



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 17.12.2019

CORAM

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD)No.816 of 2019

and

C.M.P. (MD)No.4972 of 2019

TREC-STEP

Rep by its Executive Director, RMP Jawahar

Thuvakudi, Thiruvarambur Taluk,

Tiruchirappalli

... Petitioner/Respondent

1st Defendant

Vs.

K.Vadivel

... Respondent/Petitioner

Plaintiff

Prayer : This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the fair order and decreetal order dated 01.04.2019 made in I.A.No.516 of 2018 in O.S.No. 103 of 2014 on the file of the II Additional District Judge, Tiruchirappalli.

For Petitioner : Mr.K.Prabhakar

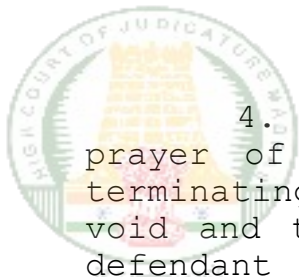
For Respondent : Mr.N.Balasubramanian

ORDER

Heard the learned counsel on either side.

2. This petition has been filed to set aside the order made in I.A.No.516 of 2018 in O.S.No.103 of 2014 dated 01.04.2019 on the file of the II Additional District Judge, Tiruchirappalli.

3. The petitioner herein is the defendant and the respondent herein is the plaintiff in the suit.



4. The respondent filed a suit in O.S.No.103 of 2014 for a prayer of declaration of the termination order dated 23.10.2014 terminating the services of the respondent/plaintiff as null and void and to declare that the functions of the body of the first defendant society is illegal and to direct the second defendant to appoint a Special Officer for the Management of the first defendant Society and to direct the Special Officer by way of mandatory injunction to restore the Employment of Finance Officer to the plaintiff with back wages and other benefits for the period from 23.10.2014 till the date of restoration of employment and to direct the second defendant to take necessary legal action against the illegal Governing Body of the first defendant.

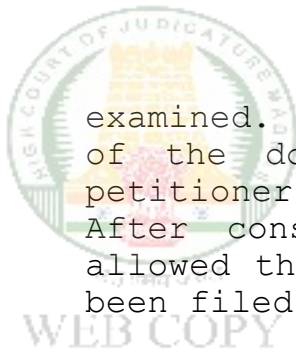
5. In that suit, the respondent/plaintiff filed a petition in I.A.No.103 of 2014 for permitting him to examine the Presenting Officer, the Enquiry Officer, Auditor and one of the Board of Directors of the first respondent to mark relevant documents and statements through them and the same was allowed by the Court below. Against which, the revision petitioner preferred this revision.

6. A brief substances of the petition in I.A.No.516 of 2018 is as follows:-

The Office Assistant of Registrar of Society, Tiruchirappalli, was examined as P.W.1. The petitioner was examined as P.W.2. The petitioner has filed a private complaint against the respondent/first defendant before the learned Judicial Magistrate, No.VI, Tiruchirappalli in CrI.M.P.(MD)No.756 of 2016. To establish his case, he wanted to examine the Presenting Officer, the Enquiry Officer, Auditor and one of the Board of Directors of the first respondent Society, who were involved in the disciplinary proceedings initiated against him. After, the commencement of trial in the suit, he has obtained the certified copies of the statement of the above said witnesses and it is necessary to mark those statements through them.

7. A brief substances of the counter is as follows:-

The list of witnesses consists of four persons. The first witness is K.Sivaramachandran, who was the Presenting Officer of the defendant in the domestic enquiry. He would be examined as witness on the side of the defendant. Hence, the first witness cannot be examined as the plaintiff side witness. The second witness mentioned by the petitioner is one A.Babu, who was the Enquiry Officer and he gave a finding and the same was challenged by the plaintiff before the Court below. An Enquiry Officer could not be examined as plaintiff side witness. The third witness mentioned by the petitioner one Dr.Sundararajan, who was the former Director of National Institute of Technology has nothing to do with the case and he was no longer in service and in the absence of any specific information, he cannot be examined. The fourth witness is an Auditor, who has nothing to do with the case. The report of the



examined. The service of the plaintiff was terminated on the basis of the domestic enquiry. To drag on the proceedings only the petitioner has filed this petition and the same has to be dismissed. After considering the facts and circumstances, the trial Court allowed the I.A petition. Against which, this revision petition has been filed.

8.The contention of the revision petitioner is that the burden is upon the plaintiff to prove his case but he can call upon persons, who are not connected to the case as a witness. The main relief in the suit for declaration is to declare the termination order dated 23.10.2014 as null and void. That order was passed after a domestic enquiry calling the Presenting Officer and the Enquiry Officer as plaintiff side witnesses is not logical.

9.The contention of the respondent is that he require the evidence of the petition mentioned persons and that their statements are to be used in the proceedings pending before the learned Judicial Magistrate No.VI, Tiruchirappalli, in Crl.MP(MD)No.756 of 2016. That proceedings was based on the complaint lodged by the plaintiff against this petitioner and others, who were connected with the domestic enquiry and they could not be examined as plaintiff side witness in this suit to gather evidence to be used against them in a criminal proceedings.

10.The trial Court has failed to see the petition mentioned second named person is the Enquiry Officer. Once the enquiry is completed his office would become *functus officio* and that the *functus officio* cannot be called to defend or speak about the proceedings. The first named person is the Presenting Officer and the Presenting Officer would be the most important witness on the side of the defendant to speak about the domestic enquiry. The petition mentioned 3 and 4 witnesses are noway connected with the domestic enquiry and that they need not to be examined.

11.On the side of the respondent, it is stated that the petitioner suppressed the other reliefs sought for by the respondent. The respondent has sought for the reliefs against the Governing Body of the first defendant Society and to appoint a Special Officer for the management of the first defendant Society and for a mandatory injunction to restore his Employment as Finance Officer with payment of arrears of his salary and benefits from 23.10.2014 upto the date of restoration of employment and to take necessary legal action against the illegal Governing Body of the first defendant. It is stated that the appointment of the Presenting Officer and the Enquiry Officer by the first defendant itself is wrong thereby the dismissal order is void. The Presenting Officer and the Enquiry Officer gave statements before the Civil Court. That statement to be marked through them. The examination of witnesses 3



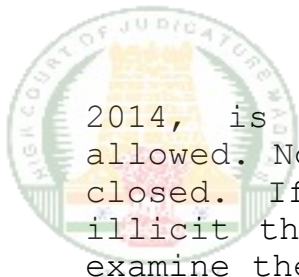
and 4 listed in the petition are necessary to prove that Society is not functioning properly.

12. On the side of the revision petitioner, it is stated that the first respondent Society is represented by its Executive Director and the Society has power to issue proceedings against the staffs. The Executive Director as such the Chief Coordinator is the administrative and academic head of the first defendant. The first defendant has framed Memorandum of Association and service rules. The Executive Director is responsible for the discipline of all the employees. He has the authority to exercise disciplinary powers in accordance with the service rules on all the members and staffs for whom he is the appointing authority as per the Service Rules No.9.17 (I) and 9.17(II), the Chief Co-ordinator shall have the power to impose penalties on any employee and also power to suspend them pending disciplinary action and also to decide the quantum of subsistence allowance. Under those circumstances, as per the Memorandum of Association and Service Rules, the Chief Co-ordinator/Executive Director has got the power to take of disciplinary action against an employee.

13. On the side of the respondent it is stated that the first defendant was the accused in the proceedings filed by the plaintiff and the first defendant cannot shift all the burden upon the plaintiff. The first defendant deleted the first charge against the plaintiff without the approval of the Board. Hence, the revision petition to be dismissed.

14. It is seen that the suit was filed questioning the dismissal order passed by the defendant and for other prayers. The respondent herein filed I.A. Petition for permitting him to examine four witnesses and to mark documents. It is seen that the first person mentioned by the respondent is the Presenting Officer in the disciplinary proceedings, who will be a witness on the side of the defendant. The second person listed by the respondent herein is the Enquiry Officer. An Enquiry Officer cannot be called upon as a witness. The third person mentioned in the petition is the Auditor and the fourth person is Director of the defendant Society. In sort, the plaintiff prayed for the defendant side witnesses to be examined on his side. The reasons for calling upon the witnesses is said to use their side in the criminal case lodged by the plaintiff against the defendants. The plaintiff cannot gather evidence for the criminal case through the defendant side witness in a civil case. A person cannot be called upon to give a evidence against his own cause. If the plaintiff wants to mark the documents, he can re-call or he can examine some other witnesses on his side. The plaintiff cannot call upon the defendant and his men to give evidence against the defendants.

15. In view of the above facts and circumstances, the order passed by the Trial Court in I.A.No.516 of 2018 in O.S.No. 103 of 2018 is hereby set aside.



2014, is hereby set aside and the civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed. If the plaintiff wants to substantiate his *lis* and to illicit that all the points are necessary by questioning to cross examine the defendant side witness.

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Sd/-

Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar (CS)

dss

To

1.The II Additional District Judge,
Tiruchirappalli.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madras. (2C)

+1 CC to M/s.K.PRABHAKAR, Advocate (SR-105475[F] dated 17/12/2019)

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KK/SAR/06.01.2020/5P-5C/