

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 29.11.2016
CORAM:
THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH

AND
THE HONOURABLE MR. JUSTICE V.PARTHIBAN
WA.No.1555/2016

P.Subburaj

.. Appellant / Writ
Petitioner

Vs.

- 1.The Chief Secretary
Government of Tamil Nadu
Fort St George, Chennai 600 009.
- 2.The Principal Secretary to Government
Cooperation, Food & Consumer Protection
Department, Member Selection Committee
cum Competent Authority, Fort St George
Chennai 600 009.
- 3.The Secretary to Government
Law Department, Member-Selection Committee
Fort St George, Chennai 600 009.
- 4.The Hon'ble State President
Chaiman-Selection Committee
State Consumer Disputes Redressal
Commission, Frazer Bridge Road
Park Town, Chennai 600 003.

.. Respondents /
Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 17.02.2016 made in WP.No.3503/2015 passed by the learned Single Judge.

WP.NO.3503/2015:Writ Petition filed under Article 226 of the Constitution of India praying for a issuance of a Writ of Mandamus Directing the respondents herein to consider the candidature of the petitioner for re-appointment as the President District Consumer Disputes Redressal Forum Madurai or President any other 5 vacancies which is lying vacant in the District Consumer Disputes Redressal Fora in the State of Tamil Nadu in compliance of provisions in Section 10(2) of the Consumer Protection Act 1986.

For Appellant : Mr.M.Gnanasekar
For Respondents: Mr.R.Prathap Kumar
Additional Government Pleader
for R1 and R3

JUDGMENT

[Judgment of the Court was delivered by HULUVADI G.RAMESH, J.]

Heard Mr.M.Gnanasekar, learned counsel for the petitioner and Mr.R.Prathap Kumar, learned Additional Government Pleader, who accepts notice on behalf of the respondents 1 and 3 and with the consent on either side, the writ appeal is taken up for final disposal at the stage of admission.

2 The Appellant / writ petitioner has preferred the instant Writ Appeal as against the order dated 17.02.2016 made in WP.No.3503/2015 passed by the Learned Single Judge.

3 The Learned Single Judge, while passing the impugned order in WP.No.3503/2016 on 17.02.2016, had raised the following questions in paragraph 7, for consideration:-

".....

7 The following questions arises for consideration:-

[i] Whether the petitioner / party-in-person is eligible for re-appointment as the President of the District Consumer Disputes Redressal Forum?

[ii] Whether reservation in terms of Tamil Nadu Arunthathiyars [Special Reservation of seats in Educational Institutions including Private Educational Institutions and of appointments or posts in the service under the State within the Reservation for the Scheduled Castes] Act, 2009, is applicable to the post or President of the District Consumer Disputes Redressal Forum?

[iii] To what relief, the petitioner / party-in-person is entitled?"

and by citing the decisions rendered by the Punjab and Haryana High Court ; Himachal Pradesh High Court and by this Court, on various occasions and by passing an elaborate and detailed order, had answered the above three questions in negative and finally, dismissed the writ petition.

4 Assailing the validity, legality of the impugned order dated 17.02.2016 in WP.No.3503/2015 passed by the learned Single Judge, the learned counsel appearing for the appellant contended before this Court that the impugned order of the learned Single Judge, in dismissing the writ petition, is against law and further, it is contrary to the facts and merits of the case.

5 The learned counsel for the appellant would aver among other things that the learned Single Judge had failed to consider the fact that the writ petitioner / appellant, having occupied the post of President for a period of five years from 2005 to 2010, is entitled to re-appointment in terms of Section 10[2] of the Consumer Protection Act and when there is a statutory provision for re-appointment of a member, the same cannot be denied to the appellant who had already held the post of President on the ground that the appellant happens to be an advocate. It is the further contention of the learned counsel that the learned Single Judge ought to have appreciated the merit and ability of the appellant and ought to have considered the unblemished record of service rendered by him. Contending further, the learned counsel would submit that the learned Single Judge failed to appreciate that the rule of reservation cannot be excluded or ignored and that the request of the appellant should have been considered not only on the basis of reservation but also on the ground of previous selection and appointment and hence, prayed for appropriate orders.

6 Answering to the above contentions, the learned Additional Government Pleader appearing for the respondents 1 and 3 submitted that the appellant, as a matter of right, cannot claim re-appointment to the post of the President, District Consumer Forum. It is the submission of the learned Additional Government Pleader that the respondents have answered to all the contentions raised by the appellant, time and again in detail, in the earlier round of litigations and the writ petitions and the contempt petition filed by the writ petitioner earlier, were dismissed by this Court and not being satisfied with the same, the appellant has once again filed WP.No.3503/2015, which was also dismissed by this Court, vide the impugned order dated 17.02.2016 and hence, prays for dismissal of this writ appeal.

7 This Court considered the submissions made by the learned Additional Advocate General and also perused the materials placed before it, in particular, the impugned order dated 17.02.2016 made in WP.No.3503/2015.

8 At the risk of repetition, it would be appropriate to reiterate the facts of the case:

The writ petitioner / appellant herein, who was enrolled as an advocate before the Bar Council of Tamil Nadu and Puducherry, with Enrollment Number as 663/1997 and who had 18 years of service in the Bar, was appointed as the President of the District Consumer Disputes Redressal Forum, Madurai on 31.10.2005, directly from the Bar and had discharged his duties diligently and efficiently till the completion of his period in the year 2010. In the interregnum, he was also put in-charge of the District Consumer Disputes Redressal Forum, in Karur and Dindigul Districts. The said post is a tenure post for a period of five years. The various representations submitted by the appellant to re-appoint him as the President of the said Forum as per the proviso to section 10[2] of the Act, were not fructified. Hence, he filed WP.No.9356/2011, which came to be dismissed by this Court 29.07.2011, after taking note of the Circular dated 17.05.2011 sent by the National Consumer Disputes Redressal Commission, New Delhi. Further, though the petitioner has applied for the said post in Madurai, Dindigul, Chengalpattu, Tirunelveli, Tuticorin and Thiruvavarur, after the issuance of the Notifications No.2/2013 and 3/2013 dated 16.07.2013, he was unsuccessful. Once again the appellant/writ petitioner filed WP.No.23742/2013 raising the very same prayer in terms of Notification No.4/2014 in respect of the Districts, viz., Madurai, Dindigul, Chengalpattu, Tirunelveli, Thiruvavarur and Tuticorin and this Court, vide order dated 26.08.2013 in MP.No.1/2013, had directed the Selection Committee to consider the case of the petitioner for re-appointment by applying reservation of seats in Educational Institutions including Private Educational Institutions under the Act and the Rules framed therein. Alleging non-compliance of the order dated 26.08.2013, the petitioner filed contempt petition which was closed, granting liberty to the writ petitioner / appellant to challenge the non-selection, if he was so advised. Hence, the writ petition in WP.No.3053/2015 came to be filed. Challenging the dismissal of the said writ petition, the appellant/writ petitioner is before us.

9 Keeping in mind the above factual matrix viz., if we look into the order passed by the learned Single Judge in WP.No.3503/2015 dated 17.02.2016, the same reveals that the learned Single Judge, after considering the arguments advanced on either side and by referring to the prayer made by the writ petitioner with regard to the service condition to the post of the President, District Consumer Forum, has held that the petitioner is not entitled to any relief as sought and it was also opined that it is always for the State Government to provide Reservation in accordance with the principles laid down by the Hon'ble Apex Court in Dr.Gulshan Prakash Vs. State of Haryana reported in 2010 [1] SCC 477 and in Ajith Singh [II] Vs. State of Punjab reported in 1999 [7] SCC 209. The prayer

of the writ petitioner / appellant seeking for issuance of a writ of mandamus to consider his candidature to re-appoint him as the President of the District Consumer Redressal Forum, Madurai or in any other District Consumer Forums on the basis of the vacancies available, has been considered by the learned Single Judge, who had also taken into consideration, the objections raised by the respondents therein and thereafter, had passed a detailed order, dismissing the said writ petition. As held by the learned Single Judge, we are also of the considered opinion that the said prayer of the appellant / writ petitioner cannot be granted as it is for the State Government to take a decision for filling up the said post. The manner in which the prayer is sought for by the appellant / writ petitioner in the writ petition is not apt and that it does not amount to service.

10 Accordingly, the Writ Appeal is dismissed and the order passed by the learned Single Judge dated 17.02.2016 made in WP.No.3503/2015 is hereby confirmed. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

AP
To

- 1.The Chief Secretary
Government of Tamil Nadu
Fort St George, Chennai 600 009.
- 2.The Principal Secretary to Government
Cooperation, Food & Consumer Protection
Department, Member Selection Committee
cum Competent Authority, Fort St George
Chennai 600 009.
- 3.The Secretary to Government
Law Department, Member-Selection Committee
Fort St George, Chennai 600 009.
- 4.The Hon'ble State President
Chairman-Selection Committee
State Consumer Disputes Redressal
Commission, Frazer Bridge Road
Park Town, Chennai 600 003.

+1 cc to Mr.Gnanaasekaran Advocate sr 69840
+1 cc to the Government Pleader High Court Madras
sr 70966
+1 cc to M/s.M.Gnanasekar Advocate sr 70351 dt 22/12/2016

WA.No.1555/2016

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