

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 03.11.2016

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

Writ Petition No.19615 of 2010

and

M.P.No.1 of 2010

T.S.Vishnu

..Petitioner

Versus

1. The Director,
Town Panchayats,
Kuralagam, Chennai-600 108.

2. The Assistant Director of Town Panchayats,
O/o, Assistant Director,
Ooty-643001.

3. The Executive Officer,
First Grade Town Panchayat,
Adigaratty and Post,
Ooty-643001, Nilgiris District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the Letter Na.Ka.No.472/2009 dated 09.12.2009 issued by the 3rd respondent and Quash the same as being illegal, arbitrary and unconstitutional and consequently direct the respondent to permit the petitioner to work as Record Clerk in the Panchayat in Udagamandalam, with all attendant benefits thereto, award costs.

For Petitioner : Mr.P.Ganesan

For Respondents : Mr.Jaya Prakash Narayanan
Special Government Pleader (R1 and R2)

Mr.V.Viswanathan (R3)

O R D E R

The prayer in this Writ Petition is for a certiorarified mandamus to call for the records relating to the letter Na.Ka.No.472/2009/09.12.2009, issued by the third respondent, quash the same and direct the respondent to permit the petitioner to work as Record Clerk in the Panchayat in Udagamandalam, with all attendant benefits thereto.

2. The case of the petitioner is that he was appointed as Record Clerk in the respondent Panchayat on 06.06.1996. Initially, he was posted to work in Bikkaty Panchayat in Uthagamandalam. On 29.01.1997, he was transferred to Ketu Panchayat and again he was transferred to Adigaratty Panchayat. He joined duty on 08.02.1999 at Adigaratty Panchayat. The petitioner was continuously working till 23.11.2004. Thereafter, he fell ill and cannot attend duty. He was given treatment for Hepatitis and depression. After recovering from illness, he made a request dated 03.02.2009 and 09.04.2009 to the second and third respondents to permit him to join duty in the said panchayat. Thereafter, since, no work was offered to the petitioner, he made so many representations. By communication, dated 09.12.2009, the third respondent informed the petitioner that the said post of Record Clerk was filled up as early as on 28.02.2005 itself. Since, the petitioner had made claim for posting, after four years that too after the filling up of said post, his request was rejected. The said order of the third respondent, dated 09.12.2009 is the order impugned herein.

3. Heard both parties.

4. The learned counsel for the petitioner would submit that the petitioner had not attended duty for a longer period i.e. from 24.11.2004, because of health reasons. After he recovered from the illness, when he approached the third respondent for joining duty, in the year 2009, the petitioner has passed the impugned order, dated 09.12.2009, stating that his position has been filled up. The learned counsel for the petitioner would further contend that if at all there was any wrong on the part of the petitioner, disciplinary action has to be taken against the petitioner. No such disciplinary proceedings were initiated by the third respondent and since the petitioner being permanent employee of the third respondent, he cannot be straight away thrown out of his job.

5. In that view of the matter, the learned counsel for the petitioner submits that the impugned order cannot be sustained and the same has to be quashed.

6. Per contra, the learned counsel for the third respondent would submit that admittedly the petitioner was absentee for several years from 2004 onwards and his whereabouts also not

known, as there was no communication between the petitioner and the third respondent for several years. Therefore, since the work done by the petitioner was affected in the third respondent office, the third respondent had appointed one Thiru. P.Kullan in the said position as record clerk on 28.02.2005. Since the position of the petitioner was filled up and the said person had been continuing, the consideration of re-appointment of petitioner after such a long years would not at all arise. Therefore, the impugned order, passed by the third respondent is fully justifiable and hence seeks dismissal of this Writ Petition.

7. This Court, considered the rival submissions made by the respective counsels.

8. Admittedly, the petitioner was absent for duty from 2004 onwards. Admittedly, he approached the third respondent for joining duty only in the year 2009. There is no explanation whatsoever from the petitioner, for such a long absence. There is no evidence to show that the petitioner has applied for Medical Leave. If the petitioner applied for Medical Leave, beyond the period of statutory requirement, the third respondent would have referred the petitioner to medical board. Since, the petitioner himself had chosen not to approach the third respondent, for years together, the post was filled up by the third respondent. However, he went and approached the third respondent in the year 2009. At least, at that point the third respondent should have initiated disciplinary proceedings against the petitioner and the same has not been done. Whatsoever be the violation of employees including the longer absence, the same has to be dealt with only in the manner known to law. No authority including the third respondent has got the power to deal with the employees in the manner as has been stated in the impugned order dated 09.12.2009. Since, the lien of the petitioner still continues with the third respondent, as no termination order was issued and disciplinary action was initiated, it is open to the third respondent to initiate disciplinary proceedings, since, there are provisions to do so. At any rate, this Court is of the view that the impugned order cannot be sustained. However, since the petitioner has been continuing in absence for several years, he cannot be straight away taken for job by the third respondent, without, undergoing disciplinary proceedings initiated by the third respondent.

9. Considering the above facts and circumstances, this Court is inclined to remand the matter back to the third respondent for re-consideration by way of either to initiate disciplinary proceedings against the petitioner or to accept his plea of medical reasons for his long and continued unauthorised absence and it is for the third respondent to take decision thereon.

10. Accordingly, the impugned order is quashed, the matter

is remanded back to the third respondent for re-consideration. The third respondent is directed to reconsider the entire issue for grant or not to grant job to the petitioner and in this regard, disciplinary action can be taken by the third respondent, in the manner known to law and in that case the same shall be completed within a period of three months from the date of receipt of a copy of this order.

11. This Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

arr

Sd/-

Assistant Registrar (CS-)

/TRUE COPY/

Sub-Assistant Registrar

To

1. The Director,
Town Panchayats,
Kuralagam, Chennai-600 108.
2. The Assistant Director of Town Panchayats,
O/o, Assistant Director,
Ooty-643001.
3. The Executive Officer,
First Grade Town Panchayat,
Adigaratty and Post,
Ooty-643001, Nilgiris District.

+1 CC Government Pleader SR.No.62854

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SSK [CO]

MSI 09/12/2016

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