

(2009) 07 MAD CK 0122

In the Madras High Court

Case No : W.A. No. 973 of 2007 and M.P. No's. 1 and 2 of 2007

M. Jayaraman

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 16-07-2009

Acts Referred:

Citation : (2009) 6 MLJ 629

Hon'ble Judges : F.M. Ibrahim Kalifulla, J;B. Rajendran, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant; G. Desinghu, Special Government Pleader for Respondents 1, 3 and 4 and Sudharsana Sundar Standing Counsel for Respondents 2 and 6, for the Respondent

Final Decision : Dismissed

Judgement

F.M. Ibrahim Kalifulla, J.—The appellant seeks to challenge the order of the learned Single Judge dated 26.06.2007, passed in W.P.No.

5472 of 2005.

2. The petitioner joined the services of the second respondent Board as an Assistant Engineer on 10.11.1980. By an order dated 10.05.1999, he

was deputed to the Rural Development Department in the very same post of Assistant Engineer for a period of two years. Though the period of

deputation as per the said order dated 10.05.1999, was for a period of two years, he was allowed to work in the Rural Development Department

even after expiry of the initial period of two years.

3. Be that as it may, the appellant along with 126 Assistant Engineers were promoted temporarily as Assistant Executive Engineers by an order

dated 21.05.2004, of the second respondent. The petitioner's name was found in Serial No. 90 of the said proceedings. That apart, in the column

Present Station"" it was specifically mentioned that he was working in RWS Division, Madurai and that he was on O.D. with DRDA, Theni i.e. in the Department of Rural Development.

4. However, by an order dated 11.02.2005, on administrative grounds, the appellant was reverted back to the TWAD Board and was posted to the Northern Region, Vellore in the existing vacancy and he was directed to join duty in the new station forthwith after getting proper relief from the present station. In pursuance to the said order, the 4th respondent issued proceedings dated 14.02.2005, relieving the appellant from his duties with the district and directed him to contact the Chief Engineer of the second respondent Board, Northern Region, Vellore for reposting. It was at that stage, the petitioner has come forward with the writ petition seeking to challenge the proceedings dated 11.02.2005, of the second respondent as well as the relieving order dated 14.02.2005, of the 4th respondent.

5. Initially an order of status quo was ordered on 18.02.2005, in W.P.M.P. 5988 of 2005 in W.P. No. 5427 of 2005. In the meantime, the Chief Engineer of Northern Region by an order dated 16.02.2005, directed the appellant to report to the P.F. Divn. I, Vellore under the control of the Superintending Engineer of Vellore-Tiruvanamalai Circle.

6. The said interim order was subsequently vacated by this Court on 14.03.2008, when the writ petition was taken up for final hearing. The appellant apart from challenging the proceedings dated 11.02.2005 and 14.02.2005, of the second and the fourth respondent, also sought for a direction to implement the D.O. letter of the State Government dated 21.07.2005. The learned Single Judge after hearing the appellant, as well as, the standing counsel for the respondent Board and the Government Pleader for the State dismissed the writ petition by holding that persons on deputation will continue to remain on deputation unless, as per the permissible rules or regulations, his service stood absorbed in the borrowing department. The learned Judge while examining the facts involved herein held that a mere continuance of the appellant's engagement in the deputed post of the 4th respondent beyond the sanctioned period of two years by itself would not create any legal right in him to claim that his services should be deemed to have been regularised or absorbed on a regular basis in the Rural Development Department.

7. In this context, the learned Judge took note of the subsequent promotion in the post of Assistant Executive Engineer ordered by the second respondent in its communication dated 25.02.2002, which order specifically made it clear that the appellant's lien in the parent department continue to remain and that at no point of time his service stood transferred to the Rural Development Department. In this context, the learned Judge relied upon the decision of the Hon'ble Supreme Court reported in AIR 2000 Sc 2076 (Kunal Nanda v. Union of India and Anr.) which made it clear that unless the claim of deputationist for permanent absorption in the department where he works on deputation is based upon any statutory rule, regulation or order having the force of law, a deputationist cannot assert and succeed in any such claim for absorption. The law thus having been made very clear and as the same was applied by the learned Single Judge to the facts of the present case, we do not find any scope to interfere with the same. It is not the case of the appellant that after his initial deputation on 10.05.1999, his service stood transferred to the Department in which he was deputed to work viz., Rural Development Department. On the other hand, as rightly held by the learned Single Judge, the subsequent temporary promotion dated 25.02.2002, in the parent Department from the post of Assistant Engineer to the post of Assistant Executive Engineer, made it very clear that even after four years, the lien of the appellant service continued with the second respondent Board.

8. In any event, there is absolutely no order passed by either the second respondent or the fourth respondent or the first respondent State Government transferring the service of the appellant from the second respondent to the fourth respondent or by way of passing any positive order of absorption of the appellant into the services of the fourth respondent. In such circumstances, the vain attempt of the appellant to rely upon the subsequent proceedings of the State Government in the D.O. Letter dated 21.07.2005, which came to be issued by the first respondent, in order to get over the action for contempt initiated based on the order of status quo dated 18.02.2005, can never be the basis for the appellant to claim that his service stood absorbed in the Rural Development Department. When such a contention was raised before the learned Judge, the learned Judge dealt with the same in the following manner in paragraph 8:

8. ...It is further submitted by the petitioner that the first respondent decided not to contest this writ petition and wrote a letter dated 21.07.2005, addressed to the fourth respondent, instructing to withdraw the counter filed in this writ petition, which was stated to have been filed by the fourth respondent without the permission of the first respondent and restore him in the previous post and prayed for a direction to implement the said letter. The said letter dated 21.07.2005, was issued under the impression that the status-quo order dated 18.02.2005 was in force, but the same was vacated by this Court by order dated 14.03.2005 itself, hence, it became infructuous at this stage.

9. We fully concur with the conclusion of the learned Single Judge in regard to the submission made based on the D.O. Letter of the first respondent dated 21.07.2005. In the light of our above conclusion, we do not find any merit in this writ appeal.

10. Further, when this writ appeal was initially entertained, while dealing with the application for stay, the appellant was directed to join duty in his parent department and the respondents were also directed to give him an order of posting in the parent department at Madurai itself and the appellant was issued a posting order at Madurai and he joined duty on 14.09.2007 and continue to discharge his duties till this date. However, it is learnt that for his failure to join duty after the dismissal of the stay petition dated 14.03.2005, charge memo was issued on 14.06.2005 and after enquiry by an order dated 28.02.2009, he has now been imposed with a punishment of increment cut for one year without cumulative effect. In as much as the second respondent has shown its gesture by granting the posting order and thereby enabled the appellant to join duty on and from 14.09.2005, we only direct the appellant to prefer necessary appeal against the present order dated 28.02.2009, before the appropriate authority.

We hope and trust that in order to put a quietus to the litigative intent by the appellant and also to ensure that he is allowed to concentrate on his duties without further distraction, appropriate orders will be passed by the second respondent Board by exhibiting its magnanimity which was displayed while reposting him and enabling him to join duty on 14.09.2007. The writ appeal however fails and the same is dismissed. If in the filing of the appeal by the appellant against the order dated 28.02.2009, any delay is involved, the second respondent shall consider the same

sympathetically, in order to pass appropriate orders in the main appeal itself. In the interest of justice we make it clear that, in as much as, the writ appeal has also been dismissed and the appellant has rejoined duty in the parent department viz., the second respondent, there should be no impediment for the second respondent to restore his services notionally as before i.e. as and from the date of his initial appointment, without any disruption, in order to enable him to gain his terminal benefits at a latter point of time. Consequently, the connected miscellaneous petitions are closed.