



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 29.01.2016

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE D.HARIPARANTHAMAN

W.P (MD) No.2161 of 2016
and
WMP (MD) No.1879 of 2016

P.Karuppiah

... Petitioner

Vs.

1. The Special Commissioner,
Commissioner for Revenue Administration,
Chepauk, Chennai.
2. The District Collector,
Sivagangai District,
Sivagangai.
3. The District Revenue Officer,
Sivagangai,
Sivagangai District.
4. The Sub-Collector,
O/o.the Sub-Collector,
Devakottai,
Sivagangai District.
5. The Tahsildar,
O/o.the Tahsildar,
Devakottai,
Sivagangai District.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari calling for the records relating to the impugned order passed by the fourth respondent in his proceedings in Na.Ka.No.Aa2-205-2010, dated 22.01.2016 and quash the same as illegal.

For Petitioner : Mr.Md.Imran for
M/s.Ajmal Associates
For Respondents : Mr.J.Gunaseelan Muthiah

ORDER

Mr.J.Gunaseelan Muthiah, learned Government Advocate takes notice for the respondents.



2. By consent of parties, the Writ Petition itself is taken up for final disposal.

3. The petitioner is a Night Watchman in the office of the fifth respondent. According to the petitioner, he has been working as a Night Watchman from 1984 onwards. While so, he was placed under suspension by the fourth respondent by an order, dated 13.01.2010. The petitioner filed W.P(MD)No.428 of 2013 questioning the order of suspension and also sought for a consequential prayer to regularize his service.

4. This Court disposed of the said Writ Petition in W.P(MD) No.428 of 2013 on 20.01.2015 with the following directions as contained in Paragraph No.5 of the said order:

"5. Thus, by going by the order passed by the Honourable Division Bench of this Court, this Writ Petition is disposed of with a direction to the fourth respondent to pay the subsistence allowance to the petitioner during the period of suspension and the arrears of such subsistence allowance shall be paid within a period of four weeks from the date of receipt of a copy of this order. The Honourable Division Bench has already directed the authorities to complete the disciplinary proceedings. Therefore, the authorities shall complete the disciplinary proceedings and pass final order without any further delay, however, within a period of eight weeks from the date of receipt of a copy of this order."

5. In the above said order, this Court had categorically stated that the authority shall complete the disciplinary proceedings and pass final order besides issuing direction to pay subsistence allowance.

6. Now the learned counsel for the petitioner submitted that when this Court had issued direction to complete the disciplinary proceedings and pass final order without any further delay, the impugned order, dated 22.01.2016 has been passed raising certain allegation, without conducting any disciplinary proceedings and no charge sheet was issued seeking explanation from the petitioner on those charges. On the other hand, a notice, dated 08.01.2016 was sent to the petitioner asking to appear before the fourth respondent and statement was also recorded from him. Thereafter, he was simply terminated from service on 22.01.2016 and that is impugned before this Court.

7. When the matter came up for admission, this Court directed the learned Government Advocate to take instructions as to whether any order was passed in contravention to the order of this Court



ie., this Court directed the learned Government Advocate to verify as to whether any disciplinary proceedings were conducted as directed by this Court.

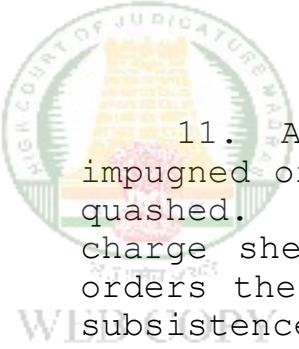
8. On instructions, the learned Government Advocate has submitted that since the petitioner is not a regular workman, there is no need to conduct regular departmental proceedings and therefore, there is no illegality in the order, dated 22.01.2016.

9. I am not inclined to agree with the submission made by the learned Government Advocate. Even if the petitioner is not a regular workman, he cannot be dismissed making allegations. Serious allegations are made in the impugned order, dated 22.01.2016 dismissing him from service. It is alleged that the petitioner is responsible for the shortage in dhoties and sarees.

10. Furthermore, as rightly contended by the learned counsel for the petitioner, even if the petitioner is not a regular workman, in view of the judgment in **V. Shanmugasundaram vs. Registrar of Co-operative Societies, Madras and Another** reported in **(2009) 1 MLJ 743**, the impugned order is liable to be quashed. It is relevant to extract paragraph Nos.8 and 9 of the above said judgment as follows:

"8.....Termination based on specific chargers, certainly casts stigma on the conduct of the petitioner. It is well settled that even a temporary employee is entitled to protection under Article 311(2) of the Constitution of India. Reference can be made to few judgments of the Supreme Court in Chandra Prakash Shahi v. State of U.P., AIR 2000 SC 1706: (2000) 5 SCC 152, the Apex Court has held that temporary government employee or a probationer is also entitled to protection under Article 311(2) of the Constitution and that the Court can lift the veil to determine the real character of termination.

9. The Supreme Court in Union Territory of Tripura v. Gopal Chandra Dutta Choudhuri AIR 1963 SC 601: 1963-II-LLJ-633, held that when employment of a temporary public servant is terminated pursuant to the terms of a contract, he is not entitled to the protection under Article 311(2) of the Constitution. But the State may, instead of exercising its contractual right to seek to terminate the employment of a temporary employee for misconduct, negligence, inefficiency or any other disqualification and when an order of termination of employment is passed for that purpose, it would amount to dismissal or removal attracting the protection of Article 311 of the Constitution. The form in which the order is couched is not decisive. "



11. Accordingly, the Writ Petition is allowed and the impugned order passed by fourth respondent, dated 22.01.2016, is quashed. However, liberty is given to the respondents to issue charge sheet and conduct a regular enquiry and pass appropriate orders thereafter. In the meantime, the petitioner shall be paid subsistence allowance before proceeding further with the matter. The respondents shall complete the proceedings, within a period of four months from the date of receipt of a copy of this order. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

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O/o.the Sub-Collector,
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5. The Tahsildar,
O/o.the Tahsildar,
Devakottai,
Sivagangai District.

+ 1 CC TO M/S.AJMAL ASSOCIATES, ADVOCATE IN SR NO. 5930
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR NO. 5889

PM
TE/AAL-MPA/ : 16/02/2016 : 4P/8C

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