

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.07.2018

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE M.NIRMAL KUMAR

W.P.No.17872 of 2018

T.M.Shanmugham

.. Petitioner

Vs.

1. The Principal District Judge,
Villupuram, Villupuram District
2. The Principal District Munsif,
Tindivanam,
Villupuram District.

.. Respondents

Prayer: Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the 1st Respondent in A.No.53/1995 and quash the Impugned Order dated 18.01.2018 as unconstitutional and further direct the 1st Respondent to consider the representation of the Petitioner dated 09.01.2018.

For Petitioner : Mr.J.Ashok
For Respondents : Mr.S.Kaithamalaikumaran

O R D E R

[Order of the Court was made by M.VENUGOPAL, J.]

Heard the Learned Counsel for the Petitioner and the Learned Counsel for the Respondents.

2. The Petitioner was appointed as Full Time Masalchi in the Office of the 2nd Respondent / Principal District Munsif, Tindivanam, Villupuram District. He was sponsored through District Employment Exchange and in fact, the 1st Respondent / Principal District Judge, Villupuram by virtue of proceedings dated 05.04.1995 directed him to join duty with effect from 17.04.1995. The said post is a permanent one and that he was appointed to the existing vacant post. That apart, he joined duty on 17.04.1995 and was discharging his duties to the utmost satisfaction to his superiors.

3. According to the Petitioner, there was no complaint from any quarters. The Petitioner continuously worked for more than 280 days, i.e., from 17.04.1995 till he was terminated on 30.09.1996. In this connection, the Learned Counsel for the Petitioner contends that the Termination Order of the Petitioner dated 30.09.1996 does not disclose any reasons for the same and on earlier occasion in W.P.No.5161 of 1997 before this Court assailing Termination Order dated 30.09.1996 passed by the 1st Respondent, the Division Bench of this Court on 08.01.1999 while dismissing the Writ Petition, had passed the following:

"The Petitioner has challenged the Termination Order dated 30.09.1996 stating that he has been terminated only to accommodate some lady. We have heard. On a perusal of the appointment Order dated 05.04.1995 admittedly the Petitioner's service was an temporary basis. That apart in the absence of the party to whom malafide was attributed, the ground of malafide cannot be entertained. We find no error in the Impugned Order."

4. The main contention advanced on behalf of the Petitioner is that the Petitioner somehow managed to eke out a minimum revenue to run his family, which not only includes food and clothing, but also, for education to his five children. Moreover, he sought an employment at various places, but due to his age factor, no employer is ready to accommodate him. Also that, even if he approaches the concerned Employment Exchange, he will be either ineligible or go down in his seniority and therefore, will not be in a position to secure a job. He does not even own a agricultural land or fields to carry on farming activity and that he is not accustomed to do other labour works.

5. The Learned Counsel for the Petitioner submits that the 1st Respondent had passed the Impugned Order dated 18.01.2018 in Application No.53/1995, wherein the Petitioner's Petition dated 08.01.2018 seeking for direct recruitment notification was rejected because he was 'Overaged'. In fact, the Petitioner [as an Employment Exchange Candidate] was appointed as a Temporary Full time Masalchi, as per proceedings of the 1st Respondent, viz., Principal District Judge, Villupuram dated 05.04.1995.

6. At this juncture, this Court worth recalls and recollects the decision of the Hon'ble Supreme Court in C.K.Antony V. B.Muraleedharan and others, (1998) 6 Supreme Court Cases 630 at Special Page 632, wherein it is observed and held as under:

"It emerges from rules that a person who has been appointed to a service or post temporarily or provisionally as a stopgap arrangement can never be considered as one, who has been appointed to that post

or service. If there is no substantive vacancy in the permanent cadre available, no direct recruitment can be resorted to. The direct recruits should get substantive vacancies in the permanent cadre, while recruits by transfer can be adjusted against a permanent vacancy or a temporary vacancy depending upon the vacancy position. A person who gets a temporary appointment or promotion, is not regarded as a probationer in that category and on account of that temporary appointment or promotion, he cannot have any preferential claim to that post. Probation period counts for seniority only if appointment is in accordance with rules. In case a temporary appointee is allowed to start his probation from a date anterior to the date of his subsequent appointment in accordance with the rules, that should be without prejudice to the seniority of others in the service; in this case, without prejudice to the seniority of direct recruits."

7. Also, this Court aptly points out the decision of the Hon'ble Supreme Court in Surinder Prasad Tiwari V. U.P.Rajya Krishi Utpadan Mandi Parishad and others, (2006) 7 Supreme Court Cases 684 at special pages 696 and 697 wherein at Paragraphs 24 & 25, it is observed as follows:

"24. In the instant case, the appellant has continued in service for 14 years because of the interim order granted by the High Court on 15-9-1992. In the aforesaid case, the Constitution Bench has observed that merely because an employee had continued under cover of an order of the court, which the court described as 'litigious employment', he would not be entitled to any right to be absorbed or made permanent in the service.

25. The appellant submitted that he has been continued in service for 14 years and is entitled for regularisation. This aspect of the matter has also been specifically dealt with by the said Constitution Bench in Para 45 of the Judgment and it was observed as under: (Umadevi (3), Secy., State of Karnataka V. Umadevi (3))

"45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain - not at arm's length - since he might have been

searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible."

8. It is to be remembered that the term 'Lien' is not a word of Article. A Lien connotes the right of a civil servant to hold the post substantively to which he is appointed. Ordinarily, when a person with a lien against a post is appointed substantively to another post, he acquires a lien against the latter post. Then the lien against his earlier post automatically vanishes.

9. Admittedly, the Petitioner was terminated from service with effect from 30.09.1996. It is to be noted that the Petitioner was appointed temporarily as Full Time Masalchi in the 2nd Respondent's Court as per 1st Respondent's proceedings dated 05.04.1995. A 'Temporary or a Provisional Appointee' cannot claim permanency, as a 'Matter of Right' or 'Routine', because of the fact that he cannot be considered as a person who was appointed to that post or service. Even the Writ Petition No.5161 of 1997 filed by the Petitioner on earlier occasion was rejected by the Division Bench of this Court.

10. In view of the fact that the Petitioner was 'Overaged' and as such, his application in regard to direct recruitment notification for the post of Masalchi was already rejected, the Official Memorandum in Application No.53/1995 dated 18.01.2018 by the office of the 1st Respondent, does not suffer from any material irregularity or patent illegality in the eye of Law. Viewed in that perspective, the Writ Petition fails.

In fine, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Principal District Judge,
Villupuram, Villupuram District
2. The Principal District Munsif,
Tindivanam, Villupuram District.

+lcc to Mr.J.Ashok, Advocate, S.R.No.46488

W.P.No.17872 of 2018

BM 18/07/2018



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