
(2007) 10 MAD CK 0079

In the Madras High Court

Case No : Writ Petition No's. 1694 of 2005, 37092 of 2006 and 32830 of 2007, W.P.M.P. No. 1881 of 2005 in Writ Petition No. 1694 of 2005, M.P. No. 1 of 2006 in Writ Petition No. 37092 of 2006 and M.P. No. 1 of 2007 in Writ Petition No. 32830 of 2007

M. Dakshinamoorthy

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 31-10-2007

Acts Referred:

Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 17

Citation : (2007) 10 MAD CK 0079

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : M. Gnanasekar, for the Appellant; M. Dhandapani, AGP, for the Respondent

Judgement

K. Chandru, J.—In the first writ petition being W.P. No. 1694 of 2005, the petitioner seeks for quashing the order dated 30.12.2004

wherein and by which he was transferred from Cuddalore Division to Villupuram Division along with his post and he was also relieved from

service. The writ petition was admitted on 24.01.2005. But, however, no ex parte interim order was granted. Subsequently, on 23.8.2005, an

interim stay was granted in W.P. M.P. No. 1881 of 2005. But the application in W.P.M.P. No. 1882 of 2005 was dismissed as not pressed. But,

however, the petitioner had neither joined duty at the post in Villupuram nor he was allowed to join duty at Cuddalore where he was working

earlier.

2. Thereafter, the petitioner filed another writ petition being W.P. No. 37092 of 2006 seeking for a direction to the second respondent Joint

Director of Agriculture to post him at Cuddalore in the office of the third respondent. That writ petition was merely directed to be posted along with the earlier writ petition, viz., W.P. No. 1694 of 2005 and no interim orders were granted in M.P. No. 1 of 2006.

3. In the third writ petition, viz., W.P. No. 31830 of 2007, a charge memo dated 04.10.2007 was issued to the petitioner under Rule 17(b) of the

Tamil Nadu Civil Service (Discipline and Appeal) Rules [for short, "Rules"]. When the matter came up on 12.10.2007, the learned Special

Government Pleader was directed to take notice and the matter was posted subsequently. Since the learned Counsel for the petitioner made a

mention that the petitioner is retiring on 31.10.2007 and, therefore, all the matters should be taken up together, all the three writ petitions were

listed on 26.10.2007.

4. I have heard the arguments of Mr. M. Gnanasekar, learned Counsel appearing for the petitioner in all these petitions and Mr. M.Dhandapani,

Assistant Government Pleader representing the respondents and have perused the records.

5. It is not known as to why the respondents did not obey the order of interim stay granted on 23.8.2005 in W.P. M.P. No. 1881 of 2005 in

W.P. No. 1694 of 2005 till date. No petition was filed either to vacate the interim order or to vary the order and no explanation is forthcoming

from the respondents. Even till date, the respondents have not filed any counter affidavit even though the matter was admitted as early as

24.01.2005. This forced the petitioner to file the second writ petition, viz. W.P. No. 37092 of 2006, which is yet to be admitted. Further, without

vacating the interim order and without filing any counter in the original writ petition, viz., W.P. No. 1694 of 2005, the respondents have framed the

charge memo dated 04.10.2007 under Rule 17(b) of the Rules. The first allegation in the Annexure I was that the petitioner had not obeyed the

order of transfer and he had been on leave without proper leave application thereby disobeyed the order of the superiors. The second charge is the

continuation of the first charge, viz., the petitioner, by absenting himself, had violated the Conduct Rules. The third and fourth charges were that he

had filed a writ petition challenging the transfer order and because of that fact, he has not applied for leave and this would amount to continued

disobedience and inspite of the charge memo levelled against him, he has been remaining absent on his own.

6. When a writ petition is pending against the shifting of the petitioner from Headquarters to Villupuram and an interim stay has also been in

subsistence, it is rather surprising as to how the respondents can frame a charge sheet in respect of the same allegations. It is also significant that

they have not filed any reply to the allegations made in the affidavit. This action of the respondents is contemacious and highly reprehensible and

that the respondents instead of framing a charge sheet under Rule 17(b) of the Rules, could have brought to the notice of this Court stating that the

action of the petitioner was unbecoming of a Government servant and that he ought to have joined in either of the stations. Instead of doing so, the

respondents have taken the law in their own hands and have framed a charge memo in respect of the conduct of the petitioner in not joining either

at the transferred place, viz., Villupuram, or at Cuddalore. In fact, the petitioner's attempt to join at Cuddalore itself was not fruitful and that forced

him to file W.P. No. 37092 of 2006.

7. Under the above circumstances, the charge memo dated 04.10.2007 issued to the petitioner under Rule 17(b) of the Rules will stand quashed.

It is only when final orders are passed in the writ petition challenging the order of transfer, the respondents can deal with such an issue and

especially in the context when there is an interim order of the transfer order given to the petitioner, the respondents should not have issued the

charge memo.

8. With reference to W.P. No. 1694 of 2005, it must be stated that it is not a mere case of transfer. It was due to reorganisation, the petitioner's

headquarters has been shifted and he has been transferred to Villupuram along with his post. The petitioner cannot contend that his juniors were

there and therefore, he will not join in the new station. By this process, the petitioner neither worked at the transferred place nor at the old station,

viz., Cuddalore. This action of the petitioner is totally unwarranted and the petitioner should have taken an appropriate application seeking for

suitable posting. By merely getting stay against the transfer along with the post especially when he was relieved from the original station, viz.,

Cuddalore, the petitioner has invited trouble to himself.

9. The second writ petition viz., W.P. No. 37092 of 2006 was not even admitted even though he sought for a direction to the respondents for

posting him at the old station. All that he should have done was to take out an application in the original writ petition, viz., W.P. No. 1694 of 2005

bringing to the notice of this Court about the interim order not being implemented by the respondents. In that way, filing of the second writ petition

in W.P. No. 37092 of 2006 is misconceived and accordingly, stands dismissed.

10. With reference to the first writ petition, viz., W.P. No. 1694 of 2005, the petitioner being unsuccessful in challenging the transfer order along

with the post, it was suggested that if the petitioner is willing to report at Villupuram on 31.10.2007, he may be permitted to join at that station. The

petitioner has filed a memo dated 26.10.2007 stating that he is willing to report at the place of transfer, viz., Villupuram. Under these

circumstances, the petitioner is directed to report for duty at Villupuram on 31.10.2007 before the Assistant Soil Chemist, Soil Testing Laboratory

at Villupuram forthwith. Since the petitioner had not worked in either of these stations, he will not be paid any salary for the period from

01.01.2005, viz., date of transfer, till 31.10.2007. However, it will be counted as service for other purposes, viz., for calculating pension and other

benefits. In fact, this order itself is being passed only on the memo filed by the petitioner on 26.10.2007 stating that he is willing to report to duty at

Villupuram and also for the reason that he is retiring from service on 31.10.2007. He shall be relieved from duty on 31.10.2007 since he had

reached the age of superannuation as the charge memo dated 04.10.2007 has also been quashed by this Court in the third writ petition, viz., W.P.

No. 32830 of 2007, filed by him.

11. All the three writ petitions are disposed of in the above terms. However, there will be no order as to costs. Consequently, connected

Miscellaneous Petitions are closed.