

C.M.P.No.11968 of 2019

in

W.A.No.1322 of 2019

K.K.SASIDHARAN, J.

and

P.T. ASHA, J.

This petition at the instance of a third party to the proceedings, seek an order impleading her as a party to the appeal, solely on the ground that in case the candidature of the appellant is ultimately rejected, she would be appointed as Deputy Collector.

2. The petitioner seeks impleading, in spite of knowing fully well that the issue is covered in view of the dismissal of the connected Special Leave Petition by the Hon'ble Supreme Court by order dated 2 July 2019 in SLP No.12901 of 2019, upholding the very same common order.

3. The petitioner, pursuant to her application, appeared for the Group I Examination conducted by the Tamil Nadu Public Service Commission. After clearing the preliminary examination, she attended the interview. Though the petitioner opted for the post of Deputy Collector as her first preference, it was not given, as the first respondent was ranked above her. It is the contention of the petitioner that in case the candidature of the first respondent is rejected on the

ground of her failure to disclose the employment in Canara Bank as an employee under the Government, she would be appointed as Deputy Collector.

4. The first respondent being an employee of Canara Bank, rightly answered the question posed by the Tamil Nadu Public Service Commission as to whether she is a Government employee, by saying "no". However, her application was rejected after selection, on the ground of suppression of Government employment. Similar case of an employee of Reserve Bank of India, which was rejected on the ground of non disclosure of Government service, was allowed by this Court declaring that Bank employment is not a Government employment. The judgment was upheld by the Hon'ble Supreme Court.

4. The issue raised in this intra court appeal therefore has already been decided by this Court in W.A.No.1280 of 2019. The judgment was upheld by the Hon'ble Supreme Court in SLP No.12901 of 2019. The present appeal should have been part of the earlier appeal in W.A.No.1280 of 2019, as it was a common order which was challenged in W.A.No.1280 of 2019. Since this appeal was filed belatedly, the same could not be taken up along with W.A.No.1280 of 2019. By the time the present appeal was filed, we have allowed

W.A.No.1280 of 2019, which was filed against the very same common order dated 26 March 2019. The Special Leave Petition filed by the Tamil Nadu Public Service Commission was dismissed by the Hon'ble Supreme Court.

5. The petitioner was not a party to the Writ Petition. The petitioner has come up with this application only after the finality attached to the issue on account of the dismissal of the Special Leave Petition in SLP No.12901 of 2019.

6. The fact that in case the candidature of the first respondent is rejected, the petitioner would be appointed as Deputy Collector, alone cannot be a valid ground to implead her as a party to the writ appeal.

7. The scope of Order 1 Rule 10(2) of the Code of Civil Procedure relating to impleadment of parties was explained by the Hon'ble Supreme Court in **Mumbai International Airport (P) Ltd. vs. Regency Convention Centre & Hotels (P) Ltd., 2010(7) SCC 417** in the following words:-

13. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be

compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure ("the Code", for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:

"10. (2) Court may strike out or add parties.- The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be [pic]struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."

14. The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or

(b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the questions involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.

15. A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed. A "proper party" is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.

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22. Let us consider the scope and ambit of Order 1 Rule 10(2) CPC regarding striking out or

adding parties. The said sub-rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo motu or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice."

8. The petitioner is neither a necessary party nor a proper party for an effective disposal of the writ appeal. In fact, on account of the binding nature of the judgment in W.A.No.1280 of 2019, which was confirmed in SLP No.12901 of 2019, there is nothing to be decided in the present appeal. We are legally bound to follow the judgment of the Coordinate Bench in W.A.No.1280 of 2019, in view of the fact that the said writ appeal was against the very same common order which is also the subject matter in the present appeal.

9. The Tamil Nadu Public Service Commission is defending the Writ Appeal. It is essentially a matter between the first respondent and the Tamil Nadu Public Service Commission. The Tamil Nadu Public Service Commission unsuccessfully challenged the matter upto the Hon'ble Supreme Court in the earlier round which was against the very same common order, which is the subject matter of this appeal. Therefore, it cannot be said that the matter would not be contested by the TNPSC. In any case, the petitioner is not a necessary party for the effective disposal of the intra court appeal.

10. The miscellaneous petition is dismissed. No costs.

(K.K.SASIDHARAN, J.)

(P.T.ASHA, J.)

18.07.2019

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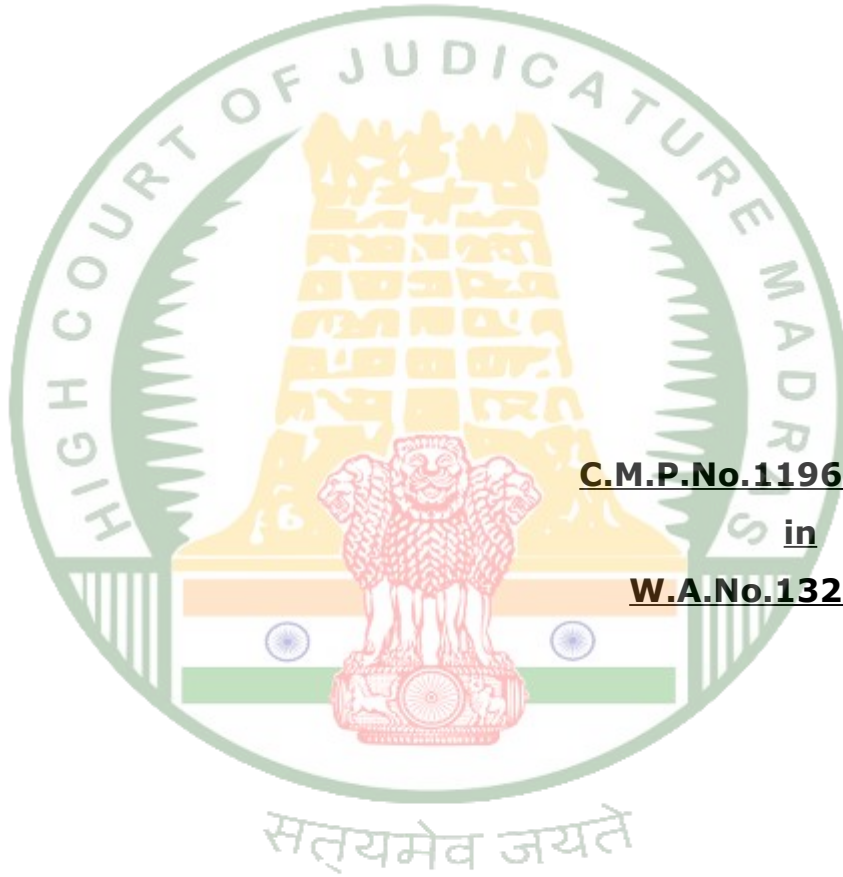
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