

(2010) 01 MAD CK 0147

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 1020 of 2009 and M.P. (MD) . No"s. 1 and 2 of 2009

A. Gnanmani	APPELLANT
Vs	
The District Collector	RESPONDENT

Date of Decision: Jan. 18, 2010

Hon'ble Judges: V. Dhanapalan, J

Bench: Single Bench

Advocate: T.S. Mohamed Mohideen, for the Appellant; R. Manoharan, Government Advocate, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

V. Dhanapalan, J.

The prayer in this Writ Petition is for a Writ of Certiorari and Mandamus to call for the records relating to the impugned order passed by the second Respondent through his proceedings in Na. Ka. Al/11030-2008 dated 29.01.2009 and quash the same and subsequently direct the Respondents to reinstate the Petitioner with all attendant benefits.

2. According to the Petitioner, after due verification of the certificates of the Petitioner, she was appointed as Village Assistant, at Pudukirramam, Nanguneri Taluk in Tirunelveli District, vide proceedings of the third Respondent dated 21.09.2007. While so, on 29.01.2009, the second Respondent passed the impugned order stating that she was wrongly appointed as Village assistant at the age of 17 1/2 years and as per the Tamil Nadu Village Assistant Special Rules, (hereinafter referred to as "the Rule") the required age for the appointment of the said post is 21. Therefore, she was terminated from the service on the ground that she did not have the minimum age prescribed for the post of Village Assistant. Aggrieved over the same, the present Writ Petition has been filed.

3. A counter affidavit has been filed by the second Respondent in which it is stated that according to the Rules, no person shall be eligible for appointment to the post of Village Assistant by direct recruitment unless the Applicant has completed the age of 21 years. The third Respondent has furnished the rule of eligibility for the post of Village Assistant to the District Employment Officer, Tirunelveli, who in turn has mistakenly included the name of the Petitioner in the selection panel against the rule framed thereon.

3.1. In the counter, it is further stated that on verification, it is found that the Petitioner is not eligible for the post of Village Assistant, since at the time of selection, she was 17 1/2 years and therefore, her service was correctly terminated by the second Respondent vide his proceedings dated 29.01.2009. It is further stated in the counter affidavit that there is no provision to issue show cause notice and framing of charges and the termination order is strictly in accordance with the Rule. It is also stated that the Writ Petition is not maintainable either in law or in facts and the same is liable to be dismissed.

4. The first and foremost contention of the Learned Counsel for the Petitioner is that as per the Tamil Nadu Village Senant Classification Control and Appeal Rule; 1983 the competent authority to impose penalty is the Tahsildar in respect of removal or dismissal from service and the appellate authority is the Revenue Divisional Officer. However, the impugned order itself has been passed by the appellate authority and thereby, it takes away the right of appeal to the Petitioner. On this sole ground, the impugned order has to be set aside. Apart from that, before passing the impugned order, there was no show cause notice and no opportunity of hearing was provided to the Petitioner. Hence, *prima facie*, the order of the second Respondent is illegal and against the principles of natural justice. Therefore, on this ground also, the impugned order has to be set aside.

5. Per contra, the learned Government Advocate would submit that as per the Rule, the Petitioner is ineligible for the appointment of the Village Assistant, since she had not attained the minimum age as prescribed for the post of Village Assistant. He would further submit that the officials have committed mistake at the time of appointing the Petitioner and she cannot claim any right over the mistake committed by the officials. Therefore, the present impugned order has been passed in accordance with the Rule which does not call for interference by this Court, as there is no violation of principles of natural justice. Apart from that, he also submits that the third Respondent Tahsildar is the appointing authority and the second Respondent is the appellate authority and panel approving authority, who is competent to issue a termination order of an irregular appointment. Hence, the present Writ Petition is liable to be dismissed.

6. I have carefully considered the rival submissions on either side and the relevant rules and perused the materials available on record.

7. A circumspection of the case would reveal that the Petitioner was appointed as Village Assistant vide proceedings of the third Respondent, dated 21.09.2007. While so, on 29.01.2009, the second Respondent passed the impugned order terminating the service of the Petitioner as she was wrongly appointed as Village Assistant at the age of 17 1/2 years and as per the Rules, the required age is 21 years. On analysis of the counter statement would reveal that there was no show cause notice and no opportunity of hearing and the impugned order has been passed on the sole ground that it was an irregular appointment.

8. As regards the first contention of the Learned Counsel for the Petitioner that the order has been passed by the incompetent authority is concerned, the relevant Rule 5 of the Tamil Nadu Village Servant Classification Control and appeal Rules, 1983 is usefully extracted below:

5. Authority competent to impose penalty: The penalties specified in column (1) of the Table below may be imposed on the village servants by the authorities specified in the corresponding entry in column (2) thereof. The authorities to whom an appeal lies are specified in column (3) of the Table.

Penalties Authority which may impose the penalty

Removal from service or dismissal from service. Tahsildar

9. It is crystal clear that the competent authority to terminate the service of the Petitioner is the third Respondent, the Tahsildar herein, whereas the present impugned order has been passed by the second Respondent, who is the Revenue Divisional Officer. The Revenue Divisional Officer is the appellate authority and if he assumes the power of the original authority, then the Petitioner may lose the opportunity of making an appeal to the Revenue Divisional Officer. It is the cardinal principle of law that only the competent authority has to pass the order in accordance with the Rules framed thereunder, so that the aggrieved party may get an opportunity of filing appeal. Any deviation contrary to the statutory Rule would vitiate the entire proceedings. Therefore, it goes without saying that the termination is contrary to the Rules. On this ground alone, the impugned order has to be set aside.

10. Apart from that, the Learned Counsel for the Petitioner would submit that no opportunity of hearing was given to put forth the contention of the Petitioner before passing the impugned order. To which, the learned Government Advocate would submit that there is no provision to issue show cause notice and framing of charges and the termination has been issued in accordance with the Rule. This Court is not inclined to accept the said contention of the Learned Counsel for the Respondents. It is settled principles of law that before passing the impugned order the Petitioner must be provided with an opportunity of hearing to substantiate her contention. Therefore, it is clear from the averments that there was no opportunity of hearing given to the Petitioner, which amounts to violation of principles of natural justice.

11. Upon perusing the facts and circumstances of the case, I am of the view that the impugned order is passed by the incompetent authority and there is violation of principles of natural justice also. Therefore, the order impugned in this Writ Petition cannot be sustained and accordingly, the same is set aside. The matter is remitted to the authorities below to relook into the issue after affording an opportunity of hearing to the Petitioner and following the procedure contemplated thereunder and pass appropriate orders as expeditiously as possible.

With the above observation and direction, the Writ Petition stands allowed to the extent indicated above. Consequently, connected M. Ps are closed. No costs.