

(2010) 11 MAD CK 0242

Madras High Court

Case No: Writ Petition No. 40900 of 2006 (T) (O.A. No. 6271 of 2000)

I. Samidurai

APPELLANT

Vs

The Personal Assistant (General)
to the Collector

RESPONDENT

Date of Decision: Nov. 11, 2010

Acts Referred:

- Constitution of India, 1950 - Article 14

Hon'ble Judges: D. Hariparanthaman, J

Bench: Single Bench

Advocate: L. Chandrakumar, for the Appellant; Lita Srinivasan, Government Advocate, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

D. Hariparanthaman, J.

The Petitioner was appointed on daily wages as a Night Watchman and he joined the services on 01.07.1981, in the Taluk office of Tiruvidai Marudhur in Thanjavur District. The District Collector, Thanjavur District recommended for a creation of a permanent post of Night Watchman in the Office of the Tahsildar, Tiruvidai Marudhur, Thanjavur District on 24.03.1992. The Special Commissioner of Revenue Administration has also recommended the proposals of the District Collector referred to above in his letter dated 28.04.1992. Based on the aforesaid proposals of the District Collector as recommended by the Special Commissioner of Revenue Administration, the Government issued G.O. Ms. No. 780, Revenue (E1) Department, dated 26.08.1993, creating a Night Watchman post in the office of the Tahsildar, Tiruvidai Marudhur, Thanjavur District and the services of the Petitioner was regularised in the said post of Night Watchman. Thereafter, the Petitioner was granted scale of pay and he was also granted annual increment.

2. While so, the Respondent passed the impugned order dated 05.08.2000 reverting the Petitioner from the regular Night Watchman to daily wages Night Watchman (Masalchi). The Petitioner filed O.A. No. 6271 of 2000 (W.P. No. 40900 of 2006), to quash the aforesaid order dated 05.08.2000 of the Respondent. While admitting the O.A., the Tribunal granted interim stay 28.08.2008.
3. The Respondent filed reply affidavit refuting the allegations. According to the Respondent, the Petitioner is the junior most Masalchi and therefore he was reverted as there was no vacancy.
4. The learned Counsel for the Petitioner submits that the impugned order was passed in violation of principles of natural justice. The impugned order was passed without hearing the Petitioner. Further, he submitted that the Respondent has no jurisdiction to pass the order as the Petitioner was regularised by the Government, vide G.O. Ms. No. 780, Revenue (E1) Department, dated 26.08.1993 and prayed to quash the impugned order.
5. On the other hand, learned Government Advocate reiterates, what was stated in the Counter affidavit and seeks to dismiss the writ petition.
6. Heard Mr. L. Chandrakumar, learned Counsel appearing for the Petitioner and Mrs. Lita Srinivasan, learned Government Advocate appearing for the Respondent.
7. I have considered the submissions made on either side. The impugned order is a cryptic order. Nothing is stated in the impugned order i.e., no reason is given in the impugned order for reversion. Now the Respondent cannot furnish reasons that are not given in the impugned order. In any event, the impugned order was passed without notice and without hearing the Petitioner. It is well settled that any order resulting in civil consequences are cannot be passed by an authority without hearing the concerned person. Hence the order of the Respondent is violative of principles of natural justice and besides it is arbitrary and violative of Article 14 of the Constitution of India.
8. Further, as rightly contended by the learned Counsel for the Petitioner while the Government issued G.O. Ms. No. 780, Revenue (E1) Department, dated 26.08.1993 and regularised the services of the Petitioner by creating a post of regular Night Watchman, the Respondent has no power to revert him to a lower post that too after seven years after regularisation. For all these reasons, the writ Petitioner is entitled to succeed. Accordingly, the impugned order is quashed and the writ petition is allowed. No costs.