

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Writ Appeal No.339 of 2017
and CMP.No.5166 of 2017

1.The Corporation of Chennai
Rep. By its Principal Secretary Commissioner
Chennai-600 003

2.The Deputy Commissioner (Education)
Corporation of Chennai
Chennai-3

..Appellants

Vs

1.K.Pitchandi

2.Government of Tamil Nadu
by Principal Secretary
Municipal Administration and Water Supply Department
Fort St.George
Chennai-9

..Respondents

Prayer:Writ Appeal filed against the order dated 16.08.2016 passed in
W.P.No.34126 of 2015.

For Appellants :: Mr.K.Venkataramani
Additional Advocate General
for Mr.G.Anantharangan

For Respondents :: Mr.K.Raja for R1
Mr.P.S.Sivashanmugha Sundaram
Special Government Pleader For R2

JUDGMENT

(Judgment of the Court was made by
RMT.TEEKAA RAMAN, J.)

The 1st respondent herein was originally employed as Project Officer for SJSRY Scheme in Corporation of Chennai. For the misdeeds/ misappropriation of funds in implementing Government Schemes and the negligence and lapses on the part of the 1st respondent/Writ Petitioner, he was relieved from his responsibility of Project Officer incharge. Aggrieved by the said order dated 16.02.2015, the 1st respondent/Writ Petitioner preferred W.P.No.34126 of 2015 seeking to quash the said order and for a further direction to respondents to reinstate him in the post of Project Officer or in an equivalent post.

2. On consideration of the facts and circumstances of the case and also the earlier round of litigation in W.P.No.21486 of 2015, in respect of the same charges, it is seen that the said Writ Petition was disposed of on 16.07.2015, treating the 1st respondent/Writ Petitioner, as regular employee and thus the respondents were directed to pay subsistence allowance to the Writ Petitioner.

3. The learned Additional Advocate General appearing for the appellant has contended that in this case, the petitioner is not eligible for subsistence allowance as he was only a contractual employee who drew wages on consolidated basis and further, he was not suspended from service but totally relieved from the post on charges of failure to effectively implement the scheme and misappropriation of scheme funds.

4. The learned counsel appearing for the 1st respondent/writ petitioner submits that the order of the learned Single Judge dated 16.08.2016 is based upon the earlier order of the learned Single Judge dated 16.07.2015 passed in W.P.No.21486 of 2015.

5. The learned Single Judge has clearly pointed out the contentions raised by the parties and observed as follows:-

"the respondents did not comply with the earlier directions of this court and that neither they paid the subsistence allowance nor the enquiry is completed within the time. Of course, a stand is taken by the respondents that the petitioner is not entitled for the subsistence allowance as he is only a temporary employee and further, the contract is ceased with effect from July 2015 since the very scheme itself has been

closed. Even during the pendency of the Writ Petition, though there was no stay, they could not complete the enquiry and they have not taken any steps to complete the enquiry. In such view of the matter, the respondents are directed to complete the enquiry within a period of three months from today, without even waiting for the copy of this order; if they failed to complete the enquiry in spite of the cooperation given by the Petitioner within the said time, dehbors the eligibility, the petitioner will be paid subsistence allowance of 50% of the last drawn pay from then onwards. "

6. We have perused the records carefully. The appointment order of the petitioner dated 06.07.2009 shows that the 1st respondent/Writ Petitioner's appointment is purely temporary and the services may be terminated at any time without any notice if the work is not satisfactory. In such circumstances, we are unable to comprehend the view of the learned Single Judge since the very same reason referring the nature of employment has been mentioned and that it is stated that he cannot be treated as regular employee, so as to award subsistence allowance pending enquiry. In any event, after going through the other records, produced by the Appellant herein, we find that the 1st respondent/Writ Petitioner indulged in misappropriation and swindled several crores of Scheme fund and Vigilance enquiry has also been ordered by the

Commissioner, Corporation of Chennai.

7. In such circumstances, we deem it fit to pass the following order:-

" (i) The order of the learned Single Judge dated 16.08.2016 in respect of direction to the appellant to pay subsistence allowance of 50% of the last drawn pay is set aside.

(ii) In view of the submission made that Vigilance Enquiry has been ordered against the 1st respondent/Writ Petitioner, the order of the learned Single Judge in respect of direction to complete the enquiry within a period of three months shall hold good and accordingly, the appellant shall complete the procees of Departmental Enquiry Proceedings within a period of three months from the date of receipt of a copy of this order. "

The Writ Appeal is partly allowed on the above terms. No costs. Consequently, connected MP is closed.

(H.G.R.J.)

(T.K.R.J.)

24.11.2017

Index: Yes/No

nvsri

HULUVADI G.RAMESH,J.

and

RMT. TEEKAA RAMAN,J.

nvsri

- 1.The Corporation of Chennai
Rep. By its Principal Secretary Commissioner
Chennai-600 003
- 2.The Deputy Commissioner (Education)
Corporation of Chennai
Chennai-3
- 3.Government of Tamil Nadu
by Principal Secretary
Municipal Administration and Water Supply Department
Fort St.George
Chennai-9

W.A.No.339 of 2017

24.11.2017