

(2010) 02 MAD CK 0141

In the Madras High Court

Case No : Writ Petition No. 8694 of 2003 and W.P.M.P. No. 11137 of 2003

S. Kannan

APPELLANT

Vs

The District Collector, The Block Development Officer,
Thurinjapuram Panchayat Union and The President,
Meppathurai Village Panchayat

RESPONDENT

Date of Decision : 16-02-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2010) 4 LLJ 248 : (2010) 1 MLJ 792

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : D. Nisha, for C. Prakasam, for the Appellant; N. Senthilkumar, Additional Government Pleader for R1 and C. Babu, for V. Subbarrayan, for R2, for the Respondent

Judgement

M. Venugopal, J.—The petitioner has filed the writ of Certiorari in calling for the records of the third respondent in his proceedings dated

09.12.2002 removing the petitioner from the service of the third respondent as Water Overhead Tank Operator and to quash the same.

2. The petitioner was appointed as Water Overhead Tank Operator on 01.02.2000 by the Former Panchayat President of Meppathurai Village

Panchayat/third respondent and was paid a monthly salary of Rs. 350/-. The petitioner was working for three years and for three months, he was

not paid any salary and when he asked for the salary for the said three months immediately the third respondent passed the impugned order dated

09.12.2002 and served the same to him on 26.12.2002.

3. According to the learned Counsel for the petitioner, the petitioner was working in the third respondent/Panchayat Office for the past three years

(prior to the impugned order being served on him) as Water Overhead Tank Operator and the third respondent had not provided him any

opportunity to the petitioner to represent his case and the impugned order dated 09.12.2002 was issued without giving notice to the petitioner,

which is in gross violation of the principles of Natural Justice and already the first respondent/District Collector, Tiruvannamalai District had issued

a circular in Na.Ka.A8/2148/2002 dated 06.03.2002 by referring to the letter of the Government Secretary, Rural Development (E5)

Department, Secretariat, Chennai-9 wherein it was mentioned that the employees of the Village Panchayat servants prior to their termination ought

to be provided with a reasonable opportunity of obtaining their stand or explanation, etc., and also the sanitary employees and Motor Pump

employees who are working continuously ought not to be terminated and even if those servants are terminated, they have to be reappointed and

this instruction was issued to all the Presidents of the Village Panchayat and in short, the contention of the petitioner is that the third respondent had

not adhered to the circular of the District Collector dated 06.03.2002 referred to in supra and therefore prays for allowing the writ petition in the

interest of justice.

4. Continuing further, to lend support to the contention that the petitioner prior to his termination ought to have been given a notice or he should

have been heard, the learned Counsel for the petitioner relies on the decision of the Hon"ble Supreme Court in Ramesh Kumar v. State of Haryana

2010 CIJ 268 SC (1), wherein it is observed that "a casual labourer who has completed 240 days of continuous service may not be terminated

without giving notice or compensation in lieu of it in terms of Section 25F of the Industrial Disputes Act, 1947.

5. Learned Additional Government Pleader appearing for the first respondent contends that by virtue of the impugned order dated 09.12.2002

passed by the third respondent, it is clear that in the place of the petitioner one Mr. Govindasamy was appointed and his service was regularised,

etc., and the said individual Govindasamy was not impleaded by the petitioner in the present writ proceedings and therefore the present writ

petition filed by the petitioner is not maintainable because of the fact that Govindasamy who is a necessary and proper party to the proceedings

was not added as a party by the petitioner.

6. It is to be noted that an industrial dispute can be raised even after 9 years as per the decision of the Hon"ble Supreme Court in Assistant

Executive Engineer v. Shivalinga (2002) LLR 327 SC. Also the payment of retrenchment compensation simultaneously at the time of termination is

mandatory and its non compliance renders retrenchment void abinitio as per the decision of the Hon"ble Supreme Court in Krishna Bhadur v.

Purna Theatre and Ors. 2004 LLR 969 (SC).

7. It is not in dispute that the petitioner was appointed as Water Overhead Tank Operator on 01.02.2000 by the then President of the third

respondent and was paid a salary of Rs. 350/- per month. Later on by virtue of the impugned order dated 09.12.2002 passed by the third

respondent, the petitioner was terminated from service. The petitioner had filed this writ petition before this Court on 19.03.2003 after a lapse of

99 days. Even though the petitioner's appointment on 01.02.2000 on a monthly salary of Rs. 300/- was temporary one as seen from the

proceedings of the third respondent when the first respondent/District Collector had issued a Circular dated 06.03.2002 to all the Block

Development Officers of Tiruvannamalai District and also to the Special Deputy Collector (Public grievance Section) Tiruvannamalai and also to

the petitioner wherein he had referred to the Government's letter dated 20.11.2001 and also even requested the Sanitary Inspectors and the

Overhead Tank Operators who were removed were to be reappointed and the said termination of the petitioner apparently was in quite

contravention of the circular issued by the District Collector dated 06.03.2002 and because of the fact that in the place of petitioner another

person by name Govindasamy was appointed as seen from the impugned order dated 09.12.2002, this Court is of the considered view that the

petitioner can agitate the issue of his termination before the appropriate forum viz., the Labour Court as per the relevant provisions of the Industrial

Disputes Act by raising an industrial dispute in the manner known to law and in fact, the petitioner cannot approach this Court by means of writ

proceedings and accordingly with this observation, the writ petition is disposed of.

7. In the result, the writ petition is disposed of with a direction that the petitioner shall approach the competent Labour Court in raising an Industrial

Dispute as per the relevant provisions of the Industrial Dispute Act in the manner known to law and to seek proper remedy thereto. It is also open to the petitioner to implead the one Mr. Govindasamy as mentioned in the impugned order dated 09.12.2002. No costs. The connected miscellaneous petition is closed.