



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.6731 of 2021 and
WMP No.7291 of 2021

D.Elango

... Petitioner

-vs-

Puducherry Slum Clearance Board,
Represented by its Chief Executive Officer,
No.106, Pallivasal Street, Periyar Nagar,
Savanapet, Puducherry - 605 005.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondent order, dated 05.02.2021, No.PSCB/Estt/PA-CEO/A5/2020-21/145 and quash the same, as the same is patently illegal and violative of principles of natural justice and consequently direct the respondent to re-instate the petitioner as a Casual labour.

For Petitioner : Mr.Mayan H.Jain

For Respondents: Mr.G.Djearany, (Pondicherry)
Government Advocate

O R D E R

This Writ Petition has been filed, to quash the order, dated 05.02.2021 made in No.PSCB/Estt/PA-CEO/A5/2020-21/145 passed by the respondent and for a consequential direction to the respondent to re-instate the petitioner as a Casual labour.

2. The petitioner has come forward with the present Writ Petition, challenging the order of disengagement from service, dated 05.02.2021. The case of the petitioner is that he joined the service as Nominal Majdoor Role (NMR) in the Respondent Board on 06.12.2004 and thereafter he was appointed as Casual labour (Temporary Status) on 23.03.2009. According to the petitioner, even though he was rendering unblemished service for 16 years, unfortunately he has been foisted with Charges, apart from registration of a criminal case, for which, the Department had issued a show cause notice on 02.02.2021 and thereafter, passed an order of termination on 05.02.2021.



3. When the matter came up for hearing on the last occasion, it is represented that a detailed enquiry was conducted and thereafter, the employee was disengaged from service. However, this Court posed a question as to how a departmental enquiry was conducted, an enquiry report was submitted, records were called for and finally, the petitioner was dismissed from service within 24 hours. However, the learned counsel for the respondent sought time to file a detailed counter.

4. Today, the respondent filed a counter affidavit wherein it is contended that the petitioner was a Casual Labour and since he has involved in a mis-conduct and that an FIR has also been registered at Orleanpet Police Station on 02.02.2021, he has been disengaged from Service.

5. Mr.G.Djearamy, learned Government Advocate (Pondicherry), appearing for the Respondent submitted that an agitation, took place on 01.02.2021 and 02.02.2021 and the filing of case was brought to the knowledge of the Secretary to Government (Housing)-cum Chairman, Puducherry Slum Clearance Board, who initiated disciplinary proceedings and the employees, whose engagement were of permanent in nature were suspended and departmental enquiry has been initiated. It is further submitted that even though the petitioner was issued with a show cause notice and disciplinary action was contemplated, the Secretary to Government, (Housing)-cum-Chairman, Puducherry Slum Clearance Board, after getting apprised of the criminal case, advised disengagement of the petitioner, as he was a Casual Labour on temporary status. Therefore, according to the respondent, the decision of terminating the petitioner can be deemed only as termination of service simpliciter and therefore, there can be no infirmity in the impugned order and hence he prays for dismissal of the Writ Petition.

6. The Joint Executive Officer was also asked to be present before this Court, to seek some clarification. She fairly submitted that the petitioner has been working as a Casual Labour on temporary status in the Board since 2009 and that for his mis-conduct, he has been disengaged from service.

7. In this case on hand, admittedly, there is no iota of evidence to show that the Departmental Enquiry was conducted and the issues whether the petitioner involved in the misconduct and any criminal case is pending, cannot be gone into by this court. It is open to the respondent to conduct the departmental enquiry simultaneously and it is not a bar for the Department to enquire and to proceed simultaneously when there is a criminal case pending and that the employee cannot stall the enquiry proceedings on that ground. The employee has completed more



than 10 years of service and that the additional documents produced by the petitioner clearly shows that out of the 4 employees, who are said to have involved in the untoward incident, causing disruption, only three persons were called for the enquiry on 26.03.2021 and that the name of the petitioner did not find place, which clearly shows that the petitioner has been disengaged by the impugned order and he was not called for the enquiry. That apart, when there is cessation of employer employee relationship, the employer cannot conduct an enquiry against the employee who is not on rolls, therefore, this Court is of the view that the impugned order is liable to be set aside. Accordingly, the Writ Petition is allowed and the impugned order dated 05.02.2021 is set aside and the matter is remanded to the respondent for fresh consideration.

8. It is needless to mention that it is open to the employer to place him under suspension or to retain him in a non-sensitive post and proceed with the Departmental action as well as the criminal proceedings, since the impugned order passed is the subject matter of the Writ Petition, which is a non speaking order and that there is no evidence to establish the charges, thereby causing stigma to the petitioner. It is submitted that both the Criminal and Departmental proceedings run simultaneously and the petitioner should not attempt to stall both the proceedings. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Chief Executive Officer,
Puducherry Slum Clearance Board,
No.106, Pallivasal Street, Periyar Nagar,
Savanapet, Puducherry - 605 005.

+1 CC to The Government Pleader (Puducherry) sr 25050.

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WMP No.7291 of 2021

GPL (CO)
SP(15/07/2021)