

(1982) 11 MAD CK 0053
In the Madras High Court

K.M. Mutusamy

APPELLANT

Vs

The Commissioner, Panchayat Union and Another

RESPONDENT

Date of Decision : 10-11-1982

Acts Referred:

Constitution of India, 1950 — Article 226, 226(3)

Citation : (1983) 2 MLJ 271

Hon'ble Judges : S. Nainar Sundaram, J

Bench : Single Bench

Judgement

S. Nainar Sundaram, J.—The petitioner in Writ Petition No. 796 of 1977 is the appellant in this writ appeal. He was working as a Junior Assistant in. Thockanaickanpalayam Panchayat Union Council on his transfer from Sathia mangalam panchayat Union. While he was so working, it is alleged that he committed serious irregularities and he was suspended pending enquiry. We do not feel obliged to go into the merits of the charges levelled against the appellant in view of the scope of the controversy raised in the writ appeal. Disciplinary action was taken against him by the first respondent in 1976 and it ended in an order of removal from service on 11th June, 1976, passed by the first respondent. The appellant preferred an appeal to the second respondent and the appellant succeeded only in getting the order of punishment modified into one of reversion as a Record Clerk. This order of the second respondent was passed on 23rd December, 1976. Challenging the proceedings of the respondents, the appellant preferred the above the writ petition and Koshal, J., as he then was, who heard the matter dismissed it in limine, pointing out that there is another remedy by way of a civil suit open to the appellant, which he has not availed of and in view of the provisions of Article 226 of the Constitution of India, as it then stood the writ petition could not be entertained. The appellant has preferred the present writ appeal as against the order of the learned Judge.

2. Mr. K.V. Sankaran, learned Counsel for the appellant, submits that on the relevant dates, the first respondent had no competency and jurisdiction to

initiate disciplinary action and pass the order of removal from service which, however, has been modified in to one of reversion as stated above, and the learned Counsel points out that by virtue of G.O. Ms. No. 1300, R.D. & L.A. the ministerial staff, to which category the appellant admittedly belonged, became government servants from 1st June, 1974, and consequently, the authority to remove them from service, namely, the appointing authority, is only the District Collector concerned. We have been furnished with a copy of the said Government order and we find that this is the factual position. Learned Counsel further draws our attention to G.O. Ms. No. 422, R.D. & L.A., dated 9th March, 1977, which refers to the earlier G.O. Ms. No. 1300, R.D. & L.A., dated 1st April, 1974, and states that in respect of the provincialised staff of the Panchayat Union, the General Rules and the Special Rules for the Tamil Nadu Ministerial Service shall apply. On the basis of the above materials, learned Counsel for the appellant submits that the order passed by the first respondent totally lacked jurisdiction and the section respondent, by his order, only modified the punishment and hence, it is not proper to put the provisions of Article 226, Clause (3) as it stood in incorporated by the 42nd amendment, against the appellant, stating that the appellant has to exhaust an alternative remedy by means of a suit or any other process.

3. As against this submission of the learned Counsel for the appellant Mr. O. Chinnaswamy, Additional Government Pleader, submits that there is provision in the concerned rules governing the service of the Panchayat Union Establishment, which provides for a revision to the Director of Rural Development and even the question of lack of jurisdiction or competency can be agitated in such revision and in this view, Article 226, Clause (3) as it stood then, was a bar for the appellant invoking the jurisdiction of this Court under Article 226 of the Constitution of India. It is true that Article 226, Clause (3), as it stood then by virtue of the 42nd amendment, states that no petition for the redress of any in jury referred to in Sub-clause (b) or Sub-clause (c) of Clause (1) of Article 226 shall be entertained if any other remedy for such redress is provided for by or under any other law for the time being in force. But, the question is If the order or proceeding impugned is totally without jurisdiction, can it be stated that even then, Article 226, Clause (3), as it stood then, would operate as a bar for seeking redress and relief before this Court under Article 226.

4. In our view, if there was a total lack of jurisdiction or in other words, if the authority who purported to make the impugned order or initiate the impugned proceedings had no jurisdiction to do so, it is no answer to point out Article 226(3), as it stood then, to deny reliefs under Article 226. When there is ex Facie a lack of jurisdiction, it goes without saying that the orders impugned or proceeding challenged are abinitio void, are a nullity and are ultra Vires. In such a contingency, the party aggrieved is not bound to resort to any other remedy by way of an appeal or revision provided by the law concerned, which would in variable apply to orders passed under that law. If the impugned orders or proceedings completely fall outside the scope of the law concerned, or in other

words, have no backing of sanction of the said law, they are ex facie nullities and require deletion under Article 226, and Clause (3) thereof, as it stood then, cannot be invoked to stifle such remedies. There have been cases decided by Courts of this country on this point and it will not be superfluous if we refer to a few of them.

5. In Ahmedabad Cotton Mfg. Co. v. Union of India (1977) 18 Guj. L.R. 714 : AIR 1977 Guj. 113, a Full Bench of the High Court of Gujarat had to deal with the scope of Article 226(3), as it stood then, and the Full Bench has opined that a distinction should always be made where the order is a nullity as being ex facie without jurisdiction and in such a case where the challenge is on the ground that the order is ultra vires, the question of exhausting alternative remedy would hardly arise and the aggrieved person could straightway seek the remedy of judicial review. This judgment of the Full Bench has been relied on by the Additional Judicial Commissioner, Goa, Daman and Diu in Shantilal K. & Bros. v. A.C.A. Martins (1979) Tax. L.R. 2401, and there it has been pointed out that even assuming that an alternative remedy is available, if it is established that the authority concerned had no jurisdiction to initiate the proceedings, the existence of such alternative remedy may not be a bar for the issuance of the asked for writ. This decision has been rendered only with reference to Clause (3) of Article 226 of the Constitution of India, referred to above.

6. We do not want to multiply citations and, as we have already stated above, we are of the firm view that total lack of jurisdiction on the part of the authority who purported to pass the impugned order or initiate the proceedings will definitely enable the person aggrieved to approach this Court for redress and relief under Article 226 of the Constitution of India, and clause (3), as it stood incorporated in that Article by the 42nd Amendment cannot be put against the person concerned in such a contingency.

7. On the question as to whether the first respondent lacked jurisdiction to initiate proceeding and pass the order of removal from service, learned Addl. Government Pleader, Mr. C. Chinnaswamy, is not in a position to bring conviction to our mind that such proceeding or order was within the jurisdiction of the first respondent. He is unable to get over the implications of the Government orders referred to above and is content to state that the rules have not been consequentially amended. In our view, this would not alter the factual and the legal position that by virtue of the Government orders referred to above at the relevant point of time, the petitioner could only be deemed to be a Government servant and, as set out in the first Government Order dated 22nd May, 1974, the authority to take disciplinary action could only be the concerned Collector and not the first respondent. Hence, here we find case where proceedings have been initiated and orders have been passed by an authority who totally lacked jurisdiction to do so.

8. The learned Judge dismissed the writ petition in limine on the ground that another remedy by way of a civil suit is open to the appellant, which he has not

availed of. Before us, the respondents have filed a counter affidavit canvassing the ether aspects, which we have dealt with above. The general remedy of a suit, which the learned Judge has put against the appellant, cannot be equated to an efficacious alternative remedy on the facts and circumstances of the present case. As pointed out by the Full Bench of the Gujarat High Court in the decision referred to above:

The amplitude of the fetter would depend on the amplitude of such a Iterative remedy which is provided for direct attack by or under the other law in question and not on any general remedy of a civil suit by way of a collateral attack.

9. The reasons set out by us above compel us to interfere in writ appeal and accordingly, the writ appeal is allowed. Consequentially, Writ Petition No. 796 of 1977 will also stand allowed and the orders of the respondents will stand quashed. We make no order as to costs, both in the writ petition and the writ appeal. This judgment of curs will not stand in the way of the competent and appropriate authority taking disciplinary action against the appellant-petitioner in the writ petition under due process of law.