
(2015) 07 MAD CK 0362
In the Madras High Court
Case No : Writ Appeal (MD) No. 373 of 2015

C.M. Kingslin Jebakumar

APPELLANT

Vs

The Secretary, State of Tamil Nadu, Municipal Administration
and Water Supply Department and Others

RESPONDENT

Date of Decision : 06-07-2015

Acts Referred:

Right to Information Act, 2005 — Section 8(i)

Citation : (2015) 07 MAD CK 0362

Hon'ble Judges : S. Manikumar, J;G. Chockalingam, J

Bench : Division Bench

Advocate : M. Dennis Joe, for the Appellant; A.K. Baskara Pandian, Special Government Pleader, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S. Manikumar, J—Mr. M. Dennis Joe, a practicing advocate of Kanyakumari District, has sought for a Writ of Quo-Warranto, calling upon the 6th respondent herein, to show cause, under what authority, he holds and remains in office, as plumber, in the 5th respondent-Panchayat. He has also sought for a further direction to oust the 6th respondent from the said post, forthwith.

2. According to the petitioner, the 6th respondent lacks educational qualification, prescribed for the post of Plumber, in the Service Rules. He has further added that the qualification for the post of Plumber, is 10th Standard and ITI Plumber Certificate. But the 6th respondent does not possess the latter. On the above averments, the Writ Court, vide order, dated 07.11.2014, has dismissed the writ petition, as hereunder:

"3. This Court is not inclined to entertain the present Writ Petition, for the simple reason that the petitioner, who is a practicing Advocate, is, in no way, aggrieved or prejudiced by the appointment of the sixth respondent in the fifth respondent Panchayat. Moreover, the writ petition seeking Quo Warranto is not maintainable,

in a matter like this. Therefore, the writ petition is dismissed."

3. Against which, the present appeal has been filed, contending inter alia, that the Writ Court has failed to address the real issue, either on facts or law. Our attention was also invited to the entries in Page 3 of the service record, enclosed in the typed set of papers, wherein, as against Column No. 8, "Education and Other qualification", it is mentioned as SSLC passed. On 04.06.2015, when the present appeal came up for hearing, we passed the following orders:

"Documents, annexed at Page Nos. 2 to 12 of the typed set of papers, pertain to the entries made in the Service Book of P. Alwar Inbaraj/6th respondent herein, against whom, a Writ of Quo Warranto is filed. However, a perusal of the proceedings in O. Mu. No. 157/A1/09, dated 16.12.2011, of the Executive Officer, Palappallam Town Panchayat, Kanyakumari District, shows that when one Smt. Geetha Sakunthala, Advocate, West Kollanpatti, Palappalam-Post, Kanyakumari District, sought for copies of the Service Book and transfer certificate of the 6th respondent, the same have been rejected under Section 8(i) & (j) of the Right to Information Act, 2005. When the request of the said individual for furnishing copies of the abovesaid documents has been rejected, it is not known, as to how, the petitioner has enclosed the Service Book of the 6th respondent in the typed set of papers, filed along with the writ appeal.

2. Mr. M. Dennis Joe, learned counsel for the appellant, submitted that he would produce proof for obtaining the abovesaid documents, under the Right to Information Act, 2005. Recording his submission, we deem it fit to direct the appellant to file an affidavit, containing the details, as to how and when those documents were obtained.

3. Affidavit directed to be filed should be supported with documents. Post the matter on 10.06.2015. We make it clear that if an affidavit with supporting documents, as directed, is not filed to substantiate the submission of the learned counsel, the writ appeal would be dismissed."

4. Additional affidavit, dated 9th June, 2015, has been filed along with the additional typed set of papers, which contains, two proceedings of the Executive Officer, Palappallam Town Panchayat, Palappallam Post, Kanyakumari District, 5th respondent herein, in O. Mu. No. 85/2012/A1, dated 14.03.2012 and O. Mu. No. 85/2012/A1, dated 15.03.2012, to support the contention that copies of the service records, were obtained by the appellant's relative, Tmt. Geetha Sakunthala, under the Right to Information Act. In the abovesaid circumstances, we directed the learned Special Government Pleader to produce the entire records.

5. Based on the resolution of the Appointment Committee, Palapallam Panchayat No. 2/88, dated 20.06.1988, learned Special Government Pleader submitted that vide proceedings in Mu. Mu. No. A1/136/88, dated 07.06.1988, the Executive officer, Palappallam Town Panchayat, Palappallam Post, Kanyakumari District, 5th respondent herein, has appointed the 6th respondent, as daily wage employee,

at Rs. 15/- per day. Thereafter, as per the orders of the District Collector, Kanyakumari District, daily wages were periodically increased.

6. Learned Special Government Pleader further submitted that in 1988, Government have issued two orders in G.O.Ms. No. 72, Rural Development Department, dated 05.07.1988 and G.O.Ms. No. 198, Rural Development Department, dated 26.10.1998 and in furtherance thereof, proceedings were issued by the Commissioner of Town Panchayat, Chennai, in R.C. No. 12159-1/2000/A3, dated 10.07.2000, by which, posts were created in Town Panchayats, on consolidated basis, for the purpose of maintaining water supply and street lights, and orders were issued that persons, working as on 31.12.1996, on daily wage basis and satisfy the educational qualifications, prescribed for permanent appointment, be posted in the created posts, on consolidated basis, in the same town panchayat and in the absence of any vacancy in the same town panchayat, they can be appointed in the nearby town panchayats, on transfer basis.

7. Learned Special Government Pleader further submitted that orders were also issued by the Regional Assistant Director of Town Panchayat, Nagercoil, for those, who were working in the town panchayats, prior to 31.12.1996, and in respect of others, who do not possess the educational qualifications, they can also be appointed on consolidated basis, after relaxing the educational qualification. Accordingly, orders were issued by the Regional Assistant Director of Town Panchayat, Nagercoil on 30.07.2001, to the Executive Officers, directing them to appoint daily rated employees, on consolidated basis, at Rs. 1,700/- and to send proposals for relaxation. Files disclose that in the list appended to the proceedings No. 1044/2001/P2, dated 30.07.2001, as many as 60 persons have been included and that the name of the 6th respondent has been included at Sl. No. 24.

8. Learned Special Government Pleader further submitted that thereafter, on the basis of the proceedings of the Executive Officer, Palappallam Town Panchayat, Palappallam Post, Kanyakumari District, 5th respondent herein, in No. 157/2001, dated 13.09.2001, the 6th respondent has been appointed as Plumber in Pallapallam Town Panchayat, on consolidated pay of Rs. 1,700/- per month, and that he was continuing in service.

9. Perusal of the service records of the 6th respondent further shows that on the basis of G.O. Ms. No. 60, Rural Development Department, dated 23.06.2006, orders have been issued, in proceedings No. A1.264/2006, dated 03.08.2006, bringing the 6th respondent, in time scale of pay of Rs. 3050-75-3950-80-4590. Subsequently, after verification of service particulars, orders have been issued by the Executive Officer, Palapalayam Town Panchayat, in proceedings No. 73/09(i), dated 08.04.2008, regularizing the services of the 6th respondent, from 01.04.2007. Probation has been declared, with effect from 01.04.2008, vide proceedings No. 73/09(ii), dated 08.04.2009. Thereafter, as per G.O.Ms. No. 234, Finance (Pay Cell) Department, dated 01.07.2009, pay of the 6th

respondent has been revised with pay band and grade pay of Rs. 5,200-20,200+1,900., with effect from 23.06.2006. Pay of the 6th respondent has been fixed at Rs. 7,580/- (Rs. 5,680 + Rs. 1,900 Grade Pay). He has been granted periodical increments also. In terms of the abovesaid Government Order, 6th pay scale of pay arrears has been granted.

10. The petitioner has been working as Plumber on daily rated basis from 1988; consolidated wages from 2001, and by relaxing the educational qualifications, brought to time scale in 2006; his services have been regularised in 2007 and probation declared in 2008, as stated supra.

11. The 6th respondent has been working as Plumber from 1988 onwards. It is not known, as to why, after so many years, a practicing Advocate from Kanyakumari District, has chosen to file a Writ of Quo-Warranto, calling upon the 6th respondent, to show cause, under what authority, he is holding the post of Plumber in Pallapallam Town Panchayat.

12. The contention of the petitioner that due to lack of necessary qualification, the 6th respondent has caused financial loss and damage in plumbing work, engaged by the private contractors, is bereft of any details. Had there been any such deficiency in service rendered by the 6th respondent, action would have been taken against him.

13. In none of the documents, enclosed in the typed set of papers, there is any substantive evidence, supporting the allegations. On the facts and circumstances of the case, it could be reasonably presumed that the petitioner has something against the 6th respondent and for reasons, best known to him chosen to file this writ petition.

14. In *Corpus Juris Secundum* [74 C.J.S. Quo Warranto ? 14], "Quo Warranto" is defined as under:

"Quo warranto, or a proceeding in the nature thereof, is a proper and appropriate remedy to test the right or title to an office, and to remove or oust an incumbent. It is prosecuted by the State against a person who unlawfully usurps, intrudes, or holds a public office. The relator must establish that the office is being unlawfully held and exercised by the respondent, and that relator is entitled to the office."

15. In *Law Lexicon* by J.J.S. Wharton, Esq., 1987, "Quo Warranto" has been defined as under:

"QUO WARRANTO, a writ issuable out of the Queen's Bench, in the nature of a writ of right, for the Crown, against him who claims or usurps any office, franchise, or liberty, to enquire by what authority he supports his claim, in order to determine the right. It lies also in case of non-user, or long neglect of a franchise, or misuser or abuse of it; being a writ commanding the defendant to show by what warrant he exercises such a franchise having never had any grant of it, or having forfeited it by neglect or abuse."

16. In R.K. Jain Vs. Union of India and Others, AIR 1993 SC 1769 : (1993) 65 ELT 305 : (1993) 3 JT 297 : (1993) 2 SCALE 843 : (1993) 4 SCC 119 : (1993) 3 SCR 802 , the Hon"ble Supreme Court held as follows:-

"Judicial review is concerned with whether the incumbent possessed of qualification for appointment and the manner in which the appointment came to be made or the procedure adopted whether fair, just and reasonable. Exercise of judicial review is to protect the citizen from the abuse of the power etc. by an appropriate government or department etc."

17. In Dr. Kashinath G. Jalmi and another Vs. The Speaker and others, AIR 1993 SC 1873 : (1993) 3 JT 594 : (1993) 2 SCALE 280 : (1993) 2 SCC 703 : (1993) 2 SCR 820 , the Apex Court held that public interest in government administration required preventing continuation of usurpation of office.

18. In The University of Mysore and Another Vs. C.D. Govinda Rao and Another, AIR 1965 SC 491 : (1964) 4 SCR 575 . The Hon"ble Mr. Justice Gajendragadkar, Former Chief Justice observed that a writ of quo warranto proceedings enables a judicial enquiry to determine whether the holder of a public office has a valid title to it. The writ can be issued to oust persons not entitled to their office or to remove usurpers of public offices. Before this writ can be claimed, the court must be satisfied of two things:-

- (1) The office in question is a public office; and
- (2) The holder is a usurper without legal authority.

19. In Statesman Private Ltd., vs. H.R. Deb, reported in AIR 1966 SC 1495, the Apex Court held that writ of quo warranto can be issued only when there is a clear infringement of the relevant legal provisions.

20. While considering the jurisdiction of the High Court to issue a Writ of Quo Warranto, Court at the outset should consider as to whether a prima facie case is made out. Exercise of discretion can be made only when appointment is contrary to the statutory rules and the directions issued while making appointment.

21. It is well settled law that a Writ of Quo-warranto is a writ which lies against a person who according to the relator, is not entitled to hold office or public in nature and is only an usurper of office. A writ of quo warranto is directed, against the person, should show by what authority he is entitled to hold the office. No doubt, a challenge can be made on various grounds including the grounds that the possessor of the office does not fulfil the required qualification or suffers from disqualification, de hors the person holds the said office. On the facts and circumstances of this case, alleged usurpation of office by the 6th respondent is not substantiated.

22. Though the present writ appeal, filed by a practicing Advocate, deserves to be dismissed with cost, we only wish to remind the appellant that the profession of an Advocate is noble. We wish that hereafterwards, the appellant would take

note of the above judgments and would not indulge, in filing such writ petitions.

23. In the result, the Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.