

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2016

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.10393 of 2016

and

WMP.Nos.9171 of 2016
and 9590 of 2016

R.Madana

.. Petitioner

Vs

1. The Principal Secretary to the Government
Social Welfare and Nutrition Meal Program,
Secretariat, Chennai - 600 009.
2. The Director
Department of Social Defence
No. 300, Purasawalkam High Road
Kellys, Chennai - 600 010.
3. A. Glory Gunaselee .. Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of Quo Warranto directing the third respondent herein to show cause on what authority she is functioning as the Superintendent of the Government Boys Children's Home, Royapuram, Chennai and direct respondents 1 and 2 to take necessary action against the third respondent in accordance with law.

For petitioner : Mrs. Shaikh Mehrunisa

For R1 and R2 : Mr.S.Gunasekaran
Additional Government Pleader

For R3 : No Appearance

O R D E R

The writ petition has been filed by one R.Madana, seeking a writ of Quo Warranto directing the third respondent to show cause on what authority she is functioning as the Superintendent of the Government Boys Children's Home, Royapuram, Chennai, and direct respondents 1 and 2 to take necessary action against her in accordance with law.

2. Learned counsel for the petitioner would submit that when the third respondent was serving as Superintendent of the Government Reception Home, Kellys, Chennai, the Juvenile Welfare Board (In short JWB), Kellys, Chennai directed her to place a minor child in the Government Reception Home, Kellys, Chennai, for safe custody, until further orders. Thereafter, the JWB, Chennai, passed an order dated 13.4.1999 transferring the minor girl child to the Government Girl Children's Home, Kellys, Chennai, for imparting education and vocational training and ordered that the minor girl child be housed there until she attains the age of 18 years, i.e. up to 12.4.2004. It is alleged that the third respondent housed the child in her official Government residential quarters and used her as a domestic help instead of housing her in the Government Reception Home. The learned counsel would further submit that even after the order dated 13.4.1999 passed by the JWB, Chennai, to transfer the child to Government Girl Children's Home, Kellys, the third respondent continued to keep the minor girl child in her official Government residential quarters for her personal gains by making the child to do all domestic chores for her, which is in violation of the order dated 13.4.1999 passed by the JWB, Chennai. She would submit that the said minor girl was found hanging on 24.02.2000 at the residence of the third respondent but the same was not brought to the notice of the higher officials and conveniently, she covered up the whole issue and projected as if the minor girl was an outsider and not an inmate of the Government Girl Children's Home. Thereafter, the third respondent filed a complaint with G-5 Secretariat Colony Police Station and FIR No.311/2000 dated 24.2.2000 was registered under Section 174 of Cr.PC but, however, RDO enquiry was not conducted though it is mandatory in such cases.

3. Adding further, she would submit that many more inmates of the Government Girl Children's Home have been misused by the third respondent and her accomplices for domestic chores and other illegal activities and many of the inmates of the Home have been taken out of the Home by the third respondent during night hours without the knowledge and permission of higher officials. Thereafter, the Commissioner of Social Defence ordered an enquiry and pursuant to the same, a report No.3332/A1/2000 was submitted by the Probation Officer on 03.6.2000 framing charges under Section 17B of Tamil Nadu Civil Services (Disciplinary and Appeal) Rules, against the third respondent stating that she has acted in violation of G.O. Ms.No.125 P&R dated 25.5.1997 and proceeding No.11077/A1/1997 dated 10.5.1997, which stipulates that boys and girls below the age of 14 years should not be used by the Government Servants for labour work. It is also stated in the report that the third respondent, by misusing her powers, had not kept the minor child in the Home as per the JWB order dated 13.4.1999 and

that she has flouted the Government Rules by not reporting the suicide, which occurred in her Government Quarters on 24.2.2000, to the higher officials. It is also her submission that the third respondent has stalled Departmental enquiry by misrepresenting that the minor was an outsider and not an inmate of the Home and indulged in suppression of truth. According to her, an enquiry was held by the Joint Director and the charges framed were confirmed. She would state that the third respondent, in order to escape from the clutches of law, fabricated letters and placed on record as if the girl was removed from the Home. She would also state that though the petitioner has given various representations to the respondents, no action was taken. According to her, though the third respondent was suspended from service in the year 2000, she was posted in the Government Home at Cuddalore in the year 2004 and now she is posted as in-charge of the Government Boys Children's Home at Royapuram, Chennai.

4. In the aforementioned backdrop, it is the grievance of the petitioner that during the tenure of the third respondent, more than 200 boys have escaped and ran away from the Home and hence, she should not be given additional in-charge.

5. The petitioner is working as a cook in the Government Vigilance Home, Mylapore and claims to be the State President of the Tamil Nadu Social Defence Department Officer's Association. Therefore, she is immensely concerned about the welfare of the Orphan Children housed in various Government Homes. With this back ground, the petitioner further states that the third respondent has been violating the directions of the Juvenile Welfare Board, Chennai dated 22.9.1998 by housing a child in her Official Government Residential Quarters and used her as a domestic help instead of housing her in the Government Reception Home. When allegations have been made against the third respondent that a child has been used as a domestic help, without even mentioning the name of the child nor even a letter from such Home, it is not known how the petitioner can come to this Court seeking a writ of Quo Warranto against such unproved allegation. Secondly, though it is alleged that the third respondent has failed in her duty as a Government Official and misused her power and also failed to work for the progress, development and rehabilitation of the minor girl child, nowhere, any incriminating documents in support of the allegations have been filed.

6. Again, when the petitioner alleges that many of the girl inmates had been taken away out of Home during night time, without the permission and knowledge of the higher ups, no complaint whatsoever given by any such inmates, who had been taken out of the Home by the third respondent, has been produced before this Court or before the higher officials to take action

against the third respondent. Besides, not even the name of one of the girl inmates has been mentioned.

7. This apart, Departmental Proceedings have been initiated against the third respondent under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. It is not mentioned about the status of the Departmental enquiry initiated against the third respondent. Obviously, when a Departmental enquiry has already been initiated against the third respondent, without substantiating the petitioner's grievance with regard to any alleged incident, the petitioner ought not to have come to this Court.

8. The petitioner, who is admittedly, working as a Cook in the Government Vigilance Home, Mylapore, has come to this Court seeking a writ of Quo Warranto against the third respondent, who is serving as a Superintendent in Government Boys Children's Home, Royapuram, on the ground that the third respondent is not entitled to hold an office of Public nature and is only an usurper of his office. When a writ of quo warranto is claimed, the Court must be satisfied of two things, viz., (a) the office in question is a public office and (b) the holder is an usurper, without legal authority. This will lead to an enquiry as to whether the appointment has been made in accordance with law or not. Neither of the above two ingredients have been established by the petitioner.

9. Broadly, speaking, the Quo Warranto proceedings affords a judicial enquiry in which any person holding an independent substantive public office or franchise or liberty is called upon to show by what right she hold the same. Only if the enquiry leads to a finding that the holder of office has no valid title to do, the Writ will oust him/ her from the office. When the jurisdiction of the High Court to issue such a writ of Quo Warranto is limited, even as per the averments made by the petitioner that the appointment of the third respondent as Superintendent is contrary to the statutory Rules, unless the petitioner is able to demonstrate the same, no writ of Quo Warranto can be issued. In other words, writ of Quo Warranto can be issued only if the appointment is made in violation of statutory rules. Admittedly, this is not the case of the petitioner. Even the writ of Quo Warranto can be issued if the person holding office disobeys a Writ of Mandamus already issued. This is also not the case of the petitioner. When it is also not the case of the petitioner that the third respondent is not legally qualified to hold the office and has been usurping the same, she cannot maintain the writ petition. Further, when the third respondent is already facing a Departmental enquiry under Rule 17 (b), the question of issuance of Quo Warranto does not arise.

10. Therefore, this Court is not able to find any merit in the writ petition for two reasons. As mentioned above, when this Court asked the learned counsel for the petitioner to produce documents to show whether the third respondent has suffered findings by the enquiry officer holding her guilty, she has not produced any documents. Secondly, no other incriminating documents have been produced by the petitioner to entertain the writ petition restraining the third respondent from functioning as Superintendent of the Government Boys Children's Home, Royapuram, Chennai. Without any documents whatsoever, the writ petition cannot be entertained based on the vague allegations made by the petitioner. Accordingly, the writ petition fails and the same stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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s/d-

Assistant Registrar (CS-VII)

True Copy

Sub-Assistant Registrar

To

1. The Principal Secretary to the Government
Social Welfare and Nutrition Meal Program,
Secretariat, Chennai - 600 009.

2. The Director
Department of Social Defence
No. 300, Purasawalkam High Road
Kellys, Chennai - 600 010.

+ 1 cc to Mr. Shaikhmehurinisa, Advocate SR 19191

+ 1 cc to Govt. Pleader SR 19368

lrs (co)
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WP.No.10393 of 2016

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