



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 30.08.2017

CORAM:

WEB COPY

**THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

W.A.[MD].No.1160 of 2016
and
C.M.P. (MD) No.7417 of 2016

1. The Assistant Director of Town Panchayats,
Kanyakumari District,
Collectorate Complex,
Nagercoil.

2. The Executive Officer,
Vellimalai Town Panchayat,
Kanyakumari District.

... Appellants

Vs.

S. Padmasekaran

... Respondent

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent, to set aside the order dated 25.11.2014 made in W.P(MD). No.3058 of 2010 on the file of this Court.

Prayer in WP(MD)No.3058/2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF CERTIORARI FIED MANDAMUS, to call for records pertaining to the order of suspension issued by the 2nd Respondent herein in the proceedings issued in Na.Ka.No.205/97, dated 22-11-2000 and the consequential order issued in Na.Ka.No.174/2007/A1, dated 30-09-2009 and quash the same and further direct the Respondents herein to reinstate the petitioner in his service with back wages, service benefits and continuity of service.

For Appellants : Mr.T.S.Mohamad Mohideen
Additional Government Pleader
For Respondent : No appearance

JUDGMENT

[Judgment of the Court was delivered by G.R.SWAMINATHAN, J.]

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This writ appeal is directed against the order dated 25.11.2014 made in W.P.(MD)No.3058 of 2010 filed by the respondent herein.



2.The respondent herein was appointed in the year 1986 as Water Supply Operator and worked till 06.03.1998. He was placed under suspension on the ground that he obtained the status of permanent employee by fabricating a Government Order. In that regard, criminal proceedings were initiated and according to the writ petitioner, he was shown as a witness.

3.The respondent herein thereafter filed a case before this Court. Finally, the Executive Officer, Vellimalai Town Panchayat, Kanyakumari District, by order dated 30.09.2009 informed the writ petitioner that he cannot be given the benefit of reinstatement. Questioning the same, the respondent filed W.P.(MD)No.3058 of 2010. The learned Judge by order dated 25.11.2014 allowed the writ petition and directed the Executive Officer Vellimalai Town Panchayat, Kanyakumari District to reinstate the respondent as Over Head Tank Operator on daily wages. Questioning the same, the present intra Court Appeal has been filed.

4.The facts are not in dispute. The appellant was appointed only on daily wages basis in the year 1986. He became permanent by citing G.O.M.S.No.21, Rural Development Department, dated 03.01.1997. It is the case of the appellants that the Government Order had been fabricated. The only defence of the respondent is that he is not a party to the said fabrication. That is why, he has been named as a witness in the criminal proceedings and not as an accused. Be that as it may, the question of reinstatement would arise only if the appellant was holding the regular post.

5.Even the learned Single Judge who allowed the writ petition gave a direction for appointing the respondent only on daily wages. Such a direction cannot be issued. When it is found that the respondent became a permanent employee on the strength of a bogus Government Order, he has no legs to stand and he has no claim in law.

6.Therefore, the learned Judge ought not to have allowed the writ petition. The order made in W.P.(MD)No. 3058 of 2010 is set aside. Accordingly, this writ appeal stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar



To

1. The Assistant Director of Town Panchayats,
Kanyakumari District,
Collectorate Complex,
Nagercoil.

2. The Executive Officer,
Vellimalai Town Panchayat,
Kanyakumari District.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 75996

MM/GSP

TE/SKN-RSK/SAR-2 : 05/12/2017 : 3P/4C

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C.M.P.(MD) No.7417 of 2016
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