

(2009) 01 MAD CK 0181

In the Madras High Court

Case No : Writ Petition No's. 4373 and 4374 of 1999 and 770 and 771 of 2000 and W.M.P. No's. 1141 to 1144 of 2000

S. Deva Arul and D. Raja Sundar Singh

APPELLANT

Vs

The Executive Officer, Vellimalai Town Panchayat and The Assistant Director of Town Panchayat

RESPONDENT

Date of Decision : 23-01-2009

Acts Referred:

Citation : (2009) 01 MAD CK 0181

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : A. Amalraj, for the Appellant; Thankasivan, (R1) and A. Arumugam, Spl.G.P.(R2), for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—W.P. Nos. 4373 of 1999 and 770 of 2000 have been filed by one Deva Arul. Likewise, W.P. Nos. 4374 of 1999 and

771 of 2000 have been filed by one Raja Sundar Singh.

2. In W.P. No. 4373 of 1999, the prayer of the petitioner is for a direction to the respondents to reinstate the petitioner in service with backwages

together with interest, continuity of service and other allowances. Similar prayer has also been made by the petitioner in W.P. No. 4374 of 1999.

Notice of motion was ordered in both the writ petitions on 17.3.1999. Subsequently, they were admitted on 07.7.1999. In the applications for

interim injunction, this Court by an order dated 07.7.1999 passed the following order:

Serious allegations have been made in the counter affidavit filed by the respondents including fabrication of Government Orders. The entire claim of

the petitioners is based upon such fabricated Government Orders, which is the subject matter of criminal investigation. The petitioners according to

the counsel for the third respondent were temporary employees. As serious allegations have been made, this Court is not inclined to issue interim

injunction as prayed for in the WMPs. Hence, these petitions are dismissed.

2. Instead, liberty is given to the respondent to initiate proceedings forthwith and also pass appropriate orders with respect to the petitioners to

keep them away from the office and pass appropriate orders with respect to payment of subsistence allowance within six weeks from today.

(Emphasis Added)

3. In the light of the direction given by this Court, the respondent Executive Officer of Vellimalai Town Panchayat passed the following order in his

proceedings dated 13.8.1999:

The Honourable Judge has ordered to take disciplinary action against Mr. S. Deva Arul and Mr. D. Raja Sunder Singh and during the suspension

period subsistence allowance to be paid and the proceedings has to be completed within six weeks from the date of order. Hence the advice of the

Assistant Director Town Panchayat was asked as per ref. No. 2 stated above.

The Assistant Director of Town Panchayat in his urgent memo dated 28.7.1999 asked to take action and impleadment (sic. implement) the order

of the High Court. The G.O. was considered to be forgery one and action being initiated against those responsible for and the enquiries pending.

Water Supply Attenders Mr. S. Deva Arul and D. Raja Sunder Singh are the beneficiaries of the forged G.O. and who are appointed daily wages

and they will not come under the Town Panchayat Employees Service Rules. The abovesaid matter is considered to be an offence and the

enquiries pending the two persons cannot be put under suspension and hence they were removed from service.

Again, the forged G.O. and the two employees were promoted from daily wages to scale of pay was wrong and hence they are not entitled for

subsistence allowance during suspension period as there is no provision in the Town Panchayat Employees Service Rules. Therefore, the above

two employees are not entitled for any subsistence allowance for the period of suspension.

To Mr. Deva Arul from 15.7.1997 to 03.9.1997 a sum of Rs. 2,811/- was paid for

subsistence allowance. The abovesaid employees got benefit due to the forged G.O. Their service has to be treated from scale of pay to daily wages and as there is no provision to pay subsistence allowance for daily wages. Therefore Mr. Deva Arul hereby directed to repay the sum of Rs. 2,811/- to the Town Panchayat.

4. Similarly, the petitioners moved this Court by filing W.P. Nos. 770 and 771 of 2000 challenging the aforesaid order dated 13.8.1999 and also sought for setting aside the said order with a further direction to grant reinstatement with backwages together with interest at the rate of 18%. Both the writ petitions were admitted on 19.1.2000. In the application for interim injunction and the application for direction to disburse subsistence allowance, notice was ordered. It was also ordered that no appointment should be made in the posts held by the petitioners. Thereafter, the matters were listed for final disposal. In the meanwhile, on behalf of the Executive Officer, a counter affidavit dated 06.4.1999 was filed by the first respondent in W.P. Nos. 4373 and 4374 of 1999. In view of the interconnectivity between the two writ petitions and as they arose out of a common order passed, all the writ petitions were heard together and a common order is being passed.

5. Mr. S. Thankasivan, learned Counsel appearing for the first respondent had also filed a typed set of papers containing the circumstances that led to the action being taken against the petitioners. Mr. Amalraj, learned Counsel for the petitioners submitted that before filing these writ petitions, the petitioners earlier came up against the order of suspension dated 16.7.1997 and 06.3.1998. This Court in W.P. No. 12897 of 1997 directed the subsistence allowance to be paid to the first petitioner Deva Arul. Once again in W.P. Nos. 12897 and 3683 of 1998 by an order dated 16.9.1998, this Court set aside the suspension order on the ground that no suspension can be made without framing charge memo. It was subsequent to the said order, the two writ petitions have been filed, viz., W.P. Nos. 4373 and 4374 of 1999 seeking for restoration to service.

6. It was found out that the petitioners have fabricated an order to show as if the Government had passed G.O. No. 21, Rural Development Department, dated 03.1.1997 bringing the Water Supply Attenders, viz., the two petitioners, into the time scale of pay. Using the said forged

Government Order, they have obtained scale of pay. Further fabricating another order claiming to be G.O. No. 357, Rural Development

Department, dated 15.9.1997, they got themselves appointed as Record Clerks. When complaints were sent to the District Collector, the District

Collector directed the Executive Officer to take immediate action and to suspend the two petitioners.

7. It was thereafter the suspension orders came to be made. The matter was also enquired by the Vigilance Inspector attached to the Directorate

of Vigilance and Anti-Corruption Department. The Vigilance Inspector informed the Executive Officer not to conduct any enquiry since the

vigilance was conducting an enquiry in this regard. It was because of this communication, no further action was taken by them. Thereafter, the

matter was referred to an enquiry by the Commissioner for Disciplinary Proceedings. The petitioners were informed about it by the Commissioner

for Disciplinary Proceedings, Nagercoil vide communication dated 12.1.2007. In that communication they were directed to peruse the records. By

a further communication dated 12.1.2007, charges were framed against the petitioner as well as several other persons. A list of witnesses had also

been given to the petitioners in respect of the three charges framed against them.

8. When all these factors were brought to the notice the learned Counsel for the petitioners had nothing to comment. The petitioners in these writ

petitions never made any averments nor gave any information with reference to the enquiry pending before the Commissioner for Disciplinary

Proceedings referred to above.

9. Mr. Amalraj, learned Counsel for the petitioner tried to contend that pursuant to the order passed by this Court, they were entitled to be

restored to service and it was a gross disobedience of the orders of this Court, dated 16.9.1998. However, the petitioners have failed to note that

in the subsequent writ petitions, this Court by an order dated 07.7.1999 had permitted the enquiry proceedings to go on. There were serious

allegations made against the petitioners. Therefore the petitioners cannot rely upon the old order. Secondly, the petitioners have never disclosed the

nature of the allegations made against them. In any event, it has now brought to the notice of this Court the charge memo framed by the

Commissioner for Disciplinary Proceedings dated 12.1.2007 in respect of the two petitioners. It was stated that in collusion with several others, they have falsely created a document as if it was a Government Order and on the basis of the said Government Order they have also obtained the scale of pay. Further by fabricating some more documents they have also got the post of Record Clerks. It was also stated that they have caused heavy loss to the Government by improperly drawing salary. When such serious charges are pending against the petitioner, reliance placed by the petitioners to the judgment of the Supreme Court in Commissioner, Karnataka Housing Board v. C. Muddaiah reported in (2007) 7 SCC 689 has no relevance.

10. In fact, the second set of writ petitions was filed in the year 2000 even when the first two writ petitions filed in the year 1999 for similar relief were pending. It was only by the interim order passed in those writ petitions, the impugned order dated 13.8.1999 came to be made by the Executive Officer. It is rather unfortunate that the petitioners should challenge an order which came to be passed pursuant to the direction given by this Court.

11. Hence, all the four writ petitions are totally misconceived, devoid of merits and accordingly, they are dismissed. It is for the petitioner to participate in the disciplinary proceedings initiated by the Commissioner for Disciplinary Proceedings, Nagercoil, await for a final order to be passed by him and thereafter work out their remedies. Consequently, the connected miscellaneous petitions are also dismissed. There will be no order as to costs.