



WEB COPY

W.A.No.2148 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2024

CORAM :

**THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN**

**W.A.No.2148 of 2022
and CMP.No.16021 of 2022**

The State of Tamil Nadu
Represented by the Additional Chief Secretary
to Government,
Social Welfare and Women Empowerment Department,
Secretariat, Fort St.George,
Chennai-600 009. .. Appellant

VS

Dr.Saranya T.Jeyakumar
No.34, Ranganathan Avenue
East Coast Road, Uthandi,
Chennai-600 119. .. Respondent

Prayer : Appeal filed under Clause 15 of the Letters Patent against the
order dated 13.07.2022 in WP.No.4914 of 2022 by this Court.

For Appellant : Mr.P.S.Raman, Advocate General
assisted by
Mr.P.Ananda Kumar,
Government Advocate

For Respondent : Mr.K.Newlin Frederick



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JUDGMENT
(Delivered by Dr.ANITA SUMANTH.,J)

This writ appeal is, in fact, infructuous as on date. However, we narrate the trajectory that the matter has taken thus far.

2.The writ petition was filed by the respondent/writ petitioner along with three others challenging G.O.(Ms).No.12 dated 23.02.2022, Social Welfare and Women Empowerment Department seeking continuance of her tenure as a Member of the Tamil Nadu Commission for Protection of Child Rights (in short 'Commission') till completion thereof, being 19.01.2024.

3. One of us, sitting single had, in fact, admitted the matter and, had passed the following order dated 03.03.2022 at the time of admission:-

'Mrs.Geetha Thamaraiselvan, learned Special Government Pleader accepts notice for the respondents and is represented by Mr.Silambannan, learned Additional Advocate General. A request is made on behalf of the respondents for some time to obtain instructions and file a counter.

2. Time is granted till 21.03.2022 when the matter will be called next.

3. The petitioner prays for an interim stay of impugned Notification dated 23.02.2022. A brief back ground is required to consider this request.

4. The petitioner is a member in the Tamil Nadu Commission for Protection of Child Rights



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(Commission/TNCPRC). This Commission has been constituted under the Commissions for Protection of Child Rights Act, 2005 (in short 'Act'), which is a Central Enactment. The constitution of the Committee is in terms of Section 17 of the Act and Section 18 thereof deals with the appointment of Chairperson and other Members.

5. The Act provides, under Section 7 (2) thereof, for 7 instances where the Chairperson or any other Member would be liable for removal from office. Section 8 states that if the office of the Chairperson or Member becomes vacant by reason any of the disqualifications mentioned in Section 7 or by virtue of the resignation under Section 5(2), then such casual vacancy shall be filled within a period of 90 days by making afresh appointment in accordance with the provisions of Section 4 thereof.

6. The tenure of the Chairperson and Members is for a period of three years from when he or she assumes office. In the present case, the petitioner has assumed office on 20.01.2021 and as such her tenure continues till 19.01.2024.

7. While this so, impugned Notification has come to be issued dissolving the Commission in entirety. Only the petitioner, amongst the entire Board, has challenged this Notification. While doing away with the Commission, the Notification proposes to re-constitute the same and call for applications afresh for the posts of Chairperson and Members.

8. The Notification does not contain any justification whatsoever for scraping the Commission and re-constituting the same. In fact, the Act, under which the Commission is constituted does not provide for such dissolution but provides for removal from office of the Chairperson and members in terms of Section 7 thereof.

9. My attention is drawn to letter dated 28.02.2022 issued by the National Commission for Protection of Human Rights, which, while referring to the impugned Notification and the complaint/representation filed by the present constituents of the State Commission, opines that



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the dissolution/cancellation of the present Commission is in contravention of the statutory provisions, requesting that appropriate and necessary enquiry and action may be taken in the matter.

10. The above communication has been addressed to the Chief Secretary and it is to be noted that the impugned Notification has been issued by the Additional Chief Secretary to the Government of Tamil Nadu.

11. Upon the heels of the impugned Notification dated 28.02.2022, a Press Release bearing No.305 dated 01.03.2022 has come to be issued by the Secretary of the Tamil Nadu Commission for Protection of Child Rights, calling for applications for the posts of Chairperson and Members for reconstitution of the Commission.

12. A prima facie case has been made out for continuance of the present Commission insofar as, a perusal of the Act does not indicate any possibility for wholesale dissolution of the Commission per se. Though Section 7 provides for removal of the Chairperson and the Members for reasons set out thereunder, such removal is subject to they having been granted an opportunity of being heard prior to such removal in terms of sub-Section (3) of Section 7. Admittedly, in this case, no show cause notices have been issued either to the Chairperson or the Members, till date.

13. For the above reasons, interim stay of impugned Notification dated 23.02.2022 and Press Release No 305 dated 01.03.2022, effective till the next date.

14. List on 21.03.2022.'

4.Ultimately, the writ petition came to be allowed on 13.07.2022 and the impugned G.O. was quashed. It was as against the same that the present writ appeal has been filed by the State and an unconditional order



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of interim stay was sought and obtained on 15.09.2022.

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5.As against the aforesaid interim order, the appellant filed a Petition for Special Leave in SLP(C)No.17294 of 2022 and after some preliminary hearings, by an order dated 17.10.2022, the Hon'ble Supreme Court posed a question to the State as to why the Commission was to be re-constituted and also further directed the State to keep the file ready for perusal of the Court on the next occasion.

6.On the next date of hearing, the State gave an undertaking to the effect that till the matter was disposed by the Supreme Court, the State would not fill up any posts in the Commission and the parties before us thus concur on the position that there was a self-imposed embargo on the State not to fill any posts in the Commission that also came to be recorded by the Supreme Court by its order dated 17.10.22.

7. On 16.01.2023 the SLP came to be disposed as follows:

'The present petition has been filed assailing the interim order passed by the Division Bench of the High Court dated 15.09.2022 in Writ Appeal No.2148 of 202. The present petitioner was appointed as one of the Member of Tamil Nadu Commission for Protection of Child Rights by Notification dated 18.01.2021, but by a later order dated 23.02.2022, that came to be cancelled. That became the subject matter of challenge at the instance of the petitioner by filing of a Writ Petition under Article 226 of the Constitution.



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The learned Single Judge of the High Court set aside the order of cancellation dated 23.02.2022 under its order dated 13.07.2022 and that became the subject matter of challenge at the instance of the respondent in Writ Appeal No.2148 of 2022.

On the first date of hearing when the matter came up for admission before the Division Bench of the High Court, the petitioner also entered on Caveat, the High Court, after looking into the matter passed ad interim stay of the order impugned by order dated 15.09.2022.

We have heard the learned counsel for the parties and taking into consideration the material on record and so also the fact that the petitioner has a fixed tenure which is going to expire in January, 2024, the pending writ appeal deserves to be considered on merits at the earliest.

While disposing of the petition and apart from the assurance given by the State, as recorded in our order dated 17.10.2022, we make it clear that the Public Notice, which was notified by the respondent on 16.09.2022 shall be kept in abeyance and await the orders of the Division Bench of the High Court in the pending writ appeal. At the same time, we request the High Court to expedite and dispose of the pending writ appeal as expeditiously as possible, preferably within a period of six weeks from today.

Let the writ appeal may come up before the Division Bench of the High Court on 23.01.2023. In the meantime, the parties shall complete the pleadings, if so advised.

In view of above, the Special Leave Petition is disposed of.

Pending interlocutory application(s), if any, is/are disposed of.'

8.While disposing the SLP, the Court reiterated the assurance recorded under order dated 17.10.2022 that the public notice that had been notified on 16.09.2022 shall be kept in abeyance. However, this was



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in anticipation of the writ appeal being heard and disposed at the earliest as the tenure of the respondent was itself going to expire in January 2024.

9.To be noted that the order of the Supreme Court is dated 16.01.2023 and the same has been brought to our attention only two days ago. We had hence listed the matter for hearing the very next day in order to give quietus to the *lis*.

10.Though we have commenced by saying that the matter is, in a way, infructuous, what survives is the filling up of the vacancies by the Commission as the unfortunate fall out of the events as recorded supra, is that between the period of interim stay granted by the Division Bench being 15.09.2022 and today, all posts in the Commission have been lying vacant. Thus, and unfortunately, there has been no Commission for the Protection of Child Rights in the State of Tamil Nadu for more than two years.

11.Be that as it may, the position now is that the tenure of the respondent has expired on 19.01.2024 and hence there is nothing that stands in the way of the State filling the vacancies up in the Commission. The interests of the writ petitioner have been taken note of and protected even in counter affidavit dated 18.03.2022, filed by the State wherein at



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paragraph 20, they state that the Government proposes to re-constitute the Commission inviting application from eligible aspirants, a three member Selection Committee will scrutinise the applications and select suitable, deserving candidates. They have specifically stated that existing members, including the writ petitioners, can apply.

12.Learned Advocate General confirms that the contents of the Notification issued earlier i.e., dated 16.09.2022, would be replicated in the proposed Notification, barring the date of Notification and other dates for fixation of the timelines for compliance. He also confirms that the respondent/writ petitioner is fully qualified to participate in the process.

13.To a query as to whether any weightage could be afforded to the respondent/writ petitioner in the forthcoming selection process, Learned Advocate General, on instructions, admits that the termination of the respondent was a no cause-termination. The State thus is unable to justify G.O.Ms.No.12 dated 23.02.2022, which has rightly been quashed in the writ petition.

14. Learned Advocate General confirms, on instructions, that the entirety of the tenure of the respondent, that is, between 20.01.2021 and 19.01.2024, would be reckoned as her effective service in the Commission



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and would be accorded due weightage in the selection process. This is recorded.

15. With this and as nothing further survives in this writ appeal, the same is closed. No costs. Connected miscellaneous petition is also closed.

[A.S.M., J] [G.A.M., J]
21.11.2024

Index:Yes/No
Speaking order
Neutral Citation:Yes
vs



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