
(2016) 12 MAD CK 0080

In the Madras High Court

Case No : W.P.(MD)No. 5083 of 2012 and M.P.(MD) Nos. 1 of 2012 and 1 of 2013

C. Selvan

APPELLANT

Vs

The District Collector, Collectorate, Kanyakumari District,
Nagercoil

RESPONDENT

Date of Decision : 09-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 LLJ 619 : (2017) 1 WritLR 390

Hon'ble Judges : R. Suresh Kumar, J.

Bench : Single Bench

Advocate : Mr. M. Saravanakumar, Advocate, for the Petitioner; Mr. V. Muruganantham Additional Government, for the Respondent No. 1; Mr. K. Mahendran, Advocate, for the Respondent No. 2; Mr. Aayiram K. Selvakumar, Advocate, for the Respondent No. 3

Final Decision : Allowed

Judgement

R. Suresh Kumar, J.—The prayer in the writ petition is for a Writ of Certiorarified Mandamus, calling for the records in pursuant to the impugned order passed by the 3rd Respondent in proceedings dated 11.04.2011 and to quash the same and consequently, direct the Respondents to reinstate the Petitioner in service with all attendant and monetary benefits.

2. The petitioner was appointed as Panchayat Assistant by the order of the third respondent on 22.12.2008 and subsequently by the resolution of the third respondent Panchayat on 02.06.2009, he was brought in time scale of pay as per the norms fixed by the Government. Thereafter, the petitioner has been continuously working in the third respondent Panchayat. The petitioner's service has been regularized fully by the third respondent Panchayat and as evidence to that the petitioner has produced the proceedings of the Block Development Officer of Munchirai Panchayat Union dated 16.09.2009, by which the petitioner was also included in the committee for implementing the Government Schemes

of the third respondent Panchayat. Thereafter, the District Collector had issued a proceedings on 29.03.2011, involving the petitioner in the election work in the Tamil Nadu State Assembly Election, 2011 and the said proceedings was also served on the petitioner personally. Therefore, all these would go to show that the petitioner was admittedly worked at the 3rd respondent Panchayat and his service has been regularised. While so, he was terminated by the impugned order of the third respondent dated 11.04.2011. Challenging the said order, the petitioner has come out with the present writ petition.

3. Heard both sides.

4. The learned counsel appearing for the petitioner would contend that the petitioner has been appointed as Panchayat Assistant in the third respondent panchayat and has been working all along till the order of termination. The impugned order of termination was issued by the third respondent, before which no enquiry was conducted, no notice was given and no proceeding was initiated against the petitioner. The petitioner has not brought any adverse notice to any authority including the third respondent, as there was no notice to state that the petitioner has violated any norms or rules, which were prevailing and governing the service conditions of the petitioner. The learned counsel for the petitioner would also contend that since the petitioner was brought in time scale of pay, the order of termination simpliciter cannot be issued. Therefore, the impugned order would not sustain in the eye of law.

5. Per contra, the learned counsel for the 3rd respondent placing reliance upon the counter affidavit submits that the appointment of the petitioner was made by the erstwhile Panchayat President of the third respondent in order to do some favour to the petitioner and such appointment was not made with the prior consent or approval of the District Collector, who is the Inspector of Panchayats. In this regard the relevant Government Orders have been violated and merely because he was appointed and brought on time scale of pay by the resolution of the third respondent and he was involved in the election work by the proceedings of the District Collector, that will not give ips o fact o any right to continue at the third respondent village Panchayat as the very appointment made in favour of the petitioner by the erstwhile President of the third respondent Panchayat itself is illegal. In view of the same, the order of termination is only an order simpliciter, terminating the services of the petitioner, which was illegally made by the erstwhile President of the third respondent. Therefore, there is no need for issuing charge memo, notice and to conduct enquiry. It is settled principle that if it is illegal appointment, the same cannot be cured by anything and the same is liable to be terminated by a mere order of termination.

6. The learned Additional Government Pleader appearing for the first respondent supported the arguments advanced by the learned counsel for the third respondent and wants the dismissal of the writ petition.

7. Heard the learned counsel appearing for the parties and considered their

respective arguments.

8. The appointment of the petitioner was made on 22.12.2008 by the President of the Village Panchayat, pursuant to the resolution of the third respondent, pursuant to which, the petitioner joined the services and worked there. Subsequently, by further resolution of the third respondent, the petitioner was brought in regular time scale of pay and the same has been made to the petitioner and he was working as such. During the services of the petitioner, his services have been extracted by the third respondent for the election work and other works for implementing Government Schemes. While so, suddenly, the impugned order of termination was passed, wherein the third respondent has given two reasons. One is that the resolution of the third respondent dated 23.07.2010 and another one is directive of the District Collector. No proceedings of the District Collector has been produced before this Court. Also in the impugned order, it has been stated by the third respondent that termination takes effect retrospectively from 25.11.2009. Even though the impugned order was passed on 11.04.2011, the same was directed to take effect from 25.11.2009. This Court is unable to understand as to how the said order take effect from 25.11.2009 and whether such an order of termination by way of simpliciter can be passed giving retrospective effect, by which whether the accrued right can be taken without any notice or enquiry.

9. If at all the third respondent not satisfied with the approach of appointment made to the petitioner, appropriate show cause notice should have been issued and after framing charges enquiry should have been conducted, without which an employee, who has been regularly brought in service with time scale of pay cannot be shown the door by way of a cryptic order. Therefore, the impugned order would not be sustained for the simple reason that it is passed in violation of the principles of natural justice, especially Article 14 of the Constitution of India and the reasons now adduced by the third respondent in the counter cannot improve their case as the law is well settled in this regard in *Mohinder Singh Gill v. Chief Election Commissioner* [(1978) 1 SCC 405].

10. Therefore, this Court has no hesitation to hold that the impugned order is liable to be set aside and accordingly is set aside. The impugned order dated 11.04.2011 has been stayed by this Court by order dated 18.04.2012 and by virtue of the same the petitioner is continuing in the post. The said fact is recorded. The petitioner, therefore, shall be at liberty to claim the benefits from the third respondent for all along he has been working during the pendency of the writ petition. It is made clear that if the respondents, especially, the third respondent Panchayat is not satisfied with the continuance of the petitioner for any proved misconduct, if any, proceedings can be initiated against him only in the manner known to law and not by way of the present order.

11. Accordingly, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.