
(2003) 07 MAD CK 0180

In the Madras High Court

Case No : Writ Petition No. 5250 of 1996

N. Chennakesavalu, Sanitary Inspector

APPELLANT

Vs

The Commissioner, Salem Corporation

RESPONDENT

Date of Decision : 25-07-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 07 MAD CK 0180

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Advocate : K. Srinivasamurthy, for the Appellant; G. Sankaran, for the Respondent

Final Decision : Allowed

Judgement

K.P. Sivasubramaniam, J.—Petitioner prays for a declaration, declaring that the action of the respondent, Commissioner, Salem Corporation in denying the employment to the petitioner with effect from 30.1.1996 as arbitrary and illegal.

2. The petitioner claims to have joined service on 19.10.1961 and holding the post of Health Assistant, Tiruchengode Municipality. He was subsequently transferred to the Salem Corporation from 18.10.1994 as Sanitary Inspector. He was presently employed as Sanitary Inspector of the 32nd Division of the respondent Corporation.

3. It is further stated that the Inspector of Police Vigilance and Anti Corruption, Coimbatore sent a letter on 10.1.1996 to the respondent corporation stating that the petitioner's presence was required on 18.1.1996 in connection with a vigilance case against the Commissioner of Tirupur Municipality. Though the letter was received by the Commissioner even as early as on 11.1.1996, he gave it to the petitioner only in the evening on 18.1.1996 when the petitioner was expected to appear at 10.00 a.m. at Coimbatore. Therefore he was asked to appear on the next adjournment on 29.1.96 at Coimbatore. By the proceedings

dt. 22.1.96 the petitioner was relieved from duty on 25.1.1996 in order to enable him to appear before the Vigilance and Anti Corruption, Coimbatore Office on 29.1.1996. He was also informed that he was allowed to join duty after giving appearance certificate from the Vigilance and Anti Corruption Office, Coimbatore. He was relieved on 25.1.1996 and he appeared before the Vigilance and Anti Corruption Office, Coimbatore on 29.1.1996. He reported to join duty on 30.1.1996 with a letter along with the certificate from the Vigilance and Anti Corruption Office stating that he had attended the enquiry on 29.1.1996.

4. According to the petitioner, in spite of the aforesaid facts, he was not allowed to work since 30.1.1996 even though he had signed in the attendance register on 30.1.1996 to 6.2.1996. However from 7.2.1996 he was denied the entry to the office by the Sanitary Inspector, in charge of the Division with instructions from the Commissioner of the respondent Corporation. The petitioner was representing every day to the Commissioner orally, but there was no response. On 7.3.1996 the petitioner has given written representation representing in person to allow him to resume work. As there was no reply, again on 10.4.1996 he sent a letter registered with acknowledgement both to the Commissioner as well as to the Secretary of the Municipal Administration and Water Supply Department, Chennai. Even to the said letter there was no reply and he was due to retire on 28.2.1997 after putting 36 years of service.

5. The petitioner further states that when he represented orally to the Commissioner, he told him that as he (the petitioner) goes to court regularly, he can approach the court and get suitable orders. The action of the respondent in not allowing the petitioner to resume work in spite of having complied with the direction by submitting a letter along with the certificate from the Vigilance and Anti Corruption Department, as required by the Commissioner, the refusal to allow him to join duties was arbitrary. Hence the above writ petition.

6. The above writ petition was taken up for hearing on several occasions and adjourned several times, at the request of the respondents to file counter. Though notice has been taken on behalf of the respondent during 1999 itself, after the writ petition has been listed for hearing the counsel for the respondent had been frequently requesting only for adjournment for filing counter. The following is the observation of P. Sathasivam, J., on 10.11.1999:-

"Mr. G. Shankar, who appears for the respondent seeks some reasonable time to get instruction. Though this court has ordered notice of motion as early as on 24.4.96, it is unfortunate that the respondent has not sent any information or instruction to the counsel concerned. Accordingly, call this matter after two weeks"

It is more than 3-1/2 years after the above observations had been made and yet the respondent would not file a counter or produce the file. On 22.4.2002, 29.4.2002 when the matter was came up before C. Nagappan, J., enquiry was adjourned, after summer vacation. Subsequently, when the matter came up for

hearing on 29.4.2002 at the request of the respondent it was adjourned to 30.6.2003 and again on 20.7.2003 at the request of the respondent it was adjourned to 7.7.2003. On 23.7.2003, as there was no representation on behalf of the respondent, it is posted today for orders. Today, also adjournment is sought for by the respondent counsel for filing counter. Learned counsel for the respondent states that the respondent is unable to trace the file relating to the issue raised in the writ petition.

7. Learned counsel for the respondent also states that if the petitioner had reported before the respondent to join duty, there was no reason for not allowing him to join duty. He would not have reported before the appropriate authority.

8. I have considered the submissions of both sides. The petitioner had clearly averred that he is a permanent employee, who was required to report before the Vigilance and Anti Corruption Department for enquiry at Coimbatore in relation to a Vigilance case against the Commissioner of another Municipality. He has also positively stated that his presence was required on 18.1.1996 in connection with Vigilance and Anti Corruption case and even though the same has been received on 18.1.1996 for reasons known to the Commissioner, it was given to the petitioner only on the evening of 18.1.1996 whereas the petitioner ought to have appeared before the authorities in the morning itself. Subsequently, he was asked to appear on 29.1.1996. He was relieved from duty on 25.1.1996 with instruction to rejoin duty by producing appearance certificate from the Vigilance and Anti-Corruption office. The petitioner has positively stated that he reported to the authorities and returned back duty on 30.1.1996 with a letter along with a certificate from the Vigilance Authorities showing that he had attended the enquiry on 29.1.1996. The hypothetical defence of the learned counsel for the respondent without any positive instructions has no basis at all, namely that the petitioner might not have reported to the appropriate officer before whom he should report. Apart from the fact that this contention is imaginary, such a technical defence in the background of the facts stated by the petitioner is not at all sustainable. If so, in answer to the letter from the petitioner, the Commissioner could have replied to him in writing about the same.

9. The petitioner has also positively averred that in spite of the aforesaid circumstances, he was not allowed to join duty after making several oral representations to the Commissioner. The Commissioner was also alleged to have told him that he can go to court for getting any suitable orders. There is no reason to disbelieve the petitioner's contention that he had sent a letter through Registered Post with Acknowledgement, to the Commissioner Corporation of Salem, on 10.4.1996. a copy of which has been marked to the Secretary, Municipal Administration and Water Supply Department, Chennai. In fact, the said complaint has been issued on his behalf by the employees' association.

10. Therefore there is absolutely no reason to disbelieve or suspect the bona fides of the petitioner especially in the absence of any explanation from respondent in spite of several adjournments. Apparently, there is no explanation

to be offered in defence of the said commissioner's high-handedness.

11. In the mean time, the petitioner has retired from service with effect from 28.2.1997. The learned counsel for the petitioner states that he has not yet received salary from 30.1.1996 onwards and that he has no instruction as regards the retirement benefits due to the petitioner are being paid to him.

12. Having regard to the aforesaid circumstances, and there being no denial of the allegations it has to be held that the then Commissioner of Salem Municipality had for ulterior reasons prevented the petitioner from joining duty because he has dared to give evidence before the Vigilance about another Commissioner. The conduct of the commissioner, Salem Corporation who was functioning at the relevant point of time is illegal and if there was any proper reason, he would have certainly come forward with a counter-affidavit denying the serious allegations against him. But in spite of such serious allegations, the respondent has not come forward to file a counter affidavit or produced any records to the court through the counsel. Though he has taken care to engage a counsel and is aware of the allegations against him, he has not given proper instructions for filing counter. Therefore there is no reason to disbelieve the various allegations made by the petitioner in the affidavit and in the result, he is entitled to succeed.

13. In the result, the writ petition is allowed with costs against the individual officer, who was the then Commissioner of Salem Corporation on 30.1.1996. Counsel fee is fixed at Rs.5000/- to be paid by him individually. It is also made clear that if the petitioner has been deprived of the retirement benefits, he is eligible for retirement benefits and also for arrears of salary if any, till date of his retirement.