incharge of children and there would be vacancy until new Anganwadi workers are appointed, the status-quo was permitted to continue and all the writ petitions on the same issue were directed to be listed and today the above writ petitions are listed.

3. The files are produced and counter has also been filed. There was a direction to fill up the post of Anganwadi workers and Anganwadi Helpers blockwise. Thereafter, it was learnt that the posts of Anganwadi workers and Anganwadi Helpers were filled up in total violation of Government rules and norms and therefore, the District Collector by his note dated 12.09.2007 ordered to cancel the posting orders. The appointment orders would show that each of the petitioner was appointed after being selected by selection committee and after obtaining the approval of the Collector. This is seen from ref. No.4 of the appointment letter which reads as follows:-

"அங்கன் வாடி பணியாளர் தேர்வுப் பட்டியல் மற்றும் கிருஷ்ணகிரி மாவட்ட ஆட்சித்தலைவர் அவர்களின் அலுவலக குறிப்பு , ஒப்ப.தல் நாள் 27,7,2007".

and the statement in the body of the order, reads as follows:

"பார்வை 2 மற்றும் 3ல் காரும் அரசாணைகளின்படி கிருஷ்ணகிரி மாவட்டத்தில் ஒருங்கிணைந்த குழந்தைகள் வளர்ச்சிப் பணிகள் திட்டத்தின் கீழ் செயல்படும் குழந்தைகள் மைய (அங்கன் வாடி) காலி அங்கன் வாடி பணியாளர் பணியிடங்களுக்கு தகுதியானவர்களை தேர்வுக்குழு மூலம் தேர்ந்தெடுக்கப்பட்டவர்களில் கீழ்க்குறிப்பிட்டுள்ள நபரை அவரின் பெயருக்கெதிரே குறித்துள்ள குழந்தைகள் மையத்திற்கு அங்கன் வாடி பணியாளராக முற்றிலும் தற்காலிக அடிப்படையில் பணி நியமனம் செய்து ஆணை வழங்கப்படுகிறது"

4. Therefore, it was vehemently urged on behalf of the petitioners that if there was any irregularity or infirmity in the appointment orders, the petitioners were not aware of the same and that when the Collector had given his approval for the appointment, it is now not open to the first respondent to cancel the appointment on the basis of certain allegations, for which even notice was not issued to the petitioners. It was submitted on behalf of the petitioners that the petitioners should have had an opportunity before their services were terminated.

5. I have perused the file to see whether any opportunity should have been given and if such an opportunity was given, would the petitioners position have been improved. On 02.11.2007, the first respondent in D.O.Roc.55/Camp Office/2007 had stated as follows:-

"The Government in G.O.Ms.No.4, Social Welfare and Nutritious Meal Programme, Dated 5.1.2007 has ordered to fill up 72 Anganwadi Workers and 157 Anganwadi Helpers posts in Krishnagiri District. As per the above orders, necessary applications were called for, interviews were conducted and postings were issued to eligible 70 Anganwadi workers and 157 Anganwadi helpers in this office proceedings dated 27.7.2007.

After this, I have received lot of complaints against Tmt.Grace Anna Backiyam, District Social Welfare Officer and Project Officer (ICDS) (i/c) Krishnagiri that she on her own without obtaining the approval of the District Collector on file was filling the remaining vacant posts thus violating the guidelines fixed by the Government for selection of posts like Anganwadi workers and Anganwadi helpers. Hence, a Committee consisting of officials was formed to enquire into the allegations. The Committee has submitted its report and has stated that 29 Anganwadi workers and 20 Anganwadi helpers posts have been filled up by the PO (ICDS) (i/c) with the following violations:

- 1) Interview for the above posts were not been conducted.
- 2) Selection Committee's recommendation has not been obtained.
- 3) Government norms in eligibility, distance between centres have not been adopted.
- 4) These orders have been issued without the concurrence of the District Collector".

6. Subsequently, on 09.11.2007, the second respondent in Na.Ka.No.156/2006/m1 has stated as follows:-

" இப்பொருள் தொடர்பாக, கீழ் கண்ட விவரங்களை மாவட்ட ஆட்சித் தலைவர் அவர்களின் கனிவான பார்வைக்கு சமர்ப்பிக்கப்படுவதுடன், குமற்படி நியமனங்கள் மேற்கொண்டதற்கு பின்னேற்பாணை வழங்கி ஒப்ப,தல் வழங்க கோரி பணிவடன் கேட்டுக் கொள்கிறேன் "



.....இந்த காரணங்களை கருத்தில் கொண்டு திட்டப்பணிநாள் தடையின்றி செம்மையாக நடைபெறவேண்டும் என்ற நோக்கத்தில் குறிப்பிட்ட காலப்பணியிடங்களின் மையங்களை சார்ந்த ஏற்கனவே நடத்தப்பட்ட நேர்காணல் தோரவில் கலந்துகொண்ட தோர்வ , செய்யப்படாத விண்ணப்பதாரர்களைக் கொண்டு அங்கன்வாடி பணியாளர் மற்றும் உதவியாளர் காலப்பணியிடங்கள் பட்டியலில் கண்டுள்ளவாறு தனி வட்டாரத்தில் 16 அங்கன்வாடி பணியாளர் பணியிடங்களும் கெலமங்கலம் வட்டாரத்தில் 3 அங்கன்வாடி பணியாளர் மற்றும் 3 உதவியாளர் பணியிடங்களும் வட்டார குழந்தைகள் வளர்ச்சி திட்ட அலுவலர்களின் பரிந்துரைகளின் அடிப்படையிலும் விண்ணப்பதாரர்களின் கல்வி தகுதி வயது வருமான வரம்பு, சமூக நிலை ஆகிய தகுதிகளின் அடிப்படையிலும் உள்ளூர் பிரமுகர்களின் பரிந்துரைகளின்படி நிரப்பப்படன",;

7. So, it is seen from this that the Collector's permission was not obtained and only exposed facto approval was sought for. The record which shows that the Collector's approval was obtained which is signed by the second respondent is proved false by her own letter dated 09.11.2006. It is also seen that the vacancy had been filled up on the basis of applicants who had failed in the interview, that had been conducted earlier. Of course, the second respondent had stated that the reason for this action is because she wanted the work of Anganwadi workers to proceed without any hitch. But however this shows that she had not obtained the approval of the Collector and there was no interview. Infact, she had chosen persons who have had not been selected in the interview that had been conducted earlier.

8. Under such circumstances, the request of the petitioners that they should be given opportunity is of no avail. The person who has signed in the appointment order has herself stated in the inter departmental communication that these appointments were made of candidates who had failed in the interview and the appointment was without approval.

9. In the case of Aligarh Muslim University and Others vs. Mansoor Ali Khan reported in 2000 (7) SCC 529, the Supreme Court considered the principle where breach of natural justice is in itself a prejudice will not apply.

"21. As pointed recently in M.C.Mehtav vs. Union of India, (1999) 6 SCC 237: 1999 AIR SCW 2754: (AIR 1999 SC 2583), there can be certain situations in which an order passed in violation of natural justice

need not be set aside under Article 226 of the Constitution of India. For example where no prejudice is caused to the person concerned, interference under Article 226 is not necessary. Similarly, if the quashing of the order which is in breach of natural justice is likely to result in revival of another order which is in itself illegal as in *Gadde Venkateswara Rao vs. Government of Andhra Pradesh*, (1965) 2 SCR 172 : (AIR 1966 SC 828), it is not necessary to quash the order merely because of violation of principles of natural justice"

22.....

23. Chinnappa Reddy, J in *S.L.Kapoor's case* (AIR 1981 SC 136), laid two exceptions (at p.395 of SCC): (at pp.147 and 148 of AIR) namely, "if upon admitted to indisputable facts only one conclusion was possible", then in such case, the principle that breach of natural justice was in itself prejudice, would not apply. In other words, if no other conclusion was possible on admitted or indisputable facts, it is not necessary to quash the order which was passed in violation of natural justice. Of course, this being an exception, great care must be taken in applying this exception".

24....

25....

26. It will be sufficient, for the purpose of the case of *Mr.Mansoor Ali Khan* to show that his case will fall within the exceptions stated by Chinnappa Reddy, J, in *S.L.Kapoor vs. Jagmohan*, AIR 1981 SC 136, namely, that on the admitted or indisputable facts - only one view is possible. In that event no prejudice can be said to have been caused to *Mr.Mansoor Ali Khan* though notice has not been issued".

In the present cases, on the admitted facts, there can be only one conclusion. So, giving opportunity would also be a 'useless formality'.

In this case, the appointments are not just irregular, they are illegal appointments. If the termination order is quashed, then it would revive the illegal order of appointment. Article 226 shall not be invoked. In the facts of the case, even if opportunity is given, the order of appointment can only be quashed because it is illegal. So, again, Article 226 shall not be invoked.

10. The Supreme Court in the case of Secretary, State of Karnataka and Others vs. Umadevi (3) and others reported in 2006 (4) SCC 1 , in paragraphs 13 and 56, has held as follows:-

"13. In A.Umarani vs. Registrar, Co.op. Societies a three Judge Bench made a survey of the authorities and held that when appointments were made in contravention of mandatory provisions of the Act and statutory rules framed thereunder and by ignoring essential qualifications, the appointments would be illegal and cannot be regularised by the State. The State could not invoke its power under Article 162 of the Constitution to regularise such appointments"

56. ....These appointments or engagements were also made in the teeth of directions of the Government not to make such appointments and it is impermissible to recognise such appointments made in the teeth of directions issued by the Government in that regard. We have also held that they are not legally entitled to any such relief. Granting of the relief claimed would mean paying a premium for defiance and insubordination by those concerned who engaged these persons against the interdict in that behalf. Thus, on the whole, the appellants in these appeals are found to be not entitled to any relief"

11. In the case of State of U.P. and others vs. Desh Raj reported in 2007 1 SCC 257 in paragraphs 10 and 11, the Supreme Court has held as follows:-

"10.The observations made in the said paragraph must be read in the light of the observations made in paras 15 and 16 of the judgment. The Constitution Bench referred to the decisions of this Court in State of Mysore vs. S.V.Narayanappa, R.N.Nanjundappa vs. T.Thimmiah and B.N.Nagarajan vs. State of Karnataka. B.N.Nagarajan is a decision rendered by a three Judge Bench of this Court in which it has clearly been held that the regularisation does not mean permanence. A distinction has clearly been made in those decisions between "irregularity" and "illegality". An appointment which was made throwing all constitutional obligations and statutory rules to the winds would render the same illegal whereas irregularity presupposes substantial compliance with the rules.



11. Distinction between irregularity and illegality is explicit. It has been so pointed out in National Fertilizers Ltd. vs. Somvir Singh in the following terms: (SCC pp. 500-01, paras 23-25)

"23. The contention of the learned counsel appearing on behalf of the respondents that the appointments were irregular and not illegal, cannot be accepted for more than one reason. They were appointed only on the basis of their applications. The Recruitment Rules were not followed. Even the Selection Committee had not been properly constituted. In view of the ban on employment, no recruitment was permissible in law. The reservation policy adopted by the appellant had not been maintained. Even cases of minorities had not been given due consideration.

24. The Constitution Bench thought of directing regularisation of the services only of those employees whose appointments were irregular as explained in State of Mysore vs. S.V.Narayanappa, R.N.Nanjundappa vs. T.Thimmiah and B.N.Nagarajan vs. State of Karnataka wherein this Court observed: (Umadevi (3) case, SCC p.24, para 16)

"16. In B.N.Nagarajan vs. State of Karnataka this Court clearly held that the words "regular" or "regularisation" do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments".

12. In the light of the decision and on the facts of the cases, the prayer of the petitioners to quash the termination orders cannot be granted. However, the counsel for the petitioners make one request, which appears to be reasonable and which is also in the interest of the children whom the petitioners are in charge. Until the respondents call for applications and select persons in accordance with the rules, for appointment to the posts of Anganwadi workers and helpers, the petitioners can continue. When such applications are called for, it is open to the petitioners to apply for the same. The petitioners will not have any weightage merely on account of having served pursuant to the illegal appointment. However, the petitioners shall also not to be



discriminated against merely because they had filed these writ petitions. They should be treated on par with the other applicants. Further, for the work done, the respondents, may consider payment of salary. In other respects, the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The District Collector,  
Krishnagiri,  
Krishnagiri District.

2. The District Programme Officer,  
Integrated Child Development Scheme  
Krishnagiri, Krishnagiri District.

3. The District Planning Officer,  
Krishnagiri, Krishnagiri District.

4. The Children Development Programme Officer,  
Tholladhimmannahalli Anganvadi Centre,  
Kelamangalam, Krishnagiri District.

1 cc To Mr.P.Rajendran, Advocate, SR.11393.  
1 cc To Mr.R.Karthikeyan, Advocate, SR.11144.  
1 cc To Mr.H.Balaji, Advocate, SR.11234.  
2 cc To The Government Pleader, SR.11322.

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BV(CO)  
RVL 19.03.2008