



W.P.No.24703 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:20.06.2023

Delivered on: 28.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.24703 of 2018

&

W.M.P.Nos.28737 to 28739 of 2018

Jagannathan

... Petitioner

Vs

1.The Commissioner
Food Safety Department
No.359, Anna Salai
DMS Complex
Teynampet, Chennai-600 006

2.The Designated Officer
Office of the District Food Safety Office
Old Nattanmai Building Complex
Salem-636 001

3.The Director of Public Health and
Preventive Medicine
No.359, Anna Salai
DMS complex
Teynampet, Chennai-600 006

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus alling for the records from the 1st respondent relating to the proceedings of the 1st respondent dated 14.02.2018 bearing reference R.No. 1000/ 2018/ S1/ FSSA and the consequential proceedings of the 2nd respondent dated 20.02.2018 bearing reference No. 263/ A1/ FSSA/ 2018 and quash the same as illegal arbitrary without jurisdiction and consequently direct the respondents 1 and 2 to continue to the petitioner in the 1st respondent department as it was done in the case of other Food Safety Officer appointed along with the petitioner whose name was gazette on 20.04.2012 pay all monetary service and other service benefits which the petitioner would have been entitled to had the impugned proceedings were not passed by the 1st and 2nd respondents.

For Petitioner : Mr.M.Vijayan
for
Mr.G.K.Thamizharasan

For Respondents : Mr.D.Gopal, Govt.Advocate

ORDER

The petitioner seeks issuance of a Writ of Certiorarified Mandamus to quash the proceedings of the 1st respondent dated 14.02.2018 and consequential proceedings of the 2nd respondent dated 20.02.2018 and to



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consequently direct the respondents 1 and 2 to continue to pay the petitioner all monetary, service and other benefits as has been done in the case of other food safety officers.

2. It is seen from the affidavit filed in support of the Writ Petition that the petitioner was originally working as Health Inspector Grade-I with the 3rd respondent, subsequently with the 1st respondent department being constituted, the petitioner was appointed on 20.09.2011 as a Food Safety Officer for Salem Block. On 22.09.2011, the Deputy Director of Health Services, Salem directed the Block Medical Officer to relieve the petitioner from his post of Health Inspector Grade I and on the same day relieving orders were also issued. According to the petitioner, he joined duty on 22.09.2011 and the appointment of the petitioner along with other Food Safety Officers also came to be notified in G.O.Ms.No.151 dated 20.04.2012. It is the case of the petitioner that he is a full time employee of the 1st respondent department and was paid salary only by the 1st respondent. Even the post Health Inspector Grade I, which he was previously occupying was



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also filled up by the 3rd respondent. However, the petitioner received the proceedings from the 1st respondent, directing the 2nd respondent to relieve him from the post of Food Safety Officer and to direct the petitioner to report to the 3rd respondent on 20.02.2018. The reason for such communication was that the petitioner allegedly failed to monitor adulterated tea dust and thereby did not perform his duties satisfactorily. According to the petitioner, neither the 1st respondent nor the 2nd respondent sought for any explanation from the petitioner, nor served any notice or letter including the alleged letter of the 2nd respondent addressed to the 1st respondent. The grievance of the petitioner is that the impugned proceedings are in violation of principles of natural justice and have been passed without giving any opportunity to the petitioner. It is also stated by the petitioner that subsequently the samples sent to the Food Analysis Lab at Guindy were declared to be conforming to the Food Safety and Standards Regulations and therefore, the very basis of calling upon the petitioner to rejoin the 3rd respondent was totally unjustified and without any basis. On these grounds, the petitioner has filed this Writ Petition.



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3. The 3rd respondent has filed a counter. Admitting the averments in so far as the petitioner being originally appointed as Health Inspector and subsequently being posted as Food Safety Officer, it is contended by the 3rd respondent that after being asked to report for duty before the 3rd respondent in and by the impugned proceedings, the petitioner has not chosen to report to the 3rd respondent as directed and consequently prayed for dismissal of the Writ Petition.

4. Heard Mr.M.Vijayan, learned counsel for the petitioner and Mr.D.Gopal, learned Government Advocate for the respondents.

5. Learned counsel for the petitioner would submit that the petitioner was relieved from service of the 3rd respondent and only thereafter he joined the services of the 1st respondent. It was not a case of deputation and further he would also contend that the impugned proceedings were in the nature of punishment. However, even then, such proceedings could not be taken without putting the petitioner on notice. Moreover, even the allegation of



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adulteration of tea was found to false. He would take this Court through the various documents to show that he was only appointed as a fresh recruit with the 1st respondent and it was not a case of transfer also. Infact, it is shwon that proper relieving orders were also passed to enable the petitioner to join the 1st respondent. The further grievance of the petitioner is that the petitioner has been without salary from 2018 onwards. The counsel would also rely on the following judgments:

i) ***Ram Praksah Makkar Vs. State of Haryana and Ors***, reported in **(1992) 4 SCC 725**, in support of his argument to drive home the distinction between appointment by transfer and a case of deputation.

ii) ***Somesh Tiwari Vs. Union of India and Ors***, reported in **(2009) 2 SCC 592**, for the proposition that when the order of transfer attracts the principle of malice in law, being not based on any factor germane for passing such an order, but only came to be based on irrelevant ground, then such an order of transfer which is passed in view of punishment, is liable to be set aside, being wholly illegal.

iii) ***P.Karunakaran Vs. Union of India and others***, reported in **2013**



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SCC Online Mad 3958, wherein the Division Bench of this Court held that when an order of transfer was made for collateral purpose to punish the petitioner such a punishment cannot be imposed without affording an opportunity of hearing, conducting an enquiry and giving a finding that such person was guilty of charges levelled against him.

6. Though the counsel for the respondents placed reliance on to “no work no pay policy” to contend that the petitioner chose not to join the 3rd respondent despite specific order being passed and the petitioner could have joined without prejudice. Learned counsel would also contend that similarly placed employees were allowed to join and therefore having voluntarily decided not to comply with the impugned proceedings, the petitioner cannot complain of not being paid salary from 2018.

7. The first and foremost question that needs to be addressed by this Court is as to whether the impugned proceedings are violative of principles of natural justice and as to whether the petitioner is entitled to relief as prayed



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for. Admittedly, the petitioner was officially relieved from the 3rd respondent initially to enable to him to join the 1st respondent. Thereafter, only on the ground that he failed to monitor and stop adulteration of tea in his area, he was directed to rejoin the 3rd respondent from where he left and joined the 1st respondent. There is absolutely nothing on record to show that the petitioner was afforded an opportunity by way of a personal hearing or even a show cause notice being issued to him before the impugned proceedings came to be passed. It is not a case where the respondents can take shelter under the adage transfer is an incidence of service and therefore the petitioner need not be heard or given an opportunity before being transferred. This is a case where the only reason for transferring the petitioner back to the 3rd respondent was on the ground that there was adulteration in tea being sold in the area coming under his supervision. That being so, as held by the Division Bench of this Court in *P.Karunakaran's* case such an order of transfer being punitive in nature, could be passed only after affording an opportunity of hearing to the petitioner, conducting an enquiry and giving a finding thereon, proving the charges slapped on the petitioner. Here admittedly, no show cause notice or



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charge memo was issued and straight away an order of transfer came to be passed. Moreover, the further fact that tea samples sent to the authorities have also been reported to meet the standards of Food safety and therefore the very allegation of adulteration itself has fallen to the ground.

In such view of the matter, the Writ Petitioner is entitled to relief from this Court. Writ Petition is allowed as prayed for. No costs. Consequently, connected miscellaneous petitions are closed.

28.07.2023.

Internet: Yes
Index: Yes/No
Neutral Citation: Yes/No
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Pre-delivery order in
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