

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 28.11.2018
CORAM:
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2074 of 2018

S.Bose

... Appellant/Petitioner

Vs.

1. The District Collector,
Cuddalore District.

2. The Project Director,
Pudhu Vaazhvu Project,
An Empowerment and Poverty Reduction Project
of Government of Tamil Nadu,
No.91, St. Mary's Road,
Abiramapuram, Chennai - 18

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent
against the Order dated 05.10.2017 made in W.P.No.25668 of 2017.

W.P.No.25668 of 2017

To call for the records pertaining to the proceedings in
No.1021/ PVT. Thee.Neer./ 2016 dated 24.06.2016 and another
proceeding in No. 1021/PVP-A/ 2016 dated 01.06.2017 passed by
the 2nd respondent and quash the same as illegal and on
sequently direct the 2nd Respondent to disburse the subsistence
allowance to the Petitioner and reinstate him in service.

For Appellant : Mr.T.Tharani
for Mr.K.Raja

For Respondents: Mr.P.S.Sivashanmugasundaram (for R1)
Special Government Pleader
No appearance (for R2)

J U D G M E N T

(Order of the Court was delivered by S.MANIKUMAR, J)

While discharging the respondent from the post of District Project Manager, the Project Director, Puduvaazhvu Project, an Empowerment and Poverty Reduction Project of Government of Tamil Nadu, Chennai, on 01.06.2017, directed recovery of a sum of Rs.2.2 Lakhs from the respondent.

2. Challenging the proceedings dated 24.06.2016 discharging him from service and another proceedings dated 01.06.2017, by which recovery has been ordered, respondent has filed W.P.No.25668 of 2017 for a writ of certiorarified mandamus, to quash the above proceedings and consequently, the respondent has also sought for a direction to appellants 1 and 2 to disburse the subsistence allowance. Writ petition has been filed after a lapse of 15 months from the date of discharge / recovery.

3. After hearing the learned counsel for the writ petitioner, vide order dated 05.10.2017, in W.P.No.25668 of 2017, the writ Court dismissed the writ petition, solely on the ground of laches.

4. Instant appeal is filed on the following grounds:-

i) Writ Court failed to consider that prior to joining in Cuddalore District, a team of specialists was constituted for surprise inspection of Community Based Organisations (CBOs) in Cuddalore District. Accordingly inspection was done from 10.08.2015 to 11.08.2015. The team submitted its report indicating various irregularities and fixing responsibilities on the officers apart from fixing time line for compliance.

(ii) Writ Court failed to consider that in the said report serious irregularities including misappropriation was indicated as against then District Project Manager Mr.P.Karuppaiah, therefore, he was transferred and in his place the appellant was posted by way of transfer on 22.08.2015. Accordingly, on 24/8/2015, the appellant joined duty in Cuddalore District. Thereafter, he wrote a letter, dated 12.09.2015 and 21.11.2015 respectively to the Project Director to send Regional Appraisal and Monitoring Team for the purpose of inspection and find out further irregularities. Accordingly inspection was done from 26.05.2016 to 03.06.2016 and the team submitted its report, based on which, erroneously, and without application of mind, the 2nd respondent in haste, came to the conclusion that for the irregularities committed by the predecessor Mr.P.Karupaiah during his tenure, the appellant was also held to be liable and ordered recovery of Rs.2.22 lakh from the appellant.

(iii) writ Court failed to consider that three orders were

passed on the same day i.e. on 24.06.2016, namely

(a). to recover the loss from the salary of the appellant, with effect from June 2016 continuously,

(b). suspending the appellant from the post and

(c). posting one Sudha Devi, in the place of the appellant and the order, dated 24.06.2016, to recover from the salary of the appellant indicated that the appellant should continue in service, whereas another order issued, on the same day, indicated that the appellant was kept under suspension which is contrary to each other."

5. On 14.11.2018, when the matter came up for hearing, we ordered as hereunder.

"By inviting the attention of this Court to the proceedings No.1021/PVP-A/2016 of the Project Director, Pudhu Vaazhvu Project, an Empowerment and Poverty Reduction Project of Government of Tamil Nadu, Chennai, dated 24.06.2016 and 01.06.2017, Mr.T.Tharani learned counsel representing Mr.K.Raja, counsel on record for the appellant, submitted that, though an argument was advanced before the Writ Court, that there was violation of principles of natural justice and no opportunity was given to the appellant before an order of recovery, was passed, the said aspect has not been considered by the writ Court, but writ petition was dismissed, only on the ground of laches.

2. Learned counsel for the appellant further submitted that the writ petition was filed within three months from the date of proceedings, namely, 01.06.2017, ordering to recover a sum of Rs.2.2. lakhs from appellant's salary account and that therefore, there is no delay on the part of the appellant in filing the writ petition.

3. Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader, is directed to get instructions, as to whether there was any notice or opportunity given to the appellant and others, before ordering recovery.

4. Post on 22.11.2018."

6. On this day, when the matter came up for further hearing, inviting the attention of this Court to the proceedings of the Project Director, dated 08.10.2009, Mr.P.S.Sivashanmuga Sundaram, learned Special Government Pleader submitted that

assignment was only on contract basis for a period of two years from the date of project. He further submitted that the project itself is now over.

7. Learned Special Government Pleader further submitted that files do not disclose that a reasonable opportunity was given to the appellant. Recovery of Rs.2.2 Lakhs from the appellant would attract civil consequences. Principles of natural justice ought to have been followed by the the Project Director, Puduvaazhvu Project, an Empowerment and Poverty Reduction Project of Government of Tamil Nadu, Chennai, before directing recovery.

8. Now, that the learned Special Government Pleader has confirmed that such an opportunity not given, therefore, the order dated 01.06.2017, is set aside.

9. Though Ms.T.Tharani for M.K.Raja, learned counsel for the appellant submitted that the Project Director ought to have given one month's prior notice or one month's remuneration in lieu thereof, before discharge, perusal of initial appointment order, dated 8/10/2009, by the Project Director indicates that to discontinue employment during currency of contract, either party may have to give one month's notice or one month's remuneration and in lieu thereof and rescind the contract. In the case on hand, during the currency of contract, the appellant has been relieved. There is no stigma in the order, dated 24/6/2016, relieving the appellant from the post of District Project Manager. The project is also over. This Court is inclined to set aside the portion of the order, directing recovery.

10. Accordingly, Writ Appeal is allowed. Recovery order, dated 24/6/2016 alone is set aside. Project Director is directed to proceed in accordance with law. No costs.

सत्यमेव जयते Sd/-

Assistant Registrar(CS VI)

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WEB COPY Sub Assistant Registrar

TO

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+1cc to Mr.K.Raja, Advocate, S.R.No.81281

+1cc to the Government Pleader, S.R.No.82261

W.A.No.2074 of 2018

KJ(CO)
GSP(04/01/2019)



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