

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T. SELVAM
AND
THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

W.P. No.1034 of 2018 & WMP No.1254 of 2018

M.Senthil Kumar

...Petitioner

Vs.

1. The Principal District Judge,
Namakkal District,
Namakkal.

2. The Sub Judge,
Rasipuram,
Namakkal Taluk & District

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records in respect of proceedings in ROC No.5822/A/2017 dated 14.06.2017 and proceeding in ROC No.5821/A/2017 dated 21.06.2017 passed by the first respondent and quash the same consequently directing the first respondent to reinstate the petition with all monitory benefits.

For Petitioner : Mr. T.Subramanian

For Respondent : Mr. M.Baskar,
Standing Counsel for R1 & R2

O R D E R

[Order of the Court was delivered by N.SATHISH KUMAR, J.]

This Writ Petition has been filed to issue a writ of Certiorarified Mandamus to call for the records in respect of proceedings in ROC No.5822/A/2017 dated 14.06.2017 and proceeding in ROC No.5821/A/2017 dated 21.06.2017 passed by the first respondent and quash the same and consequently direct the first respondent to reinstate the petitioner with all monitory benefits.

2. The brief facts of the writ petition are as follows

The writ petitioner was selected as an Office Assistant for Sub Court Rasipuram based on the interview and he was appointed temporarily as per proceedings in ROC.1738/A/2017, dated 23.02.2017. While the writ petitioner was discharging his duties regularly, a show cause notice dated 03.05.2017 in D.No.2013 and D.No.2015 dated 3.05.2017 was issued calling for explanation for using filthy language against the second respondent and his family members and that the writ petitioner has suppressed the material particulars during the interview. Accordingly, he has submitted his explanation. However, the first respondent terminated the service of the writ petitioner from the service on 14.06.2017 vide proceedings in ROC No.5822/A/2017 dated 14.06.2017 without giving an opportunity to the writ petitioner. Hence, the writ petitioner has filed the present writ petition to quash the said proceedings and consequently direct the first respondent to reinstate the petitioner with all monitory benefits.

3. During admission of this writ petition, the learned counsel appearing for the writ petitioner submitted that a charge memo was issued calling for explanation that the writ petitioner did not have experience in vehicle and another show cause notice for allegedly using filthy language against the Judicial Officer, namely, the second respondent herein. According to the learned counsel, both the show cause notices have been motivated and not legally valid. Therefore, without giving an opportunity to him, he has been terminated from service.

4. Mr.Baskar, Standing Counsel, takes notice for the first and second respondents. We have perused the materials on record.

5. The writ petitioner was originally appointed as an Office Assistant temporarily as per ROC.No.1738/A/17, dated 23.02.2017 by the first respondent. The appointment order reads as follows :

"3. They are further informed that they are required to join duty in their respective stations on the FN of 24.02.2017 without fail and any representation regarding extension of joining time will not be entertained and that failure to join duty with the specified time and at the specific place will result in their name being removed from the temporarily approved list.

4. They are further informed that if any particulars pertaining to them was found wrong after their temporary appointment, their

temporary appointment order will be cancelled immediately.

5. The temporarily approved candidates thus appointed will be brought under the Contributory Pension Scheme.

6. Soon after joining duty by the temporarily approved candidates in their respective station, they are required to submit the physical fitness certificate and employment identity card without any delay and the respective Presiding Officers are required to submit the employment identity so surrendered, to the undersigned within seven days from the date of their joining duty."

6. Memo dated 03.05.2017 issued by the first respondent shows that the writ petitioner during the interview has shown his driving licence and stated that he is able to drive the vehicle. However, after his appointment, he has expressed that he is not able to drive the vehicle. Therefore, according to the first respondent, the writ petitioner has suppressed the material facts during the interview.

7. In the appointment order, it is clearly stipulated that if any particulars pertaining to the temporary appointees was found incorrect, the temporary appointment will be liable to be cancelled. Similarly, another show cause notice even dated 03.05.2017 was issued alleging that the writ petitioner used abusive language against the Subordinate Judge and his family members. Therefore, explanation has been sought for from the Writ Petitioner. Explanation submitted by the writ petitioner clearly shows that due to some ailment he has called the children of the Subordinate Judge as wooden log and he has also admitted that he has used such a language without knowing how to behave in the Judicial Department. After perusing the explanation, the first respondent having not satisfied with that has terminated the writ petitioner from service on 14.06.2017.

8. It is pertinent to note that the writ petitioner was appointed only temporarily. When a person was appointed temporarily, due to emergency which has arisen to fill immediately a vacancy, cannot be recorded as a probationer in such service nor entitled to any preferential claim. The memo issued by the first respondent and the explanation offered by the writ petitioner clearly indicate that within the period of three months after his appointment, the writ petitioner had started abusing the Judicial Officer. Discipline and good behaviour are paramount conditions for the employees working in

the Judicial Department. If a person, who was appointed temporarily, resorting to such an abusive behaviour as against the judicial officer, we are of the view that such a person is unfit to continue in service, particularly in Courts. As already stated, as a matter of right, he cannot claim any preferential right.

9. Admittedly, the writ petitioner has been temporarily appointed as an Office Assistant. In this regard, it is useful to refer to section 17(5) of Tamilnadu Government Servants (Conditions of Service) Act, 2016, which reads as follows :

"17(5) A person appointed under sub-sections (1), (2) or (4) shall not be regarded as a probationer in such service, class or category or be entitled by reason only of such appointment to any preferential claim to future appointment to such service, class or category. The services of a person appointed under sub-sections (1), (2) or (4) shall be liable to be terminated by the appointing authority at any time without notice and without any reason being assigned."

10. The above section empowers the appointing authority to terminate the temporary appointee at any time without notice and without any reason being assigned. Though the rule stipulate that a temporary appointee can be terminated at any point of time without any notice or reason being assigned, a perusal of the records reveals that the first respondent has issued a memo and called for an explanation and on a thorough examination of the explanation, has come to the conclusion that the explanation was not satisfactory and his temporary appointment was terminated. Therefore, we do not find any illegality or infirmity in the order of the first respondent. Accordingly, we hold that there is no merits in this writ petition.

11. Accordingly, this Writ petition is dismissed. Consequently, the connected miscellaneous petition is closed. No cost.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vrc

To

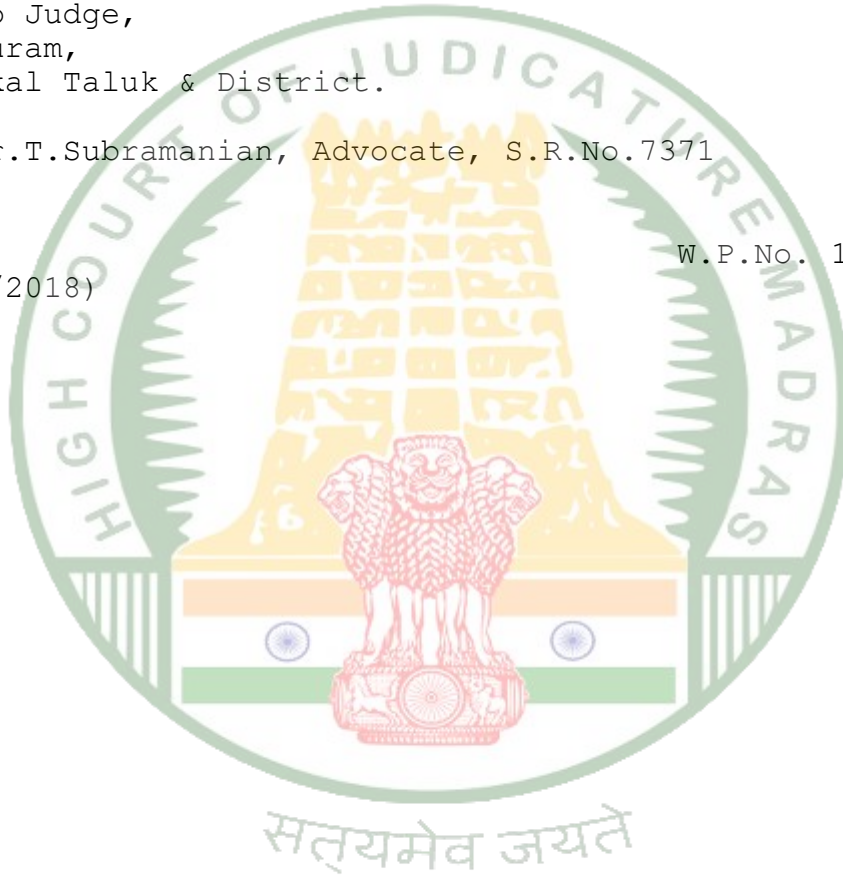
1. The Principal District Judge,
Namakkal District,
Namakkal.

2. The Sub Judge,
Rasipuram,
Namakkal Taluk & District.

+1cc to Mr.T.Subramanian, Advocate, S.R.No.7371

RRK(23/02/2018)

W.P.No. 1034 of 2018



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