

(2010) 11 MAD CK 0124

In the Madras High Court

Case No : Writ Petition (MD) No. 12757 of 2009 and M.P. (MD) No's. 1 and 2 of 2009

S. Elavarasan

APPELLANT

Vs

The District Collector, The Block Development Officer (VP),
Gandharvakottai Panchayat Union, The President, Nodiyur
Panchayat, Gandharvakottai Union and Sivakumaran

RESPONDENT

Date of Decision : 01-11-2010

Acts Referred:

Tamil Nadu Panchayats Act, 1994 — Section 106

Citation : (2010) 11 MAD CK 0124

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : G. Thalaimutharasu, for the Appellant; V. Rajasekaran, Spl. G.P. for R1, S.C. Herold Singh, G.A. for R2 and R3 and R. Singaravelan, for R4, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner, who was a Panchayat Assistant in the Nodiyur Panchayat, has come forward to challenge the order passed by the District Collector, Pudukkottai, the first Respondent dated 25.11.2009.

2. The provocation for passing the impugned order was due to the earlier Writ petition filed by the Petitioner in W.P.(MD) No. 11059 of 2009 wherein this Court by order dated 02.11.2009, directed the Petitioner's representation to be considered. It is pursuant to the said direction, the District Collector passed the impugned order. The Petitioner was informed that he was appointed on account of a vacancy caused due to the removal of the earlier incumbent to the office by name Sivakumaran. The said S. Sivakumaran challenging the suspension, moved this Court in W.P.(MD) No. 8382 of 2007 and this Court by order dated 07.10.2009 set aside the order of suspension and directed to reinstate him in service. Therefore, in order to give effect to this order passed by this Court, the

said S. Sivakumaran i.e., the 4th Respondent was reinstated as a Panchayat Assistant of Nodiyur Panchayat.

3. The District Collector also informed that in respect of the Panchayat Assistant, there is only one post in the Panchayat and the said post cannot be occupied by two persons. Therefore, his request for restoration to the post will not arise. Challenging the same, the present Writ petition has been filed.

4. When the matter came up on 04.12.2009, the Counsel for the Respondents took notice on behalf of the official Respondent. A counter affidavit dated 11.06.2010 was also filed.

5. Mr. R. Singaravelan, learned standing Counsel for the 4th Respondent also adopted the arguments made there under.

6. The contention of the Petitioner in the affidavit was that the action of the Respondents was arbitrary and violative of Article 14 and 16. Only because to give effect to the orders of this Court, the Petitioner cannot be discharged from the said post and the official Respondents have misconstrued the order passed by this Court. It is also stated that at this point of time, the Petitioner cannot be disturbed and what has been settled cannot be unsettled after a long lapse of time.

7. Per contra, in the counter affidavit, it is stated that the post of the Petitioner was only a part time Assistant and once the order of the High Court set aside the earlier order passed by the Panchayat in a Writ jurisdiction, there is no other option for the Respondents except to implement the same and the natural consequence is that the Petitioner will have to be removed. When there is no violation of either Article 14 or 16, after making some submission, the Petitioner also filed an additional affidavit dated 01.11.2010 stating that the District Collector may be directed to consider his long service and also the possibility of granting an alternative posting in any other Panchayat.

8. The first submission is that the authorities are not bound by the order of this Court. It is necessary to refer to the order passed by this Court in W.P.(MD) No. 8382 of 2007 dated 07.10.2009. The operative portion of the order in paragraph No. 8, this Court held as follows:

8. I had an occasion to consider a similar matter in the W.P. No. 9436 of 2007, wherein it has been clearly held that terminating the services of a Panchayat Assistant, without holding enquiry, is not valid and the President of a Panchayat Union has no power and jurisdiction to pass dismissal order, in view of Section 106 of the Tamil Nadu Panchayat Act.

9. In the said circumstances, the Writ petition is allowed and the impugned order is quashed. However, it is left to the concerned competent authority to take appropriate action, if so advised. The Respondents are directed to restore the Petitioner immediately into service, not less than four weeks from today.

9. Therefore, set aside the earlier order, this Court also fixed a time frame by which the 4th Respondent can be restored into service. It is needless to state that in the absence of any appeal being filed by the official Respondents or by the present Petitioner, the said order has become final and binding on the official Respondents. Therefore, no fault can be found with the stand taken by the Respondents in giving effect to the orders of this Court.

10. The other contention is that merely because a person, who succeeds in the Court, has been restored and that the Petitioner cannot be replaced, also cannot be accepted. The Supreme Court had an occasion to consider a similar contention vide judgment in *The Punjab National Bank Ltd. Vs. Its Workmen*, . In that judgment on account of an illegal strike of workmen, certain workmen were appointed in the place of the regular workmen and subsequently, by orders of the Court, those workmen were sought to be restored. The employers contended that if their restoration will be involved displacing of the new incumbent to the office. Rejecting the employers difficulty, the Supreme Court held in paragraph No. 63, which is as follows:

...The mere fact that the Bank may have employed some other persons in the meanwhile would not necessarily defeat such a claim for reinstatement. As has been held by this Court in the *National Transport and General Co. Ltd. v. The Workmen* Civil Appeal No. 312 of 1956, D/22-1-1957 (SC), however, much the court may sympathise with the employer's difficulty caused by the fact that after the wrongful dismissals in question he had engaged fresh hands, the court cannot "overlook the claims of the employees who, on the findings of the tribunals below had been wrongly dismissed". In the case of such wrongful dismissal the normal rule would be that the employees thus wrongfully dismissed must be reinstated.

The hardship in question, observed this Court, "has been brought about by the precipitate action of the Appellants themselves who dismissed their workmen without holding the usual enquiries after framing a proper charge against them. If they had proceeded in the usual way and given a full and fair opportunity to the workmen to place their case before the enquiring authority, the result may not have been so hard".

These observations are equally applicable to the conduct of the Bank in the present appeals.

Therefore, the second contention raised by the Petitioner also must fail.

11. But, the third contention is alternative submission raised in the additional affidavit. He had requested the first Respondent, the District Collector to consider his case for another employment. Therefore, while dismissing the Writ petition, a direction will issue to the first Respondent to consider the feasibility of engaging the Petitioner in some other needy Panchayat where there is a vacancy and over which the first Respondent can direct for such engagement.

12. With these observations, the Writ petition stands dismissed. No costs. Consequently, connected M.Ps. are closed.