

(2013) 12 MAD CK 0140

In the Madras High Court

Case No : Writ Petition No. 20189 of 2012 and M.P. No's. 1 and 2 of 2012

B. Ramesh

APPELLANT

Vs

The District Collector, The Panchayat President and P.
Mullairoja

RESPONDENT

Date of Decision : 12-12-2013

Acts Referred:

Citation : (2013) 12 MAD CK 0140

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : V. Subbiah, Special Govt. Pleader for R1 and R2 and Mr.
Paramasivadass for R3, for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J.—The Petitioner has filed the instant Writ of Mandamus praying for issuance of an order by this Court in forbearing the respondents from terminating the Petitioner from his service without following due process of law. Further, the Petitioner has sought for passing of an order by way of directing the respondents to permit him to discharge his duties as Panchayat Assistant at Pazavalam Panchayat. It comes to be known from the affidavit filed by the Petitioner in W.P. No. 20189 of 2012 that by means of Panchayat Resolution No. 65, dated 16.12.2003 that he was appointed as "Part Time Panchayat Writer" on a temporary basis for consolidated pay. Subsequently, through Government Order G.O. No. 175, Rural Development, dated 05.12.2005, the said post of Part Time Panchayat Writer was converted into Full Time Panchayat Assistant Grade-2 and was paid the scale of pay. Also, the said Government Order speaks of the service conditions, Administrative control and duties of the Panchayat Assistant. Accordingly, Panchayat Assistants are appointed by the Panchayat Board and they should work under the disciplinary control of the Executive Officer of the Panchayat i.e. Panchayat President. Later in G.O. No. 91, dated 12.08.2009, the post of Panchayat Assistant Grade 2 was upgraded as Panchayat Assistant. In the

Panchayat Assistant seniority list was published on 01.01.2010 and the Petitioner was assigned seniority as 832.

2. While that being the fact situation, the First Respondent/the District Collector, on 01.06.2011, passed an order to re-instate the Third Respondent (Mrs. P. Mullai Roja), who worked as Panchayat Assistant. Pursuant to the order of the First Respondent/the District Collector, Villupuram, the third Respondent/Mullai Roja was appointed as Panchayat Assistant on 14.06.2011. As such, the Petitioner was simply discharged without even assigning any reason. He also preferred an "Appeal" before the First Respondent and the Second Respondent/Panchayat President, Pazavalam Village, Villupuram District, in respect of the denial of employment. Subsequently, Panchayat Resolution No. 3, dated 14.09.2011, he was re-instated as a Panchayat Assistant. In the mean while, the said third Respondent, was terminated by the Second Respondent for certain financial irregularity.

3. The plea of the Writ Petitioner is that he had discharged his duties efficiently without any adverse remarks from his superior officers and as such, before terminating his service as Panchayat Assistant in terms of G.O. No. 175, dated 05.12.2006, he ought to have been provided with an opportunity to submit his explanation over the charge against him and further, personal enquiry should also be conducted. Furthermore, as per Section 101 of Tamil Nadu Panchayat Act, 1994, as regards, any proposal regarding to termination or dispense with the service of the Panchayat servant, a sanction should be obtained from the Panchayat in the special meeting convened for the said purpose and no such proposal shall be given unless assented by at least one half of the members in the Panchayat. Therefore, the stand of the Petitioner in pith and substance is that he was denied the employment by the Second respondent without necessary procedure being followed.

4. At this stage, the Learned Special Government Pleader for Respondents 1 and 2 brings it to the notice of this Court that the Petitioner in earlier occasion filed the Writ Petition No. 28942 of 2011 before this Court and on 08.08.2012, this Court passed the following order:

The learned counsel for the petitioner has made an endorsement that he is not pressing this Writ Petition. In view of the endorsement so made this Writ Petition is dismissed as not pressed. Connected Miscellaneous Petitions are closed. No costs.

As such, it is the argument of the Learned Special Government Pleader for R1 and R2 that the present Writ Petition filed by the Petitioner is not maintainable in law.

5. It is to be borne in mind that the principles of "Res Judicata" will squarely apply to the Writ Proceedings (although the ingredients of CPC are not applicable to writ proceedings in strict sense of the term). It is to be noted that the principles of "Res judicata" will apply to successive writs as opined by this Court.

6. That apart, it is brought to the notice of this Court that the Third Respondent got himself impleaded in the Writ Petition as per order passed by this Court in M.P. No. 3 of 2012 in W.P. No. 20189 of 2012 on 19.11.2012. Further, it is also represented on behalf of the Third Respondent before this Court that the third Respondent was appointed as "Village Assistant" on 24.01.2011 and she continued to work from that date onwards. Therefore, the Writ Petition filed by the Writ Petitioner is not per se maintainable in law.

7. On a careful consideration of the contentions advanced on behalf of the Respondents 1 to 3 and also this Court taking note of a very important fact that after dismissal of the Petitioner, the third Respondent was appointed as Village Assistant on 24.01.2011 by the Second Respondent and also bearing in mind the facts and circumstances of the present case, comes to an inevitable conclusion that when the Respondents had terminated the service of the Petitioner and also appointed the third Respondent (in the place of Petitioner) and also when the third Respondent is working from the date as on 24.01.2011, then, the Writ Petition filed by the Petitioner praying the relief of restraining the Respondents from terminating the Petitioner in service without following due process of law is not maintainable in limine. Viewed in that perspective, the Writ Petition is devoid of merits. In the result, the Writ Petition is dismissed leaving the parties to bear their own costs. It is made clear that dismissal of the Writ Petition will not preclude the Petitioner to seek appropriate remedy before the competent forum in the manner known to law and in accordance with law. Consequently, connected miscellaneous petitions are closed.