

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. No. 1275 of 2019
and
C.M.P. No. 8694 of 2019

A. Valarmathi ... Appellant/Petitioner

-vs-

1. The Commissioner of Labour,
Office of the Commissioner of Labour,
DMS Building,
Teynampet,
Chennai - 600 006.

2. S. Sivakumar,
Administrative Officer,
Tamil Nadu Labour Welfare Board,
Chennai - 600 006. ... Respondents/Respondents

PRAYER:- Writ Appeal filed under Clause 15 of Letters Patent,
praying to set aside the order dated 11.03.2019 in W.P. No.
34624 of 2018.

Petition filed under Article 226 of the Constitution of
India prayed that this Honourable Court may be pleased to issue
a Writ of Certiorari calling for the proceedings of the 1st
respondent in .E2/40624 / 18 dated 21.12.2018 published in the
website on 22.12.2018 and quash the same.

For Appellant : Mr. V. Vijay Shankar

For Respondents: Mrs. A. Sri Jayanthi,
Special Government Pleader (for R1)

Mr. L. Chandrakumar for
Mr. P.K. Rajesh Praveen Kumar (for R2)

J U D G M E N T

(Judgment of the Court was delivered by P.D. AUDIKESAVALU, J.)

The intra-Court Appeal arises out of the order dated 11.03.2019 in W.P. No. 34624 of 2018 passed by the Learned Judge of this Court.

2. The Appellant and the Second Respondent are working in the cadre of Assistant Commissioner of Labour in the Labour Department of the Government of Tamil Nadu. While, the Appellant was holding the office of the Assistant Commissioner of Labour (Enforcement) at Tiruvallur, The Second Respondent was posted as Administrative Officer in the Tamil Nadu Labour Welfare Board at Chennai. The First Respondent, viz., the Commissioner of Labour in the order No. E2/40624/2018 dated 21.12.2018 passed an order of transfer of the Appellant and the Second Respondent by swapping their aforesaid positions that they were holding. The Appellant challenged the aforesaid order of transfer in W.P. No. 34624 of 2018 before this Court on the ground of malafides inasmuch as it was evident from that order itself that it was in pursuance of the representation dated 20.12.2018 made by the Second Respondent in that regard, apart from the fact that the post of Assistant Commissioner of Labour (Enforcement) at Tiruvallur also included an ex-officio position as Legal Metrology Officer and that the Second Respondent did not possess the qualifications prescribed for the same under Rule 28 of the Legal Metrology (General) Rules, 2011.

3. The Learned Judge, who heard the Writ Petition, by order dated 11.03.2019, after referring to the settled legal position that an order of transfer is an incidence of service and the same cannot be interfered in the absence of proved malafides or violation of statutory provisions, dismissed the Writ Petition holding that the materials placed on record would not suffice to prove malafides and that the person holding the office of the First Respondent had not been made as a party in his personal capacity. Aggrieved thereby, the Appellant has preferred this appeal.

4. We have heard Mr. V. Vijay Shankar, Learned Counsel appearing for the Appellant, Mrs. A. Sri Jayanthi, Learned Counsel appearing on behalf of the First Respondent, Mr. L. Chandrakumar, Learned Counsel appearing for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

5. There cannot be any quarrel to the settled legal position that an order of transfer, which is an incidence of service,

shall not to be interfered by the Courts unless it is shown to be clearly arbitrary or vitiated by malafide or is made in violation of statutory provisions (see Union of India -vs- S.L. Abbas [(1993) 4 SCC 357]). Though the Appellant has impeached the order of her transfer in the Writ Petition, the question that really arises for consideration is whether the Second Respondent could exercise the powers of the Legal Metrology Officer without possessing the qualifications prescribed for the same under Rule 28 of the Legal Metrology (General) Rules, 2011, which is admittedly one of the functions required to be performed by the person holding the post of Assistant Commissioner of Labour (Enforcement), Tiruvallur, as evident from the pleadings of the parties. A specific contention has been raised by the Appellant in that regard in the Writ Petition, but on a perusal of the Counter Affidavit dated 23.01.2019 filed by the First Respondent before the Writ Court, it is seen that the same has not been explained in a satisfactory manner. All that has been said is that there is no separate department to enforce the Legal Metrology Act, 2009 and the Rules made thereunder and that the officials appointed as Assistant Commissioner of Labour in the Labour Department of the Government of Tamil Nadu are notified as Deputy Controller of Legal Metrology under the Legal Metrology Act, 2009. Even in the Counter Affidavit dated 03.01.2019 filed by the Second Respondent, there is no denial that the Second Respondent does not possess the qualifications prescribed under Rule 28 of the Legal Metrology (General) Rules, 2011, for holding the office of the Legal Metrology Officer. Nothing has also been shown by the Respondents as to whether any exemption has been obtained for appointing persons without the requisite qualifications for occupying the said post. The undue haste exhibited in posting the Second Respondent as Assistant Commissioner of Labour (Enforcement) at Tiruvallur on 21.12.2018 immediately after receiving his representation dated 20.12.2018 strengthens the contention of the Appellant that there has not been proper application of mind by the First Respondent about the possession of essential qualification by the Second Respondent before effecting the impugned order transferring him to the aforesaid post.

6. In that view of the matter, we set aside the impugned order No. E2/40624/2018 dated 21.12.2018 insofar as it posts the Second Respondent as Assistant Commissioner of Labour (Enforcement) at Tiruvallur for exercising the powers of the Legal Metrology Officer under the provisions of the Legal Metrology Act, 2009, and further direct that aspect of the matter to be re-examined by the First Respondent with reference to the relevant statutory provisions. We also permit the Appellant to make a representation against her transfer to the First Respondent by 30.04.2019, though we are

not inclined to disturb her transfer in this order. The First Respondent shall expeditiously take a reasoned decision in the matter on merits and in accordance with law and communicate the decision taken to the concerned parties and file a report of compliance in this regard before the Registrar (Judicial) of this Court by 31.05.2019.

7. In the result, the Writ Appeal succeeds and the order dated 11.03.2019 in W.P. No. 34624 of 2018 is set aside and the Writ Petition is allowed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

The Commissioner of Labour,
Office of the Commissioner of Labour,
DMS Building,
Teynampet,
Chennai - 600 006.

Copy to

The Registrar (Judicial),
Madras High Court,
Chennai - 600 104.

+1cc to M/S.V.Vijay Shankar, Advocate Sr.35177

+1cc to Mr.P.K.Rajesh Praveen Kumar, Advocate Sr.34844

W.A. No. 1275 of 2019

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srg 22/04/2019

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