

(1994) 11 SC CK 0064

In the Supreme Court Of India

Case No : Civil Appeal No. Nil of 1994 (arising out of SLP (C) No's. 8172-73 of 1994)

K. Subramaniam

APPELLANT

Vs

Ponnusami and another

RESPONDENT

Date of Decision : 21-11-1994

Acts Referred:

Citation : AIR 1995 SC 2113 : (1995) 3 SCC 402 Supp

Hon'ble Judges : K. S. Paripoornan, J; J. S. Verma, J

Bench : Division Bench

Final Decision : Partly Allowed

Judgement

1. Leave granted. Heard.

2. The appellant was Advocate General of the State of Tamil Nadu. Writ Petition No. 4167 of 1994 and writ Miscellaneous Petition No. 9612 of 1994 were filed by one Ponnusami, Respondent No. 1 herein challenging his appointment as Advocate General. In that writ petition, a preliminary objection was raised to the maintainability of the writ petition. Prior to the impugned order dated 19-4-1994 (reported in Ponnusamy Vs. State of Tamil Nadu and another, made by Justice Kanakaraj of the Madras High Court holding that the writ petition was maintainable, earlier the same morning at 8-30 a.m. the appellant (Respondent No. 2 in the writ petition) tendered his resignation from the office of Advocate General. However, the intimation of this fact was not given to the High Court before the impugned order was pronounced that day. It is common ground before us that the said writ petition has now become infructuous on account of the fact that the appellant has resigned the office of Advocate General. The surviving grievance of the appellant is against certain observations made at the end of the impugned order dated 19-4-1994 by Kanakaraj, J. which cast some aspersion on the appellant.

3. The submission made by Shri Venugopal, learned Counsel for the appellant is,

that having held that the writ petition was maintainable there was no occasion to make any observations on the merits of the allegations contained in the writ petition without any enquiry there into, or a hearing given to the parties on the merits. Learned Counsel submitted that these observations contained in para 18 at the end of the impugned order of the learned single Judge are wholly unwarranted. Having heard learned counsel for the parties we are satisfied that this submission must be accepted.

4. The only question which required decision of the learned single Judge was whether the writ petition was maintainable. There was no occasion while deciding that the writ petition was maintainable, to also make observations relating to the merits of the allegations made in the writ petition relating to the personal character of the appellant. This alone is sufficient to hold that the observations so made, expressly and by inference therein, in para 18 of the order made by the learned single Judge Ponnusamy Vs. State of Tamil Nadu and another, being wholly unwarranted and unnecessary for deciding the question of maintainability of the writ petition, and that too without affording an opportunity to the appellant to show cause against the same, must be treated as expunged and ignored.

5. Since learned Counsel for respondent No. 1 (writ petitioner in the High Court) concedes that the writ petition filed in the High Court has become infructuous, nothing further need be said in this behalf. The formal order dismissing the writ petition must be made by the High Court, on a motion made to this effect in the High Court.

6. This appeal is partly allowed to the above extent. No costs.