



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.11.2017

Pronounced on : 22.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBBIAH**

AND

THE HONOURABLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**

C.M.P. (MD) .Nos.10076 and 10112 of 2017

in

W.A. (MD) .Nos.SR44086 and SR44299 of 2017

and W.A. (MD) .No.1427 of 2017

and C.M.P (MD) .No.10781 of 2017

and W.A. (MD) .No.SR44299 of 2017

C.Muthu

.. Petitioner in

C.M.P. (MD) .No.10076/2017/Appellant

/ Appellant in

W.A. (MD) .No.1427 of 2017/3rd party/3rd party

The District Collector,
Pudukkottai District.

.. Petitioner in

C.M.P. (MD) .No.10112/2017

/ Proposed Appellant

Vs.

1.K.Thamizh Selvi

... 1st Respondent/1st Respondent

2.The Vigilance Commissioner,
Fort St. George,
Chennai - 600 009.

3.The Director of Vigilance & Anti Corruption,
Greenways Road,
Chennai.

4.The Deputy Superintendent of Police,
Vigilance & Anti Corruption,
Pudukkottai.

.. Respondents 2 to 4/ Respondents 2 to 4

COMMON PRAYER IN BOTH C.M.Ps.: These miscellaneous petitions have been filed to grant leave to the petitioners to file appeal as against the interim order dated 30.10.2017, passed in W.M.P. (MD) .Nos.10076 and 10112 of 2017 in W.P. (MD) .No.19632 of 2017.



COMMON PRAYER IN W.A. (MD) .No.1427/2017 AND W.A. (MD) .No.SR44299 of 2017 : both the appeals are preferred under Clause 15 of the Letters Patent as against the interim order, dated 30.10.2017, passed in W.M.P.(MD).No.15908 of 2017 in W.P.(MD).No.19632 of 2017.

For Petitioner in
C.M.P. (MD) .No.10076/2017/
appellant

: Mr.M.Ajmalkhan
Senior Counsel for
M/S.Ajmal Associates

For Petitioner in
C.M.P. (MD) .No.10112/2017

: Mr.Vijaya Narayanan,
Advocate General,
assisted by Mr.B.Pugalendhi,
Addl. Advocate General

For 1st respondent in
C.M.P. (MD) .No.10076/2017 &
in the appeal

: Mr.Veera Kathiravan
Senior Counsel for
M/S.Veera Associates

For 1st respondent in
C.M.P. (MD) .No.10112/2017

: Mr.Elephant G.Rajendran
for Mr.C.Jeganathan

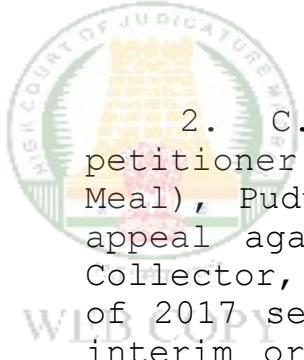
For respondents 2 to 4 in
both the petitions &
in the appeal

: Mr.T.S.Mohammed Mohideen,
Addl. Government Pleader

COMMON JUDGMENT

[Judgment of the Court was made by **R.SUBBIAH, J.**]

Both the writ appeals are preferred against the interim order, dated 30.10.2017 passed in W.M.P.(MD).No.15908 of 2017 in W.P.(MD).No.19632 of 2017, whereby and whereunder a learned Single Judge of this Court directed the District Collector, Pudukkottai District not to allow the petitioner viz., C.Muthu, P.A. to the District Collector (Noon Meal Scheme) to retire from service pending the disposal of the main writ petition ie., W.P.(MD).No.19632 of 2017. In the writ petition, neither the District Collector, Pudukkottai District, who was directed not to allow P.A. to the District Collector (Noon Meal Scheme) to retire from service nor P.A. to the District Collector (Noon Meal Scheme) against whom the interim order was passed, was arrayed as a party.



2. C.M.P.(MD).No.10076 of 2017 has been filed by the petitioner viz., C.Muthu, P.A. to the District Collector (Noon Meal), Pudukkottai District seeking leave of the Court to file an appeal against the interim order dated 30.10.2017. The District Collector, Pudukkottai District has also filed C.M.P.(MD).No.10112 of 2017 seeking leave of the Court to file an appeal against the interim order passed in W.M.P.(MD).No.15908 of 2017 in W.P.(MD).No.19632 of 2017.

3. At the time of taking up the leave petitions, the learned senior counsel appearing for the first respondent raised maintainability of both the miscellaneous petitions and also the appeals, as the appeals are preferred against the interim order passed by the learned Single Judge of this Court in the criminal case.

4. Since the issue involved in both the petitions are interrelated to each other and the grounds raised by both sides in respect of maintainability as well as the merit of the interim order passed by the learned Single Judge are one and the same, they were heard together and they are now disposed of by way of this common judgment.

5. Before traversing into the rival submissions made on either side, we are of the view that it would be appropriate to refer brief facts of the case for better appreciation and the same are as follows:

(a) The first respondent in both the appeals viz., K.Thamizh Selvi has filed a writ petition before the learned Single Judge of this Court in W.P.(MD).No.19632 of 2017 seeking for a Writ of Mandamus, directing the Director of Vigilance and Anti-corruption, Chennai and the Deputy Superintendent of Police, Vigilance and Anti-Corruption, Pudukkottai to register a FIR on her complaint, dated 10.10.2017, conduct enquiry into the selection process of Noon Meal Organizers made in the Pudukkottai District by the District Collector, Pudukkottai District as well as P.A. to the District Collector (Noon Meal Scheme), Pudukkottai and file the final report before the Court within a reasonable time. It is stated in the said writ petition that she had applied for the post of Noon Meal Organiser, based on the newspaper publication dated 31.01.2017, made by the District Collector, Pudukkottai District and she had attended the interview conducted for the said post on 24.02.2017, but she was not selected for appointment in the said post due to procedural violations and arbitrary selection of the candidates by the District Collector, Pudukkottai, who is the appointing authority for the said post and the P.A. to the District Collector (Noon Meal Scheme), Pudukkottai District, who had conducted the selection process. It is also stated in the said writ petition that the appointing authority viz, the District Collector, Pudukkottai District and P.A. to the District Collector (Noon Meal Scheme) Pudukkottai and the political office bearers of



the ruling party have conspired together, violated the procedures and after receiving illegal gratification, appointed 130 Noon Meal Organizers on 16.10.2017.

(b) It is further stated in the writ petition that in the meantime, the first respondent herein has filed a writ petition in W.P.(MD).No.19325 of 2017 seeking to quash the impugned news bulletin, dated 31.01.2017 and news item published in Dinakaran Daily newspaper, dated 01.02.2017, issued by the 1st respondent herein for filling up the post of Noon Meal Organizer under the Tamil Nadu Dr.M.G.R. Noon Meal Scheme and for consequential direction to the respondents herein to conduct free and fair selection process in filling up of Noon Meal Organizer under the Tamil Nadu Dr.M.G.R. Noon Meal Scheme, by following the rule of reservation. It is also stated in the said writ petition that though she had sent a complaint on 10.10.2017 to the 2nd respondent, no action was taken by the 2nd respondent on her complaint and hence, she has filed the writ petition in W.P.(MD). No.19632 of 2017 for the aforesaid prayer.

(c) Along with the writ petition in W.P.(MD).No.19632 of 2017, the first respondent herein has filed interim applications in W.M.P.(MD).No.15908 of 2017, seeking a direction to the respondents 2 to 4 herein not to allow the accused now working as P.A. to the District Collector (Noon Meal Scheme), Pudukkottai District to retire from service on 31.10.2017 pending disposal of the above writ petition and in W.M.P(MD).No.15909 of 2017 seeking a direction to the 2nd respondent herein to take effective steps not to allow the District Collector, Pudukkottai, in any way from interfering with or tampering with the witnesses in the Pudukkottai District, pending disposal of the writ petition. However, in W.P.(MD).No.19632 of 2017 neither the District Collector, Pudukkottai District nor the P.A. to the District Collector was made as a party.

(d) On 30.10.2017, the learned Single Judge of this Court has passed the impugned interim order, wherein at paragraph Nos.4 to 6, it has been held as follows:

"4.When the matter was heard on 25.10.2017, the learned Additional Government Pleader prays time to file status report in respect of the complaint given by the petitioner herein. But, the respondents have not chosen to file any status report today, as agreed and seeks further time. He would further contend that there is no violation in appointments made for the post of Noon Meal Organiser and the petitioner had applied with false particulars. Records produced by the writ petitioner are perused. There is a prima facie case of violation of residential rules in respect of some appointments.



5. The learned Additional Advocate General appearing for the respondent would contend that the respondents want to file preliminary objection in respect of the maintainability of the Writ Petition. However, the learned senior counsel appearing for the petitioner states that P.A. to the District Collector is going to retire tomorrow i.e., on 31.10.2017, on superannuation and if he permits to retire, he will escape from the allegation of illegal gratification in respect of the recruitment made by him.

6. Considering the above facts and circumstances of the case, the respondents are directed to file preliminary objection in the writ petition and the status report of the complaint filed by the petitioner herein. In the meantime, the District Collector of Pudukkottai District is directed not to allow P.A. to the District Collector (Noon Meal Scheme) to retire from service, as laid down in Tamil Nadu Government Fundamental Rules, until further orders from this Court in contemplation of the complaint pending before the Vigilance Department."

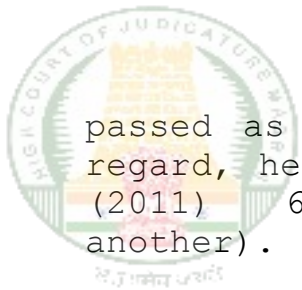
(e) Aggrieved over the said interim order, the District Collector, Pudukkottai and the P.A. to the District Collector (Noon Meal Scheme), Pudukkottai have come up with the present appeals.

6) Mr. Ajmal Khan, learned senior counsel appearing for the appellant / P.A. to the District Collector by name C. Muthu has raised the following grounds :

(a) The interim order passed by the learned Single Judge is in the nature of affecting the civil right of the appellant and the said order is in the nature not arising out of the criminal case as the order not allowing the appellant to retire from service is only pertaining to the service matter. Therefore, the appeal is maintainable.

(b) Further, the prayer in the writ petition is only for a direction to the Vigilance Department to register a case, based on the complaint of the first respondent herein. But, the impugned interim order is in the nature of collateral issue which is not the subject matter of the main case. In this regard, he relied upon the decision of the Hon'ble Supreme Court in *Midnapore Peoples Cooperative Bank Ltd., and others Vs. Chunilal Nanda and others* reported in (2006) 5 SCC 399.

<https://hcservices.ecourts.gov.in/hcservices/>
The appellant herein against whom the interim order came to be passed for not allowing him to retire is not made as a party in the writ petition and as such, no interim order could have been



passed as against the appellant without impleading him. In this regard, he relied upon a decision of the Hon'ble Supreme Court in (2011) 6 SCC 570 (J.S.Yadav Vs. State of Uttar Pradesh and another).

(d) In service jurisprudence, the third parties have no role in the matter of disciplinary proceedings which is exclusively coming under the domain of the employer and employee. The third parties are not entitled to approach the Court seeking for initiation of departmental proceedings and the Court shall not issue any direction to the employer to initiate departmental proceedings against the employee at the instance of the third party. As such, the interim order not allowing the appellant to retire from service cannot be sustained. In this regard, he relied upon the decision of the Hon'ble Supreme Court in (2000) 9 SCC 313 reported in Rajnit Prasad Vs. Union of India and others.

7) Mr.Vijaya Narayanan, learned Advocate General appearing for the District Collector / appellant submitted that the first respondent herein is an unsuccessful candidate and she could not be selected due to false certificates produced by her. Her complaint, dated 10.10.2017, is also bereft of any particulars and the same does not make out any cognizable offence. The competent authority to take action against the P.A. to the District Collector (Noon Meal Scheme) is the Additional Chief Secretary to Government, Rural Development and Panchayat Raj Department. But, neither the Secretary, Rural Development nor the Principal Secretary, Social Welfare and Nutritious Meal Development, who is the administrative Head of the Department of the Noon Meal Programme Department and the Director of Social Welfare and Nutritious Meals Programme Department were arrayed as party in the writ petition and hence, without arraying the necessary parties, the interim order with regard to retirement of an employee could not have been passed. However, in obedience to the order passed by this Court, the District Collector, Pudukkottai District / appellant has passed an order not allowing P.A. to the District Collector (Noon Meal Scheme) to retire from service on attaining the age of superannuation.

8.The learned Advocate General would further submit that with regard to Pudukkottai District, there were 160 vacancies in the post of Noon Meal Organizers and to fill up the vacant position, paper publication was issued on 31.01.2017, calling for the applications from eligible candidates by strictly following the rule of reservation. Selection committees drawn from different departments were constituted and block level interviews were held and after complete verification of each candidate as to their claim, particularly with respect to priority quota, orders were passed by the District Collector, Pudukkottai District / appellant strictly following the rules of recruitment prescribed in G.O.Ms.No.163, Social Welfare and Nutritious Meal Programme Department, dated 18.08.2010. With respect to priority quota, the



certificates have to be verified and confirmed before the appointment is made. Confirmations of the genuineness of the priority certificates have caused the delay for finalization of the appointment list. He would further submit that there is no iota of truth in the allegations and in fact, no specific allegations were raised by the first respondent herein against either the District Collector or the P.A. to the District Collector (Noon Meal Scheme). If all the unsuccessful candidates in the selection process are allowed to raise such false allegations against the District Level Officers, then no recruitment can be made in the Government service. Thus, he prayed to grant leave and to set aside the interim order dated 30.10.2017 by allowing the appeal.

9. Mr.Veera Kathiravan, learned senior counsel and Mr.Elephant Rajendran, learned counsel appearing for the first respondent / writ petitioner in unison made the following submissions :

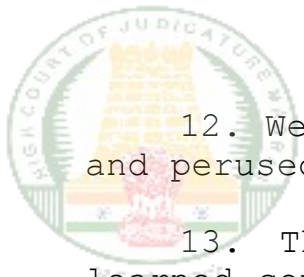
(a) The above leave applications as well as the writ appeals are not maintainable against an interim order passed in furtherance of the criminal jurisdiction of the High Court. In this regard, they relied upon the decision of the Hon'ble Supreme Court in Ram Kishan Fauji Vs. State of Haryana and others, reported in 2017 (5) SCC 533.

(b) The accused has no pre-audience in the matter of registration of FIR and therefore, the appellants cannot challenge the impugned interim order.

(c) As the interim order passed by the learned Single Judge has already been complied with by the District Collector, both the writ appeals are not maintainable.

10. Mr.Elephant Rajendran, learned counsel appearing for the first respondent / writ petitioner in furtherance of the above submissions additionally submitted that though the District Collector is not an authority to pass an order not allowing the P.A. to the District Collector to retire from service, the District Collector has admitted that he has passed such an order and therefore, after complying with the order, there is no necessity for him to file an appeal against that interim order. Hence, both the miscellaneous petition filed for leave of the Court as well as the appeal by the District Collector are liable to be dismissed.

11. The learned Additional Government Pleader appearing for the respondents 2 to 4 submitted that as per Rule 27 of the Vigilance Manual (Annexure II) grants a time limit of two months to complete the preliminary enquiry. Hence, the interim order directing the first respondent / Vigilance Police to file a status report within three days is not possible to adhere to.



12. We have heard the learned counsel appearing for both sides and perused the materials available on records.

13. Though very many contentions have been raised by the learned counsel appearing for both sides with regard to the merits and demerits of the writ petition pending before the learned Single Judge, we ourselves refrained from dealing with the same, because they can raise all those submissions before the learned Single Judge in the main writ petition.

14. It is seen from the record that the main writ petition has been filed by the first respondent herein for a direction to the Vigilance Department to register a FIR based on her complaint dated 10.10.2017, to conduct enquiry into the selection process of Noon Meal Organizers made in the Pudukkottai District by the District Collector, Pudukkottai and the P.A. to the District Collector (Noon Meal Scheme), Pudukkottai and file final report before this Court within a reasonable time. Along with the said writ petition, the first respondent herein has also filed interim applications in W.M.P.(MD).No..15908 of 2017, seeking a direction to the respondents 2 to 4 herein not to allow the accused now working as P.A. to the District Collector (Noon Meal Scheme), Pudukkottai District to retire from service on 31.10.2017 pending disposal of the above writ petition and in W.M.P(MD).No.15909 of 2017 seeking a direction to the 2nd respondent herein to take effective steps not to allow the District Collector, Pudukkottai, in any way from interfering with or tampering with the witnesses in the Pudukkottai District, pending disposal of the writ petition.

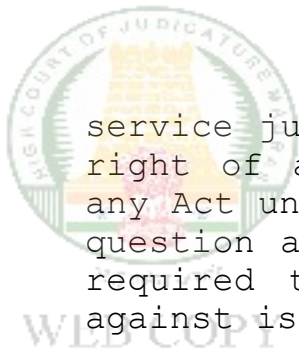
15. Admittedly, both the appellants were not arrayed as a party in the writ petition. It is the submission of the learned senior counsel for the first respondent / writ petitioner that as the first respondent has sought for only a direction to the Vigilance Department to register a case in the writ petition and as the person against whom such direction sought for was not necessary to be impleaded in the criminal matters, they were not impleaded in the writ petition and no appeal can be maintained against an order passed in the criminal matter. In this regard, he relied upon the decision of the Hon'ble Supreme Court in Ram Kishan Fauji Vs. State of Haryana and others reported in (2017) 5 SCC 533, wherein the Hon'ble Supreme Court has held in paragraph No.56 as follows:

"56.As we find from the decisions of the aforesaid three High Courts, it is evident that there is no disagreement or conflict on the principle that if an appeal is barred under Clause 10 or Clause 15 of the Letters Patent, as the case



Constitution for quashing of a criminal proceeding, there is no exercise of criminal jurisdiction. It has distinguished the proceeding for quashing of FIR under Section 482 CrPC and, in that context, has opined that from such an order, no appeal would lie. On the contrary, the High Courts of Gujarat and Delhi, on the basis of the law laid down by this Court in Ishwarlal Bhagwandas (supra), have laid emphasis on the seed of initiation of criminal proceeding, the consequence of a criminal proceeding and also the nature of relief sought before the Single Judge under Article 226 of the Constitution. The conception of 'criminal jurisdiction' as used in Clause 10 of the Letters Patent is not to be construed in the narrow sense. It encompasses in its gamut the inception and the consequence. It is the field in respect of which the jurisdiction is exercised, is relevant. The contention that solely because a writ petition is filed to quash an investigation, it would have room for intra-court appeal and if a petition is filed under inherent jurisdiction under Section 482 CrPC, there would be no space for an intra-court appeal, would create an anomalous, unacceptable and inconceivable situation. The provision contained in the Letters Patent does not allow or permit such an interpretation. When we are required to consider a bar or non-permissibility, we have to appreciate the same in true letter and spirit. It confers jurisdiction as regards the subject of controversy or nature of proceeding and that subject is exercise of jurisdiction in criminal matters. It has nothing to do whether the order has been passed in exercise of extraordinary jurisdiction under Article 226 of the Constitution or inherent jurisdiction under Section 482 Cr.P.C.

16. There cannot be any contra opinion with the regard to the above said dictum laid down by the Hon'ble Supreme Court. But, here in this case, pending disposal of the writ petition filed for registration of a complaint, learned Single Judge has passed an interim order directing the District Collector, Pudukkottai District not to allow Mr.C.Muthu, P.A. to the District Collector (Noon Meal Scheme) to retire from service, affecting his civil right. No doubt, the prayer sought for by the first respondent herein in the writ petition would squarely fall within the criminal jurisdiction. But, the interim relief sought for by the first respondent herein in the writ petition and the interim order passed by the learned Single Judge are in the nature of affecting the civil right of the appellant and also interfering with the



service jurisprudence. Clause 15 of the Letters Patent confers a right of appeal on a litigant against any judgment passed under any Act unless the same is expressly excluded. For determining the question as regards Clause 15 of the Letters Patent, the Court is required to see as to whether the order sought to be appealed against is a judgment within the meaning thereof or not.

17. At this juncture, this Court is of the view that, it would be appropriate to refer to the decision of the Hon'ble Supreme Court in Midnapore Peoples Cooperative Bank Ltd., and others Vs. Chunilal Nanda and others reported in (2006) 5 SCC 399, wherein the Hon'ble Supreme Court has held in paragraph Nos.15 & 16 as follows:

" 15. Interim orders/interlocutory orders passed during the pendency of a case, fall under one or the other of the following categories :

(i) Orders which finally decide a question or issue in controversy in the main case.

(ii) Orders which finally decide an issue which materially and directly affects the final decision in the main case.

(iii) Orders which finally decide a collateral issue or question which is not the subject matter of the main case.

(iv) Routine orders which are passed to facilitate the progress of the case till its culmination in the final judgment.

(v) Orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties.

16. The term 'judgment' occurring in clause 15 of the Letters Patent will take into its fold not only the judgments as defined in section 2(9) CPC and orders enumerated in Order 43 Rule 1 of CPC, but also other orders which, though may not finally and conclusively determine the rights of parties with regard to all or any matters in controversy, may have finality in regard to some collateral matter, which will affect the vital and valuable rights and obligations of the parties. Interlocutory orders which fall under categories (i) to (iii) above, are, therefore, 'judgments' for the purpose of filing appeals under the Letters Patent. On the other hand, orders falling under categories (iv) and (v) are not 'judgments' for purpose of filing appeals provided under the Letters Patent."



18. From the above dictum laid down by the Hon'ble Supreme Court, it is clear that an interlocutory order, which affects vital and valuable rights of the party and which causes serious injustice to the party concerned can be regarded as a judgment under Clause 15 of the Letters Patent. The interim order impugned in the writ appeals is in the nature of deciding the collateral issue, which is not the subject matter of the main case, as the prayer sought for by the first respondent herein in the main writ petition is only a direction to register a case and to file a final report. The order impugned herein squarely falls under the category (iii) mentioned in the judgment cited supra. Therefore, we are of the view that the appeal filed by the affected person viz., Mr.C.Muthu, P.A. to the District Collector (Noon Meal Scheme), Pudukkottai can be taken up for consideration.

19. No doubt, it is true that the pre-audience of a person against whom a complaint sought to be registered is not necessary. However, when a civil right of a person is involved in the nature of the relief sought for, he ought to have been impleaded, put on notice and heard. Otherwise, it would be a violation of principles of natural justice. In this case, without impleading the appellant / Mr.C.Muthu, P.A. to the District Collector (Noon Meal Scheme) and affording an opportunity of hearing, the impugned interim was passed behind the back of the appellant / Mr.C.Muthu, P.A. to the District Collector (Noon Meal Scheme). Therefore, the impugned order cannot be sustained. In this regard, this Court is inclined to refer to the decision of the Hon'ble Supreme Court in J.S.Yadav Vs. State of Uttar Pradesh reported in (2011) 6 SCC 570, wherein the Hon'ble Supreme Court has held in paragraph No.31 as follows:.

" 31.No order can be passed behind the back of a person adversely affecting him and such an order if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the principles of natural justice. The principles enshrined in the proviso to Order I Rule 9, of the Code of Civil Procedure, 1908 provide that impleadment of a necessary party is mandatory and in case of non-joinder of necessary party, the plaintiff/petitioner may not be entitled for the relief sought by him. The litigant has to ensure that the necessary party is before the Court, be it a plaintiff or a defendant, otherwise the proceedings will have to fail. In Service Jurisprudence if an unsuccessful candidate challenges the selection process, he is bound to implead at least some of the successful candidates in representative capacity. In case the services of a person is terminated and another person is



appointed at his place, in order to get relief, the person appointed at his place is the necessary party for the reason that even if the plaintiff/petitioner succeeds, it may not be possible for the Court to issue direction to accommodate the petitioner without removing the person who filled up the post manned by plaintiff/petitioner. (Vide: Prabodh Verma & Ors. etc. etc. v. State of U.P. & Ors. etc., AIR 1985 SC 167; Ishwar Singh & Ors. v. Kuldeep Singh & Ors., 1995 (supp) 1 SCC 179; Tridip Kumar Dingal & Ors. v. State of West Bengal & Ors., (2009) 1 SCC 768; State of Assam v Union of India & Ors., (2010) 10 SCC 408; and Public Service Commission, Uttaranchal v. Mamta Bisht & Ors., AIR 2010 SC 2613). More so, the public exchequer cannot be burdened with the liability to pay the salary of two persons against one sanctioned post.

20. In yet another decision of a Division Bench of this Court (wherein one of us was a party - R.Subbiah, J) in Dr.R.Muthukumaran Vs. Ramesh Babu reported in 2017 (3) CTC 603, it has been held in paragraph Nos.17 & 18 as follows;

"17.1. Though very many grounds have been raised to assail the order of the learned single Judge, it would be appropriate to deal with the issue whether the appellants ought to have been made as parties before passing any order against them. The main contention of the writ appellants is that an adverse order has been passed by the learned single Judge without impleading them and without affording any opportunity of hearing to them. Once the said issue is decided, there will be quietus to the entire issue involved in the writ appeals. There is no dispute that the writ appellants were not parties before the Writ Court. The writ petitioner could have very well impleaded the appellants as one of the parties when he filed the additional typed set of papers, wherein, the writ petitioner has stated the alleged act of the writ appellants and therefore, we can safely come to the conclusion that they lost their valuable right accrued to them in defending the case in a proper manner. In this connection, we find much force in the arguments of the learned Senior Counsel for the appellants. In this connection, it is useful to refer to the judgment reported in Testa Setalvad Vs. State of Gujarat, 2004 (10) SCC 88. In this connection, the Hon'ble Supreme Court held as follows:



Judge at the time of passing an adverse order against the appellants in W.A.(MD).Nos.910 of 2012 and 355 of 2013. Right to rebut allegations made against an individual is a valuable right which cannot be taken away just like that. It is always safe and better to pass an order after impleading the affected party, who might have a say to defend the allegations levelled against them. It is settled principle of law that, no observation much less any remarks, prejudicial to the interest of any person can be made in any lis when such persons are not made party to the litigation and did not have an opportunity to rebut the same. Thus, the order made by the Writ Court rendering findings against the appellants and directing initiation of disciplinary action against the appellants, when they were not party to the writ petition and thus had no opportunity to rebut the same warrants interference at the hands of this Court.

17.3. The Hon'ble Supreme Court in the case of State of West Bengal vs. Babu Chakraborty, AIR 2004 SC 4324 , has held as follows : (Para 29) In our view, the High Court was not justified and correct in passing observations/strictures against Appellants 2 and 3 without affording an opportunity of being heard, and it is in violation of a catena of pronouncements of this Court that harsh or disparaging remarks are not to be made against the persons and authorities whose conduct comes into consideration before courts of law unless it is really necessary for the decision of the case. Likewise, the directions issued by the High Court to the trial court to lodge a complaint to the Magistrate having jurisdiction for prosecuting Appellants 2 and 3 for having committed an offence under Section 58 of the Act read with Sections 166 and 167 of the Indian Penal Code is not warranted. The observations made by the High Court are liable to be expunged and accordingly, we expunge the same including the direction to lodge a complaint against Appellants 2 and 3.?

17.4. Similarly, the Hon'ble Supreme Court has held in the case of Manohar Lal v. Ugrasen, (2010) 11 SCC 557 : (2010) 4 SCC (Civ) 524, it is held as follows:-



not asked for by a party could be granted and that too without having proper pleadings. The Court held as under: (AIR p. 240, para

22. .. It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint, the court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case.

17.5. A similar view has been reiterated in Krishna Priya Ganguly v. University of Lucknow and Om Prakash v. Ram Kumar observing that a party cannot be granted a relief which is not claimed.

17.6. Dealing with the same issue, in Bharat Amratlal Kothari v. Dosukhan Samadkhan Sindhi, the Hon'ble Supreme Court has held as follows:-

30. ... Though the court has very wide discretion in granting relief, the court, however, cannot, ignoring and keeping aside the norms and principles governing grant of relief, grant a relief not even prayed for by the petitioner.

17.7. In the case of Fertilizer Corpn. of India Ltd. v. Sarat Chandra Rath, it is held that the High Court ought not to have granted reliefs to the respondents which they had not even prayed for.

18. From the dictum laid down in the afore-said judgments, it is clear that without affording an opportunity of hearing or impleading as a party or pleading before the Writ Court or exceeding the relief sought, an observation cannot be made by the High Court and accordingly, the observations made against the writ appellants are liable to be expunged.

21. The main relief sought for by the 1st respondent herein in the writ petition is to register a case. But, exceeding the scope of the main relief, he sought for an interim direction not to allow the appellant / Mr.C.Muthu, P.A. to the District Collector (Noon Meal Scheme) to retire from service and the learned Single Judge has also granted the relief. On this aspect also, the interim order passed by the learned Single Judge cannot be sustained. In this regard, this Court is of the view that it would be appropriate to refer to the decision of the Hon'ble Supreme Court in Cotton Corporation of India Limited Vs. United Industrial



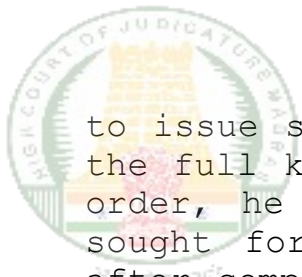
Bank Limited and others reported in (1983) 4 SCC 625:

"10..... It is indisputable that temporary injunction is granted during the pendency of the proceeding so that while granting final relief the court is not faced with a situation that the relief becomes infructuous or that during the pendency of the proceeding an unfair advantage is not taken by the party in default or against whom temporary injunction is sought. But power to grant temporary injunction was conferred in aid or as auxiliary to the final relief that may be granted. If the final relief cannot be granted in terms as prayed for, temporary relief in the same terms can hardly if ever be granted. In *The State of Orissa v. Madan Gopal Rungta*(1) a Constitution Bench of this Court clearly spelt out the contours within which interim relief can be granted. The Court said that 'an interim relief can be granted only in aid of, and as ancillary to, the main relief which may be available to the party on final determination of his rights in a suit or proceedings. If this be the purpose to achieve which power to grant temporary relief is conferred, it is inconceivable that where the final relief cannot be granted in the terms sought for because the statute bars granting such a relief ipso facto the temporary relief of the same nature cannot be granted.'"

22. There is no dispute that the High Court has extraordinary jurisdiction under Article 226 of the Constitution of India and inherent jurisdiction under Section 482 Cr.P.C. But, whenever a relief relating to a criminal jurisdiction sought for under Article 226 of the Constitution of India, the Court has to maintain a balance of convenience and see that no order is passed exceeding the nature of the jurisdiction. Otherwise, the same would lead to miscarriage of justice.

23. In view of all the above, this Court is of the view that the writ appeal filed by the appellant / Mr.C.Muthu, P.A. to the District Collector (Noon Meal Scheme) is maintainable and the leave can be granted to him and the interim order passed by the learned Single Judge is liable to be set aside.

24. With regard to the maintainability of the appeal filed by the District Collector, Pudukkottai is concerned, this Court is of the view that the same is not maintainable as his right has not been affected in any way by the impugned interim order passed by the learned Single Judge. More over, it is submitted by the learned Advocate General that the interim order passed by the learned Single Judge has been complied with by the District Collector, Pudukkottai, though he is not the competent authority



to issue such order. This Court is of the view that when he has the full knowledge that he has no authority to issue such kind of order, he ought to have approached the learned Single Judge and sought for a clarification in this regard, at-least immediately after complying with the order. Having failed to do so and having passed a cryptic order, now he cannot question such order passed by the learned Single Judge.

25. Though the learned senior counsel appearing for the first respondent submitted that in view of the implementation of the interim order by the District Collector, the appeal filed by the appellant / Mr.C.Muthu, P.A. to the District Collector (Noon Meal Scheme), Pudukkottai is also not maintainable, this Court is not inclined to accept the same, in view of the fact that the order passed by the learned Single Judge is only an interim order, pending disposal of the main relief sought for in the writ petition and the implementation has been made only by an incompetent authority which could not be executed.

26. In the result, (i) C.M.P.(MD).Nos.10076 of 2017 is allowed and Leave is granted. The Writ appeal is allowed and the interim order, 30.10.2017, passed by the learned Single Judge, directing the District Collector, Pudukkottai not to allow the appellant / Mr.C.Muthu, P.A. to the District Collector (Noon Meal Scheme), Pudukkottai to retire from service, is set aside. Consequently, connected miscellaneous petition is closed.

(ii) C.M.P.(MD).No.10112 of 2017 is dismissed and consequently, W.A.(MD).No.SR44299 of 2017 is rejected at the SR stage itself.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1.The Vigilance Commissioner,
Fort St. George,
Chennai - 600 009.

2.The Director of Vigilance & Anti Corruption,
Greenways Road,
Chennai.

3.The Deputy Superintendent of Police,
Vigilance & Anti Corruption, Pudukkottai.

4.The District Collector,
Pudukkottai District.



5.The Additional Advocate General,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.Ajmal Associates, Advocate SR.No. 88948
+2cc to M/S.Veera Associates, Advocate SR.No. 88731

Common Judgment made in
C.M.P. (MD) .Nos.10076 and 10112 of 2017
in
W.A. (MD) .Nos.SR44086 and SR44299 of 2017
and
W.A. (MD) .No.1427 of 2017
Dated: 22.11.2017

gcg
JM/SKN RSK/SAR 1/24.11.2017/18P/9C