

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2016

Coram

The Hon'ble Mr.Justice B.RAJENDRAN

W.P. No. 27973 of 2016

N.Govindaraj

...Petitioner

Vs.

The Secretary/President
Thirupattur Servodaya Sangam
Authorized by Central Government of
Handloom Village Labour Committee
Gandhi Road
Thirupattur
Vellore District.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondent to pass orders on petitioner's representation, dated 20.04.2016 and pass such further orders as this Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.P.Wesley Isaac

O R D E R

The Writ Petition has been filed seeking for a Mandamus, directing the respondent to pass orders on the representation of the petitioner, dated 20.04.2016.

2. The petitioner was working as an Assistant in the 1st respondent Society from 14.03.1994. A departmental proceeding was initiated against the petitioner and it ended against the petitioner. The petitioner was transferred to Aarani Sarvodaya Society. The petitioner sought to permit him to work in the same place. The respondent declined to accept his request and the petitioner was removed from service on 01.06.2010. The petitioner had made a representation to the respondent, on 20.04.2016, for reinstatement. But, there is no action and hence, the present Writ Petition.

3. Mr.P.Wesley Isaac, the learned counsel for the petitioner would submit that the petitioner seeks only a limited prayer to consider and pass orders on his representation.

4. The main Writ Petition itself is taken up for final disposal at the stage of admission, because, this is a fittest case, where this Court has to say that the petitioner has been terminated from service way back in the year 2010, thereafter, he has approached the Labour Court, which is the competent Court and the Labour Court has ultimately dismissed his application. Thereafter, the petitioner has not preferred any appeal. He kept quiet conveniently for three years. Thereafter, the petitioner made a representation on 20.04.2016 seeking to set aside the order of termination, which has been upheld by a competent Court viz., Labour Court. When the competent Court has upheld the order of termination, can that order be set aside, under the guise of making a representation and when that was not considered, the petitioner had conveniently come to this Court seeking to direct the respondent to pass orders on the petitioner's representation, dated 20.04.2016. When such an order directing the respondent to consider the representation is passed, it creates a new right. That is how the petitioner is trying to misuse the direction issued to "consider". There are large-scale misuse of the orders "to consider" and such things should be curtailed.

5. In this context, I wish to follow the decision of the Division Bench of this Court reported in (M. Ingaci vs. The Commissioner, Devakottai Municipality, Sivagangai District) 2010 2 Law Weekly 785, in which I am also a party, wherein the Division Bench held that there are several instances where unscrupulous petitioners have misused the direction issued to "consider". It was further held that there are large-scale misuse of the orders "to consider". The Division Bench referred to the decision of the Hon'ble Apex Court reported in the case of A.P. SRTC vs. G. Srinivas Reddy (2006) 3 SCC 674 = 2006, 3 Law Weekly 170, wherein in Para Nos. 18 to 20, it was held as under:-

"18. We may also note that sometimes the High Court dispose of the matter merely with a direction to the authority to 'consider' the matter without examining the issue raised even though the facts necessary to decide the correctness of the order are available. Neither pressure of work nor the complexity of the issue can be a reason for the court to avoid deciding

the issue which requires to be decided, and disposing of the matter with a direction to 'consider' the matter afresh. Be that as it may.

19. There are also several instances where unscrupulous petitioners with the connivance of 'pliable' authorities have misused the direction 'to consider' issued by Court. We may illustrate by an example. A claim, which is stale, time-barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the representation within a reasonable time, the person making the representation approaches the High Court with an innocuous prayer to direct the authority to 'consider' and dispose of the representation. When the court disposes of the petition with a direction to 'consider', the authority grants the relief, taking shelter under the order of the court directing him to 'consider' the grant of relief. Instances are also not wanting where authorities unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order 'to consider' as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to 'consider' may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of the court's direction 'to consider' the claim, or on account of collusion/connivance between the person making the representation and the authority deciding it. Representations of daily-wagers seeking regularisation/absorption in to regular service is a species of cases, where there has been large-scale misuse of the orders 'to consider'.

1. Therefore, while disposing of the writ petition with a direction 'to consider', there is a need for the High Court to make the direction clear and specific. The order should clearly

indicate whether the High Court is recording any finding about the entitlement of the petitioner to the relief or whether the petition is being disposed of without examining the claim on merits. The court should also normally fix a time-frame for consideration and decision. If no time frame is fixed and if the authority does not decide the matter, the direction of the court becomes virtually infructuous as the aggrieved petitioner will have to come again to court with a fresh writ petition or file an application for fixing time for deciding the matter."

6. Thus, it is evident from the decision of the Hon'ble Apex Court that what could not be considered cannot be directed to be considered by this Court. Following the decision cited supra and also for the reasons stated above, I am inclined to dismiss the Writ Petition. Accordingly, this Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(V)

//True Copy//

Sub Assistant Registrar

paa
To

+1cc to Mr.P. Wesley Isaac, Advocate, S.R.No.

KGK(CO)
EU(02/09/2016)

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