

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Writ Petition No.31797 of 2004
and W.P.M.P.No. 38524 of 2004

M.G.Dhamu

... Petitioner

Vs.

1. The Inspector General of Registration,
120, Santhome High Road,
Chennai-28.

2. The Deputy Inspector General of
Registration-cum-enquiry Officer,
27, Rajaji Salai,
Chennai.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the file of the first respondent in No.41258/Aa4/2002-1.dt.29.8.2002 and consequential notice of the 2nd respondent in 3626/Thu.Tha/2003.dt.5.10.2004, and quash the same; and direct the first respondent to regularise the period from 01.04.2002 to 13.09.2002 covered by the stay orders granted by the Tribunal.

For Petitioner : Mr.G.Sankaran

For Respondents: Mr. M.Elumalai,
Government Advocate.

O R D E R

Heard learned counsel for the petitioner and the learned Government Advocate for the respondents. With consent of the learned counsel appearing for both sides, the writ petition itself is taken up for final disposal.

2. The petitioner was working as a Steno-typist Grade II in the Registration department. While the petitioner was working in the office of the Inspector General of Registration, Chennai-28, he was transferred to the office of the Deputy Inspector General of Registration, Vellore, by proceedings dated 01.04.2002. The said transfer order was effected under

regulation 34(a) of Registration Standing Orders. As against the said transfer order, the petitioner filed an Original Application before the Tamil Nadu Administrative Tribunal in O.A. No. 2197 of 2002. The Tribunal granted an order of interim stay, on 19.04.2002. Thereafter, the Original Application was dismissed on 01.08.2002, confirming the transfer order. Subsequently, departmental proceedings were initiated against the petitioner for his unauthorised absence and a charge memo has been passed against the petitioner and ultimately, he was suspended from service, on and from 29.08.2002. In the meantime, the petitioner challenged the order passed by the Original Application by the Tribunal, by way of a writ petition before this Court, in W.P.No.33950 of 2002 and an order of interim stay has been passed against the same. Thereafter, the first respondent, by his proceedings dated 09.09.2002, has revoked the suspension order, which ultimately resulted in W.P.No.33950 of 2002 to be disposed of, as withdrawn. The petitioner has joined the transferred place of posting on 16.09.2002. Since it is evident from the proceedings dated 09.09.2002 that the order of cancellation came to be passed only to maintain status-quo ante, in compliance of the order of this Court, the suspension as well as charge memo ceased to exist, in pursuant to the order, dated 09.09.2002 of the first respondent. Therefore, the petitioner submitted a detailed explanation before the respondents. After receipt of the detailed explanation made by the petitioner, the respondents proceeded with the enquiry. When the petitioner sought for supply of documents to vindicate his stand, he was supplied with only a few documents and other relevant documents were not given to him. This was evident from the proceedings of the second respondent, dated 05.10.2004, which was challenged by the petitioner, in this writ petition.

3. While this writ petition was taken up for hearing, on 23.12.2004, an order of status-quo was ordered to be maintained between both the parties.

4. The issue involved in this case is, whether the petitioner has right to challenge the order passed by the second respondent before this court or not.

5. The learned Government Advocate appearing for the respondents supported the action of the respondents, by contending that the respondents had transferred the petitioner under Ministerial Staff Standing Order No.34(a), from Inspector General of Registration, to Deputy Inspector General of Registration, Vellore, on 01.04.2002; even after the dismissal of the Original Application by the Tribunal, the petitioner had not joined the duty till 29.08.2002, which is nothing but wilful disobedience.

6. It is common knowledge that every citizen, including Government Servant, have a right to challenge any order before

this court or the appellate court, as the case may be. It is the statutory right as well as the constitutional remedy. The remedy available cannot be deprived of, by way of issuing a charge memo. On the face of it, the charge memo issued by the respondents is not sustainable.

7. Further, this Court, in its order, dated 05.09.2002, has ordered to maintain status-quo ante, to continue and ultimately, has passed the following order:-

"Learned Government Advocate undertakes that as soon as the post is available in Chennai, the petitioner herein shall be brought back. In view of the statement made, the writ petition is allowed to be withdrawn. The petitioner shall also make a representation in the same terms. Accordingly, the writ petition is disposed of as withdrawn. No costs. Consequently, connected WPMP No.50191 of 2002 is closed."

After the passing of the above said order, the petitioner joined the post on 16.09.2002. Hence, the charge memo issued prior to the orders of this Court cannot be proceeded with inasmuch the same would be against the directions issued by this Court. In the opinion of this Court, if the respondents are allowed to proceed with the enquiry, it would be prejudicial to the interest of the petitioner as well as the same would be in gross violation of the orders of this Court. Therefore, the present action of the respondents in pursuing the charge memo is in contradiction to the settled legal principles. Therefore, this Court is of the opinion that the charge memo issued by the respondents is not valid.

8. In view of the foregoing reasons, the impugned order is liable to be set-aside and it is set-aside accordingly. The writ petition is allowed. No costs. Consequently, the connected WPMP is closed.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

To

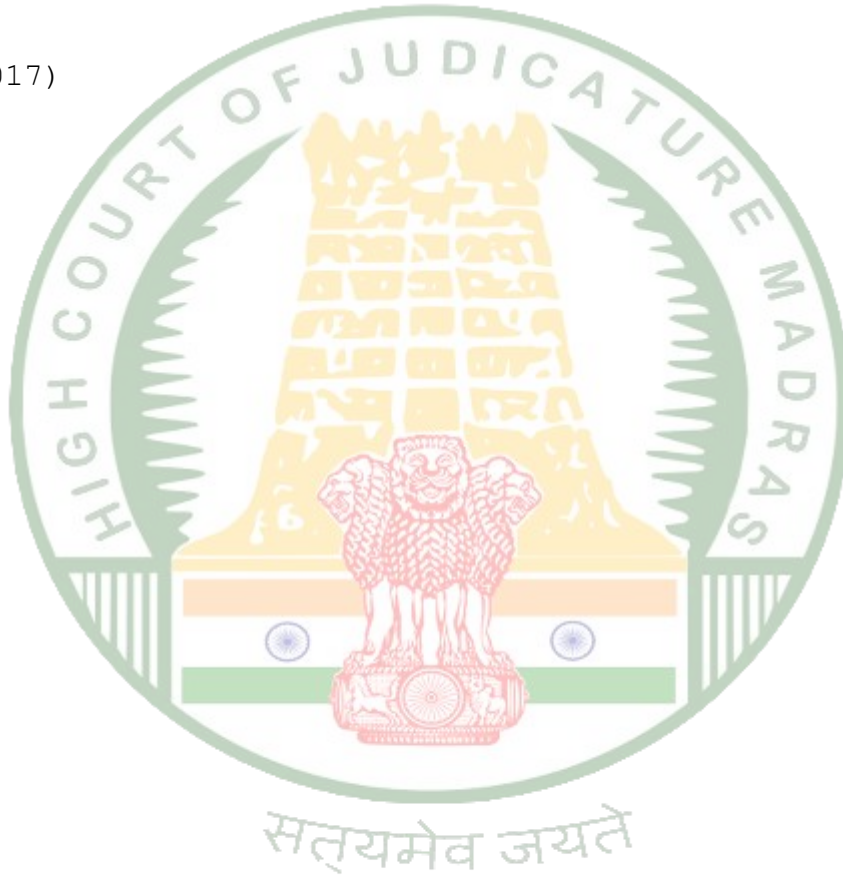
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+1cc to Government Pleader sr.61621

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ss(22/9/2017)



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