

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 30.01.2018	Date of Pronouncing Judgment 20.03.2018
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CORAM:

THE HONOURABLE MR.JUSTICE K.K. SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P. VELMURUGAN

Writ Appeal No.2253 of 2013
and
M.P.No.1 of 2013

1. The Director of Fire Service,
Tamil Nadu, Chennai-600 008
(Now the Director of Fire and Rescue Services,
Tamil Nadu, No.17, Rukmani LAKshmipathi Salai,
Egmore, Chennai - 600 008.
2. The Director of Archaelology, i/c.
Circle Library Building,
Third Cross Road, Tharamani,
Chennai - 600 113 (Now Commissioner of Archaeology i/c.
Tamil Valarchi Valagam, Halls Road,
Egmore, Chennai - 600 008.
3. The Director (Training),
District Training Centre,
Tamil Nadu Fire and Reserve Services,
Chennai-600 047
(Now the Joint Director (Training and Rescue Operations)
State Training Centre, Tamil Nadu Fire and Rescue Services,
Tambaram, Chennai-600 047.

... Appellants

Vs.

K.Jayakumar

... Respondent

PRAYER: The Writ Appeal filed under Section 15 of Letters Patent, this Court prays to set aside the common orders dated 16.12.2011 passed in W.P.No.2741 of 2007 (O.A.No.5123 of 2001).

The Original Application No.5211/2001 has been filed before the Tamil Nadu Administrative Tribunal and after abolition of the Tribunal the same was transferred to this Court and

renumbered as Writ Petition relief to direct the respondent to relieve the Petitioner immediately withall consequential benefits with effect from 28.05.2001.

For Appellants : Ms.Ramya Revathy
Government Advocate

For Respondent : Mr.R.Karthikeyan

J U D G M E N T
P.VELMURUGAN, J.

Heard both sides.

2. Aggrieved against the order passed by the Writ Court, the State has filed the present Appeal before this Court.

3. Originally, the respondent was selected by the Tamil Nadu Public Service Commission (TNPSC) and allotted to the Department of Archeology and he was posted as Junior Assistant, at Marine Museum, Poombuhar, Nagapattinam District. The respondent joined duty on 20.9.2000. Subsequently, he was also selected for the post of Station Fire Officer at Nagapattinam. He was directed to report before the Director (Course), State Training Centre at Tambaram Sanatorium, Chennai, on 31.05.2001 for undergoing training for a period of four months, and it commenced from 01.06.2001.

i) The respondent, on receipt of the said order of appointment, dated 21.05.2001, submitted his resignation letter, dated 28.05.2001, to the Assistant Director, Archeology Department, Chennai. Thereafter, no order was passed pursuant to his resignation letter dated 28.05.2001. The respondent joined the Fire Service Department, and he was sent for training w.e.f., 01.06.2001. While he was undergoing training, the Department of Archeology, vide their letter, dated 23.07.2001 asked the Fire Service Department to inform as to whether the respondent joined in the Fire Service Department. Immediately, the Fire Service Department relieved the respondent from training on 27.07.2001.

ii) Aggrieved by the same, the respondent filed Original Application, in O.A.No.5211 of 2001, seeking for a direction to the Director of Archeology to relieve him w.e.f., 28.05.2001 from the date of Department of Archeology. The first respondent has also filed another Original Application No.5123 of 2001 seeking to quash the order, dated 21.07.2001 of the Director of District Training Centre of Tamil Nadu Fire Service Department, Chennai relieving him from the training. Initially, the Tamil Nadu Administrative Tribunal (Tribunal) granted an order of interim stay of the impugned order, dated 27.07.2001 in Original Application No.5123 of 2001, on 10.08.2001. Pursuant to the said interim order, the respondent was permitted to undergo training,

and thereafter, he joined the service of the Fire Service Department. He is continuing to render his service in the Fire Service Department for more than a decade. Subsequently, due to the abolition of the Tribunal, the Original Application stood transferred to the file of this Court, and the application got re-numbered as W.P.Nos.934 and 2741 of 2007. The Writ Court allowed the Writ Petitions, by order, dated 16.12.2011. Against order in Writ Petition No.2741 of 2007 the appellant has preferred the present Appeal.

4. We have heard the learned Government Advocate appearing for the appellants and the learned counsel appearing for the respondent.

5. The contention of the appellants is that, the respondent, without intimating them, and without even obtaining relieving order, joined the service of the Fire Service Department. Though it is the case of the respondent that he submitted the resignation letter before the second respondent, without getting approval or final order of confirmation of his resignation, he left the service of the Archeology Department, and joined in the service of the Fire Service Department. Therefore, after receipt of the letter from the second respondent, the third appellant relieved the respondent from service. Due to the interim order of stay granted by the Tribunal, the respondent was permitted to continue his service in the Fire Service Department. The respondent has suppressed the fact that he was working in the Department of Archeology earlier, and joined in the service of the Fire Service Department, without even getting proper permission or approval for his resignation. The Learned Single Judge failed to consider this fundamental fact and allowed the Writ Petition.

6. The appellants have not filed any Appeal against the order passed by the the learned Single Judge, in W.P.No.934 of 2007 and have filed the present Appeal only against the order passed in W.P.No.2741 of 2007.

7. It is not in dispute that the respondent submitted resignation letter dated 28.05.2001. It is not the case of the second appellant that they were not willing to relieve the respondent from service. The Director of Archeology has decided to relieve the respondent from service on 30.07.2001, since the respondent joined the service of the Fire Service Department on 01.06.2001. Therefore, the Writ Court has given the relief that, instead of relieving the respondent from 30.07.2001, he shall be relieved from service w.e.f. 28.05.2001. The order has become final.

8. The respondent initially joined in the service of the Archeology Department in the post as Junior Assistant.

Thereafter, he was selected by the Tamil Nadu Public Service Commission and was allotted to the Fire Service Department. He was appointed as Station Fire Officer and sent for training. While he was undergoing training, the Director of Archeology, vide their letter, dated 23.07.2001 asked the Fire Service Department to inform as to whether the respondent joined the service of the Fire Service Department. The Fire Service Department, without giving an opportunity to the respondent, relieved him from training on 27.7.2001. Aggrieved against the said order, the respondent initially approached the Tribunal and got an interim order and on the strength of the said order he continued in the post. The respondent submitted his resignation letter dated 28.05.2001. This fact has not been denied by the said appellant. In the said letter the respondent stated the reasons for resignation. Therefore, once the second appellant has sought for information from the Fire Service Department regarding the joining of service of the respondent in Fire Service Department, it is clear that the second appellant was well aware of the fact that the respondent has joined the service of the Fire Service Department. Therefore, the second appellant cannot take a stand that, without intimating them, the respondent joined the fire service Department. All these aspects have been taken into consideration by the Writ Court and by exercising the discretion, allowed the Writ Petitions. We do not find any reason to take a different view in the matter.

9. For the reasons stated herein above, the Writ Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

msm/tar
To

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W.A.No.2253 of 2013

MP (CO)
SP (03/05/2018)



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