

(2009) 06 MAD CK 0280

In the Madras High Court

Case No : Writ Petition No. 28563 of 2006

C. Subramanian

APPELLANT

Vs

The Asst. Director, Survey and Land Records, The Additional
Director of Survey and Land Records and The Secretary to
Govt., Govt. of Tamil Nadu, Revenue Department

RESPONDENT

Date of Decision : 09-06-2009

Acts Referred:

Citation : (2009) 06 MAD CK 0280

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

**Advocate : R. Subburaj, for the Appellant; P. Gurunathan, GA, for the
Respondent**

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard both sides.

2. The petitioner has filed O.A. No. 7620 of 1997 seeking to challenge the order of the first respondent, dated 23.9.1989, the order of the second respondent dated 27.10.1989 and the orders of the third and second respondents, dated 31.5.95 and 8.8.95.

3. In view of the abolition of the Tribunal, the matter stood transferred to this Court and was renumbered as W.P. No. 28563 of 2006. On notice from the Tribunal, the respondents have filed a reply affidavit, dated 18.08.1998.

4. When the State Government undertook the updating registry scheme work, it sanctioned additional staff. The staff in the basic level categories were engaged on consolidated pay and contract basis. The petitioner was one such appointee. Under the term of appointment, the contract can be terminated by giving one month notice by either side. The petitioner joined the sad post on 16.3.83 and at the time of termination, he was getting Rs. 610/- as consolidated pay.

5. When the petitioner was working at the Natham Land Survey Unit in Chengam (Kanchi Village), a complaint was received against the petitioner. The action of the petitioner led to dispute between two groups of people in that village. It was on enquiry by the Deputy Inspector, it was found that the petitioner had gone to that place without any authority and his creating survey boundaries in contravention of rules was highly objectionable. It was on the basis of the report sent by the Inspector of Survey and Land Records, recommending dispensation of service, the first respondent, by an order, dated 16.8.89 terminated the service of the petitioner by giving a month's notice and his service was brought to an end with effect from 25.9.89.

6. Though the petitioner sent an appeal to the second respondent, the same was rejected by an order dated 27.9.89. The petitioner belatedly send a representation to the State Government. This was also rejected by a Government letter dated 31.5.95. It was thereafter, the petitioner moved the Tribunal with the present O.A.

7. The petitioner at no point of time, moved the Tribunal immediately after his termination during September, 1989. The delay in moving the Tribunal after 8 years is not sufficiently explained. Sending belated representation cannot revive a stale cause of action as pointed out by the Supreme Court vide its judgment in C. Jacob v. Director of Geology & Mining and Anr. reported in 2008 AIR SCW 7233.

8. Further, since the petitioner is only holding a contractual post and he cannot claim any statutory right under Article 311(2) of the Constitution. The Supreme Court vide its judgment in Union Public Service Commission Vs. Girish Jayanti Lal Vaghela and Others, , has held that a person holding a contractual appointment under the State cannot claim protection under Article 311(2). It is necessary to refer to the following passage found in para 21 of the judgment, which is as follows:

21. ...His contractual appointment for six months was dehors the rules. The appointment was not made in a manner which could even remotely be said to be compliant with Article 16 of the Constitution. The appointment being purely contractual, the stage of acquiring the status of a government servant had not arrived. While working as a contractual employee Respondent 1 was not governed by the relevant service rules applicable to Drugs Inspector. He did not enjoy the privilege of availing casual or earned leave. He was not entitled to avail the benefit of general provident fund nor was he entitled to any pension which are normal incidents of a government service. Similarly, he could neither be placed under suspension entitling him to a suspension allowance nor could he be transferred. Some of the minor penalties which can be inflicted on a government servant while he continues to be in government service could not be imposed upon him nor was he entitled to any protection under Article 311 of the Constitution. In view of these features it is not possible to hold that Respondent 1 was a government servant.

9. In the light of the above, there is no case made out to entertain the writ petition. Accordingly, the writ petition stands dismissed. No costs.