

(2011) 06 MAD CK 0479

Madras High Court

Case No: Writ Petition No. 9639 of 2010

S. Ulaganathan

APPELLANT

Vs

Registrar General,
High Court of Madras,
Chennai - 104 and
Another

RESPONDENT

Date of Decision: June 9, 2011

Citation: (2011) 6 MLJ 401

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

Bench: Division Bench

Advocate: S.T. Varadarajulu, for the Appellant; R. Tholgappian, S. Venkatesh, Government Pleader, assisted by T.N. Rajagopalan, Additional Government Pleader and R. Vijayakumar, Additional Government Pleader, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M.Y. Eqbal, C.J.

The instant writ petition has been filed by the petitioner seeking issuance of a writ of certiorarified mandamus to call for the records relating to the order of the 1st respondent in R.O.C. No. 7533/2003-B2 dated 6.5.2009, and quash the same and consequently direct the 1st respondent to regularize the suspension period from 6.11.2006 to 10.12.2007 and to pay difference in wage for the said suspension period.

2. The undisputed facts are that the petitioner was appointed as Civil Judge (Junior Division) on 10.12.1999 and posted as Additional District Munsif at Mayiladuthurai. At the relevant point of time viz., in 2003 the petitioner was functioning as the Principal District Munsif cum Judicial Magistrate, Cheyyar. During the surprise inspection made by the Principal District Judge, Thiruvannamalai in the petitioner's

Court 13 unfilled Remand Warrant Forms and unfilled Bail Forms, all duly signed by the petitioner, were seized from the custody of one Thiru. P.V. Raghunathan, who was the Head Clerk of ADM cum JM Court at Cheyyar. When the Principal District Judge questioned about the signed blank forms in the custody of Thiru. P.V. Raghunathan, the petitioner replied that he had handed over those signed blank forms to the Head Clerk, so that they could be used whenever need arises at the week end, when he will be out of station. Explanation was called for from the Head Clerk, who submitted that those signed forms in his custody were for the purpose of using them as and when circumstances warrant for such using. The petitioner also submitted his explanation, which was considered, and thereafter, it was resolved to place the petitioner under suspension and proceed with the enquiry. Accordingly, the petitioner was placed under suspension w.e.f. 6.11.2006 and a disciplinary proceeding was initiated. Charges were framed and an Enquiry Officer was appointed to conduct the departmental enquiry against the petitioner. In the meantime, the Administrative Committee of the High Court reviewed the performance of the judicial officers, including the petitioner, who were attaining the age of 50 years during the month of October, 2007. The Administrative Committee recommended to retire the petitioner compulsorily from service under FR56(2) on his attaining the age of 50 years as his continuance in service was found to be against public interest. The said decision of the Administrative Committee was duly approved by the Full Court of the Madras High Court and finally on 31.10.2007 the recommendation of the Full Court was forwarded to the Government requesting the Government to issue necessary orders for retiring the petitioner. However, in view of the guidelines issued by the Government of Tamil Nadu vide G.O. Ms. No. 623, Personnel and Administrative Reforms (Per-R) Department dated 14.7.1983 the suspension order of the petitioner was revoked and he was reinstated into service. Thereafter, the order of compulsory retirement was issued by the Government on 3.12.2007.

3. It is also not in dispute that the petitioner challenged the order of compulsory retirement by filing a writ petition being W.P. No. 6446 of 2008, which dismissed by a Division Bench of this Court in terms of its judgment and order dated 23.1.2009. The petitioner then filed a Review Petition against the order passed by the Division Bench, which was also dismissed on 30.7.2009. The petitioner then challenged the said order before the Supreme Court by filing a Special Leave Petition, which too was dismissed on 22.3.2010.

4. While the writ petition filed by the petitioner in W.P. No. 6446 of 2008 was pending before the Division Bench, the petitioner filed a representation to the High Court on 4.1.2008 requesting to regularize the period of suspension from 6.11.2006 to 10.12.2007 and for the settlement of the balance wages for the suspension period. The said representation remained pending because of the pendency of the writ petition. It was only after the writ petition was dismissed by the Division Bench, the Administrative Committee of the High Court considered his representation and

rejected the same. Hence, the petitioner made a prayer in the present writ petition for quashing the impugned order rejecting his representation and also for regularization of his suspension period, and further payment of backwages.

5. Mr. S.T. Varadarajulu, learned counsel appearing for the petitioner mainly contended that when the suspension order has been revoked and the petitioner was reinstated into service, it should be presumed that the enquiry proceeding was dropped, and he shall be deemed to be in regular service. Learned counsel further submitted that no reason has been assigned while rejecting the representation for regularization of suspension period. According to the learned counsel, while the petitioner was not punished in a departmental proceeding, then the refusal to regularize the period of, suspension is against the principles of natural justice.

6. We do not find any force in the submission made by the learned counsel appearing for the petitioner. From a perusal of the final order passed by the Division Bench in the earlier writ petition it transpires that in the said writ petition the petitioner sought an interim relief by filing a miscellaneous petition for payment of difference of wages for the suspension period from 6.11.2006 to 10.12.2007, which was disallowed and the miscellaneous petition was rejected.

7. As noticed above, as per the guidelines issued in G.O. Ms. No. 623 dated 14.7.1983 if any case of the government servant, who is under suspension, is recommended for compulsory retirement, he cannot straightaway be compulsorily retired under FR56(d) unless the suspension order is revoked in the first instance reinstating him into service. It is only under this guideline the suspension order of the petitioner was revoked and he was reinstated into service, so that the order of compulsory retirement could be given effect to. Hence, it is manifest that the suspension order was not revoked on the basis of any finding recorded in the departmental enquiry.

8. Be that as it may, the charges made against the petitioner are so serious that such Officer cannot be allowed to continue in service and should be removed forthwith. The petitioner, functioning as the Principal District Munsif cum Judicial Magistrate, Cheyyar used to hand over signed blank Remand Warrant Forms and Bail Order Forms to the Head Clerk for the purpose of using it, when circumstances warrant. Those blank signed forms were duly seized from the custody of the Head Clerk, who in his explanation has stated that those blank signed forms were used during the absence of the petitioner from his office. Hence, the question of revocation of suspension order and regularizing the period of suspension cannot and shall not arise.

9. In the facts and circumstances of the case, we are of the definite opinion that the representation filed by the petitioner for regularizing the period of suspension has been rightly rejected by the Administrative Committee of the High Court. The petitioner does not deserve any relief from this Court. Accordingly, this writ petition is dismissed. However, there will be no order as to costs.