
(2012) 11 MAD CK 0258
In the Madras High Court
Case No : W.A. No. 2388 of 2012

P. Saravanan

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-11-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) LabIC 88

Hon'ble Judges : M.Y. Eqbal, C.J.; T.S. Sivagnanam, J

Bench : Division Bench

Advocate : M. Gnanasekar, for the Appellant; N. Mala, AGP (Puducherry), for the Respondent

Final Decision : Dismissed

Judgement

1. This writ appeal is directed against the judgment and order, dated 4.7.2012 passed in W.P. No. 17001 of 2012, whereby the learned single Judge dismissed the said writ petition filed by the appellant/writ petitioner challenging the appointment of the fifth respondent as Law Secretary in the Union Territory of Puducherry. The writ petition was filed by the appellant/writ petitioner under Article 226 of the Constitution of India seeking for the issuance of a writ of quo warranto questioning the authority under which the fifth respondent is functioning as the Law Secretary to the Government of Puducherry.

2. The petitioner's case is that the fifth respondent, who was holding the post of Deputy Secretary to the Government (Law), Puducherry, was promoted to the post of Secretary to Government (Law), Puducherry by virtue of G.O. Ms. No. 49, Department of Personnel and Administrative Reforms (Personnel Wing), dated 9.5.2012 issued by the first respondent. According to the petitioner, earlier there was a proposal to give only additional charge to the fifth respondent, but, taking into consideration that the fifth respondent was going to retire in another six months, the first respondent issued the notification appointing him as the Law Secretary to Government, which is contrary to the Recruitment Rules, since the

fifth respondent was not qualified for holding the said post. Therefore, he has filed a representation, dated 28.5.2012 before the respondents requesting the Government of Puducherry to cancel the appointment made in favour of the fifth respondent and intimate the Union Public Service Commission to fill up the post on regular basis.

3. The stand taken by the learned Additional Government Pleader appearing for the respondent-Union Territory of Puducherry is that the said appointment is purely temporary and ad hoc in nature till the regular selection of Law Secretary is made by the Government. Hence, the writ petition is not maintainable. The learned single Judge, relying upon the ratio decided by the Supreme Court in the case of B. Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees' Association and Others,) dismissed the writ petition.

4. We have heard the learned counsel appearing for the appellant and the learned Additional Government Pleader (Puducherry) appearing for the respondent-Union Territory of Puducherry.

5. The notification, dated 9.5.2012, by which, the fifth respondent was appointed on ad hoc basis as Law Secretary is reproduced hereinbelow:--

GOVERNMENT OF PUDUCHERRY ABSTRACT

Promotion of Thiru A. Ragou, Deputy Secretary to Government (Law) as Secretary to Government (Law), Puducherry on ad hoc basis -- Orders -- Issued.

DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS (PERSONNEL WING)

* * *

G.O. Ms. No. 49 Puducherry, dated 9-5-2012

READ: Note No. 1234/Estt/LD/2012, dated 24.4.2012 of the Secretary to Government (Law), Puducherry.

* * *

ORDER:

The following Notification shall be published in the State Gazette:

NOTIFICATION

The Lieutenant Governor, Puducherry is pleased to order with immediate effect that Thiru A. Ragou, Deputy Secretary to Government (Law), Puducherry is promoted as Secretary to Government (Law), Puducherry purely on ad hoc basis till the post is filled up on regular basis.

2. He shall draw his pay and allowances in the Pay Band-4 Rs. 37,400-67,000 with Grade Pay Rs. 8,700/-.

M. SATHIYAVATHY

CHIEF SECRETARY TO GOVERNMENT

To

The Director of Stationery and Printing Puducherry -- for publication in the Gazette.

6. From a bare perusal of the impugned Government Order it is manifestly clear that the fifth respondent, who was holding the post of Deputy Secretary to Government (Law), Puducherry has been given promotion as Secretary to Government (Law), Puducherry purely on ad hoc basis till the post is filled up on regular basis. Hence, it is nothing but a stop-gap arrangement. In the aforesaid premises, the question that falls for consideration is as to whether a Writ of Quo Warranto can be entertained challenging the authority of the fifth respondent to hold the post in question purely on ad hoc basis.

7. In a Writ of Quo Warranto, what are the conditions to be satisfied have been discussed in the case of *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, While discussing the principles His Lordship P.B. Gajendragadkar, J. observed:--

Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the public from usurpers of public office; in some cases, persons, not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the Courts to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the Court, inter alia, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not.

8. It is well settled that the High Court in exercise of its writ jurisdiction in the matter of issuance of a Writ of Quo Warranto is required to determine at the outset as to whether a case has been made out for the issuance of such a writ. The

jurisdiction of the Court is a limited one and such a writ can only be issued when a substantive appointment is made contrary to the statutory rules. The question with regard to the issuance of a Writ of Quo Warranto challenging an ad hoc appointment has been settled by the Supreme Court in the case of B. Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees' Association and Others, wherein their Lordships observed:--

43. Whether a writ of quo warranto lies to challenge an appointment made "until further orders" on the ground that it is not a regular appointment? Whether the High Court failed to follow the settled law that a writ of quo warranto cannot be issued unless there is a clear violation of law? The order appointing the appellant clearly stated that the appointment is until further orders. The terms and conditions of appointment made it clear that the appointment is temporary and is until further orders. In such a situation, the High Court, in our view, erred in law in issuing a writ of quo warranto the rights under Article 226 which can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus.

9. It is equally well settled that any temporary promotion on ad hoc basis does not create any right to the said post, merely because of the fact that the person so promoted on ad hoc basis was given the monetary benefits of that post.

10. Learned single Judge while dismissing the writ petition has rightly directed the Government to fill up the post on regular basis as expeditiously as possible. We, therefore, reiterate that the Government shall take immediate steps to fill up the post of Secretary to Government (Law), Puducherry on regular basis. For the aforesaid reasons, we do not find any merit in this appeal, which is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.