

(2010) 12 MAD CK 0272

Madras High Court

Case No: Writ Petition No. 22613 of 2009

P. Vijay Kumar

APPELLANT

Vs

The Collector/Chairman, The
Additional Collector and The
District Coordinator (TSC)

RESPONDENT

Date of Decision: Dec. 15, 2010

Acts Referred:

- Industrial Disputes Act, 1947 - Section 17B

Hon'ble Judges: Vinod K. Sharma, J

Bench: Single Bench

Advocate: C.A. Sharmila, for the Appellant; P. Wilson, Additional Advocate General, for the Respondent

Judgement

Vinod K. Sharma, J.

The Petitioner by invoking the extraordinary supervisory jurisdiction of this Court, seeks a writ in the nature of certiorari for quashing the order dated 07.03.2009, vide which the Petitioner was placed under suspension.

2. The brief facts leading to the filing of this writ petition are that the Petitioner was served with a charge memo on 31.03.2009. The Petitioner submitted explanation to the charge memo. Thereafter another memo was issued to the Petitioner on 04.05.2009 which was followed by a suspension order on 07.05.2009. The order of suspension is under challenge in this writ petition.

3. The Respondent in pursuance to the charge sheet did not take any action on the charge memo nor any order of punishment was passed. The reason for not taking any punitive action against the Petitioner was under a wrong impression that he was a contract employee whose contract came to an end.

4. This Court while issuing notice directed the Respondents to pay subsistence allowance to the Petitioner if due, however the Respondents failed to comply with

the order passed by this Court.

5. The Petitioner thereafter filed a contempt petition for initiating contempt proceedings against the Respondents. On receipt of notice of this Court, the Respondents moved an application for vacation of the interim order, on the ground that the application on which interim order was passed, was moved u/s 17B of the Industrial Disputes Act. Therefore, the application itself was not competent as there was no award of the Labor Tribunal in favor of the Petitioner.

6. On consideration, I find no ground to vacate the stay order on this ground, for the reason that though Section 17B of the Industrial Disputes Act had no application to this case, for want of award of the Labor Tribunal as contended, but the interim order passed by this Court can be treated to be one u/s 151 of the Code of Civil Procedure. It is well settled law that mere wrong description of the provision of law, cannot be a ground to deny the relief to a party to which he or she is otherwise entitled to.

7. It was next contended by the learned Additional Advocate General that the suspension order infact is an order of termination. The Respondent merely used wrong terminology in describing the termination order to the suspension order, therefore impugned order gives no right to the Petitioner to invoke the writ jurisdiction, as the Petitioner was a contract employee and his service came to an end, on expiry of the contract period.

8. This contention again deserves to be rejected, as it is not disputed that the Respondents thereafter passed 5 an order dated 14.07.2009 terminating the services of the Petitioner by simplicitor order.

9. The passing of the subsequent order shows that the intention of the Respondent was to suspend the Petitioner for the charges levelled against him.

10. Keeping in view of the nature of the dispute, the learned Counsel for the parties agreed that the main writ petition itself be disposed off.

11. In support of the plea that the services of the Petitioner could be terminated, the learned Additional Advocate General vehemently contended that the Petitioner was a contractual employee, and his services came to an end on expiry of contract period, therefore Petitioner can not take advantage of suspension order to claim any subsistence allowance. It is also the contention of the learned Additional Advocate General that Petitioner can not take any advantage of issuance of charge sheet, as no action was taken there on.

12. This contention again is misconceived, though it is not in dispute that after issuing the charge sheet, no further action was taken, but this was for the reason that the Petitioner was treated be a contract employee.

13. The Petitioner has not challenged the order of termination, therefore, this Court feels that no opinion is required to be expressed at this stage, as to whether the order of termination can be sustained in law or not, as it will prejudice the case of either party, in case the Petitioner subsequently chooses to challenge the order of termination.

14. In view of the fact stated above, it cannot be disputed that the Petitioner cannot challenge the order of suspension, as it was passed pending departmental enquiry.

15. It was for the department to proceed with the departmental enquiry, but the Petitioner was in any case entitled to subsistence allowance during the period of suspension. In view of the fact that subsequently the Respondents chose to terminate the services of the Petitioner vide order dated 14.07.2009, the relief prayed with respect to the challenge to the order of suspension has been rendered in fructuous, 7 as the order of suspension would be deemed to have merged with the order of termination.

16. The very fact that the order of termination was passed not by way of punishment, it cannot be disputed that the Petitioner would be entitled to full salary from 07.05.2009 till 14.07.2009, for more than one reason: i.e.,

(i) that the case of the Respondents themselves is that the provisions of the fundamental rules are not applicable to the Petitioner. Therefore the Respondents had no right to suspend the Petitioner. It is well settled that in absence of any rule authoring the employer to suspend the employee, the inherent power can be exercised, but in that event, the employee is entitled to payment of full salary during the period of suspension.

(ii) that order of suspension did not result into any punitive order. Therefore, the salary for the period of suspension cannot be denied to the Petitioner.

17. For the reasons stated above, the writ petition is disposed off with a direction to the Respondents to release full salary to the Petitioner, interims of the letter of appointment for the period from 07.05.2009 to 14.07.2009, 8 within 15 days from the date of receipt of certified copy of this order. The Petitioner is given liberty to challenge the order of termination, if so advised in accordance with law. No costs.