



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE PARESH UPADHYAY

and

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

WEB COPY

W.A(MD)No. 339 of 2022
and C.M.P.(MD) No. 3382 of 2022

S.P.M.Ariff Rahuman .. Appellant / 6th Respondent in
writ petition

Vs

1. M.A.M.Raja .. 1st Respondent/ Writ Petitioner
2. The Special Personal Assistant to
Minister for Law,
O/o. The Special Personal Assistant to
Minister for Law,
Chennai - 600 009.
3. The Private Secretary to the
Additional Chief Secretary to Government,
O/o. the Private Secretary to the
Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Chennai - 600 009.
4. The Advocate General,
O/o. The Advocate General,
Madras High Court,
Chennai.
5. The District Collector,
O/o. The District collector,
Theni, Theni District.
6. The Superintendent of Police,
O/o. The Superintendent of Police,
Theni, Theni District. .. Respondent 2 to 6/ Respondent 1 to 5
7. The Principal Secretary to Government,
Home Department,
Fort St.George, Chennai - 600 009. .. 7th Respondent/
7th Respondent
(1st respondent is original writ petitioner
& Respondents 2 to 7 are R1 to R5 & R7
of writ petition)



Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 15.03.2022 made in W.P.(MD) No. 3305 of 2022.

Prayer in WP(MD) . 3305/ 2022 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF QUO WARRANTO as to under what authority the 6th respondent holds the post of Government Pleader for District Munsif Court, Periyakulam and to restrain the 6th respondent from continuing in the said post and remove the 6th respondent from the post of Government pleader for District Munsif Court, Periyakulam since the 6th respondent is having pending criminal case in C.C. No.239 of 2020 on the file of the Judicial Magistrate, Theni.

For Appellant : Mr.M.Ajmal Khan,
Senior Advocate
for M/s Ajmal Assiciation

For Respondents : Mr.M.A.M.Raja (Party in person)
for R1
Mr.Veera Kathiravan,
Additional Advocate General
for R2 to R7

JUDGMENT

[Delivered by PARESH UPADHYAY, J.]

Challenge in this appeal is made to the order dated 15 March 2022 recorded on W.P(MD) No.3305 of 2022. This appeal is by the sixth respondent in the writ petition. By the impugned order, Writ of Quo Warranto is issued against him and he is unseated from the post of 'Government Pleader of District Munsif Court, Periyakulam, Theni District'.

2. We have heard Mr.M.Ajmal Khan, learned Senior Advocate for the appellant, Mr.M.A.M.Raja, who is a practising advocate of this Court and who has appeared in person (writ petitioner) and Mr.Veera Kathiravan, learned Additional Advocate General for the State Authorities.

3. Mr.M.Ajmal Khan, learned Senior Advocate for the appellant has submitted that, the appellant was appointed as 'Government Pleader of District Munsif Court, Periyakulam, Theni District' vide G.O.(D).No.1176, Home (Courts,VIA) Department dated 13 October 2021 along with nine other persons. It is submitted that, the writ petitioner and the present appellant are close relatives, having strain relations. It is submitted that there are complaints and counter complaints by and against both sides including against



respective spouses and parents. It is submitted that, the merits of the complaints by and against the appellant and the writ petitioner is not and can not be a subject matter of the writ petition, where a Writ of Quo Warranto is prayed for and therefore the same is not addressed by him. It is submitted that, there is no statutory Rule which regulates the appointment of Government Pleader in the District Court and thus, there can not be said to be any breach, which can be said to be statutory violation and therefore Writ of Quo Warranto could not have been issued.

4. On behalf of the appellant, serious grievance is made that the procedure undertaken to consider the petition also needs due consideration by this Court. It is also pointed out that, unnecessary parties were joined as respondents and the appointing authority was not joined as party respondents at all. It is also submitted that, standing as the sole contesting respondent also, the appellant could have met with the argument of the petitioner, had it been pointed out, which statutory Rule is breached by continuing to hold the office of the Government Pleader. It is submitted that, this appeal be allowed and the impugned order be set aside.

5. Mr.Veera Kathiravan, learned Additional Advocate General has submitted that, the officers of the Government were called by sending messages and the reports were got, including from the Judicial Magistrate, Theni District who is not a party. It is further submitted that the Principal Secretary to the Government, Home Department, was joined as party respondent, on 10 March 2022 - the date on which the judgment was reserved. Specific stand is taken by learned Additional Advocate General before this Court that, there is no statutory Rule which governs the appointment of Government Pleaders in District Court. It is further submitted that, so far the appointment in question was concerned, the same is reflected in G.O. (D).No.1176, Home (Courts,VIA) Department dated 13 October 2021 and the same was after following due procedure and in due consultation with and recommendation of the concerned District Judge and District Magistrate. It is submitted that, before doing so, the antecedents of the concerned candidates were also taken into consideration. While making the submission, it is reiterated by him that, so far the Writ of Quo Warranto is concerned, the scrutiny by the Court would be restricted, if there is any breach of statutory Rule or the incumbent is holding the post in conflict with any statutory Rule. It is submitted that, according to State, there is no such breach and that is the stand in this appeal as well.

6. Mr.M.A.M.Raja, the contesting respondent No.1 / writ petitioner has appeared in person before us. He has addressed the Court at length - for more than about one hour. At the outset, specific question was put to him that, which statutory Rule is breached in appointing the present appellant. He has, after more than about an hour, conceded to that situation that there is no breach of which he can point out to the Court.



7. It is noted that, the contesting respondent No.1 / writ petitioner has made serious grievance about the conduct of the appellant. Attention of the Court is invited to the contents of cross FIRs. It is submitted that, the directions given by learned Single Judge to unseat the present appellant from the post of Government Pleader is just and proper and therefore no interference be made by this Court. It is noted that the contesting respondent No.1 / writ petitioner has extensively taken the Court through procedure which was undertaken by the Court at the relevant time to arrive at the question that the present appellant is not named in the charge sheet filed by the State. The petitioner has also submitted that, since the writ petitioner is also an accused in the Court, where the appellant is working as the Government Pleader, it is well founded apprehension by him that his case will not be dealt with in accordance with law. It is submitted that, this appeal be dismissed.

8. Having heard learned advocates for the respective parties, so also the writ petitioner (who is a practising advocate of this Court), this Court finds as under:-

8.1 The prayer clause of the writ petition reads as under:-

"Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of quo warranto as to under what authority the sixth respondent holds the post of Government Pleader for District Munsif Court, Periyakulam and to restrain the sixth respondent from continuing in the said post and remove the sixth respondent from the post of Government Pleader for District Munsif Court, Periyakulam since the sixth respondent is having pending criminal case in C.C.No.239 of 2020, on the file of the Judicial Magistrate, Theni."

8.2 The question formulated by learned Single Judge while answering the petition is as under:-

"30. The fundamental basis of the proceeding of Quo Warranto is that the public has an interest to see that an unlawful claimant does not usurp a public office. It is, however, a discretionary remedy which the Court may grant or refuse according to the facts and circumstances of each case."

8.3 Learned Single Judge has arrived at a conclusion that the present appellant has no authority to continue in the post of Government Pleader for the District Munsif Court, Periyakulam at Theni District.

8.4 We have attempted to search the reasons in the entire services record of the appellant before learned Single Judge to find out how the present appellant



is ineligible to hold the post of Government Pleader. We have not been able to find even one line from the entire order, on what basis this satisfaction is recorded by learned Single Judge. We have also asked the writ petitioner, who is also a practising advocate of this Court to point out, which statutory Rule is breached by the present appellant while holding the post. He has also conceded before us that, there is no statutory Rule which can be said to be breached insofar as the appointment in question is concerned. We find that, in the Writ of Quo Warranto, there could not be any further scrutiny by the Court. For this reason, we arrive at the conclusion that the writ petition could not have been entertained. The final conclusion arrived at by learned Single Judge therefore needs to be quashed and set aside. The writ appeal therefore needs to be allowed.

9. Having held as above, we further find that, the submissions made by the writ petitioner for more than an hour before this Court, takes us to an inescapable conclusion that, only because social strain relations of close relatives, the petition was filed and the only ground as reflected in the prayer clause is that in view of pendency of one criminal case in CC No.239 of 2020 on the file of learned Judicial Magistrate, Theni District, the present appellant could not have been appointed. It is a matter of record that, the charge sheet is already filed in that case long back (27 February 2020) and column 12 thereof refers to the name of the present appellant as a person who is not charge sheeted in that case. This being the factum, the very basis of the petition would not survive.

10. The submissions on behalf of the writ petitioner before this Court and the discussion by learned Single Judge in the order under challenge, by and large centres around one issue, why the present appellant was not treated as an accused while filing that charge sheet. We find that, such a scrutiny could not have been undertaken by this Court, that too, while considering the Writ of Quo Warranto.

11.1 We also find that, in the writ petition the following were the party respondents:-

1. The Special Personal Assistant to
Minister for Law,
O/o. The Special Personal Assistant to
Minister for Law, Chennai - 600 009.
2. The Private Secretary to the
Additional Chief Secretary to Government,
O/o. the Private Secretary to the
Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Chennai - 600 009.



3. The Advocate General,
O/o. The Advocate General,
Madras High Court,
Chennai.
4. The District Collector,
O/o. The District collector,
Theni, Theni District.
5. The Superintendent of Police,
O/o. The Superintendent of Police,
Theni, Theni District.
6. S.P.M. Ariff Rahuman
7. The Principal Secretary to Government,
Home Department,
Fort St.George, Chennai - 600 009.

We find that, in the writ of quo warranto first five respondents were neither 'necessary parties', they could not be even termed as 'proper party'. The entire proceedings continued in that manner. Further, reports are gathered in the writ proceedings from the SP and even the Judicial Magistrate. Such a procedure is unknown to consider any writ petition, more particularly when it is Writ of Quo Warranto. We do not approve the said procedure and the findings in that regard can not be said to be relevant for deciding the point at issue.

11.2 We further find that, over and above the present appellant, it is the State of Tamil Nadu which alone can be said to be necessary / proper party, however the State of Tamil Nadu was not joined as party respondent at any point of time. Even on the date, when the judgment was reserved by learned Single Judge, the Principal Secretary to Government, Home Department, was joined as party respondent and if at all it can be said to be the Government, the said party is not given any opportunity to justify the appointment, which it had made. We note that, learned Additional Advocate General has also made that submission before this Court that, the judgment was reserved on 10 March 2022 and on that day, the seventh respondent i.e., the Principal Secretary to Government, Home Department, was joined as party respondent and the State was not given any opportunity to file counter.

12.1 The lack of bonafide on the part of the writ petitioner would be evident from para:3 of the order, which reads as under:-

"The petitioner appearing in person contended that the sixth respondent has involved in criminal

<https://hcservices.ecourts.gov.in/hcservices> along with his wife and mother by



throwing a knife shaped object used for the purpose of cutting vegetables upon the glass panels fixed in the office room of the petitioner..."

12.2 The Writ of Quo Warranto could not have been prayed with these grievances. We find that, the entire submissions, which is for more than an hour before this Bench has also centred around such facts only. This appeal therefore needs to be allowed by imposing cost against the writ petitioner. While quantifying cost, it also needs to be kept in view that the writ petitioner is a practising advocate of this Court.

13. For the reasons recorded above, the following order is passed:-

13.1 This writ appeal is allowed.

13.2 The impugned order recorded by learned Single Judge dated 15 March 2022 is quashed and set aside.

13.3 The writ petition is dismissed by imposing cost of Rs.25,000/-.

13.4 With a view to see that, challenge if any to this order remains meaningful to the writ petitioner, time to pay the cost is given till 31.07.2022.

13.5 Connected miscellaneous petition would not survive.

Sd/-

Assistant Registrar (A.D.I)

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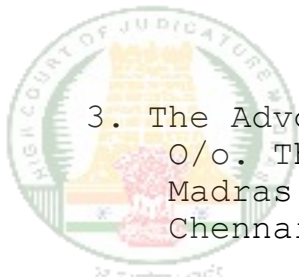
/ /2022

Sub Assistant Registrar(CS)

Pkn/3

To:-

1. The Special Personal Assistant to
Minister for Law,
O/o. The Special Personal Assistant to
Minister for Law, Chennai - 600 009.
2. The Private Secretary to the
Additional Chief Secretary to Government,
O/o. the Private Secretary to the
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3. The Advocate General,
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4. The District Collector,
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5. The Superintendent of Police,
O/o. The Superintendent of Police,
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6. The Principal Secretary to Government,
Home Department,
Fort St.George, Chennai - 600 009.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-18168[F] dated
12/04/2022)

+2 CC to M/s.M.A.M. RAJA, Advocate (SR-18311[F] dated 12/04/2022)

+1 CC to M/s.SPL.GP. (SR-18837[F] dated 13/04/2022)

W.A(MD)No.339 of 2022
12.04.2022

RD(25.04.2022) 8P 11C