

(2011) 11 MAD CK 0145

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 820 of 2011

C. Shenbagakumar

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision: Nov. 14, 2011

Acts Referred:

- Constitution of India, 1950 - Article 162, 309, 323A

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: V. Sasikumar, for the Appellant; T.S. Mohammed Mohideen, Additional Government Pleader for Respondents 1 and 2, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Honourable Mr. Justice K. Chandru

1. The petitioner is a third party in this writ petition. He seeks for a direction to the second respondent namely, the Deputy Inspector General of Police, Tirunelveli Division, Tirunelveli to consider his representation, dated 07.12.2010 in the light of the G.O.Ms.No.368, Personnel and Administrative Reforms Department, dated 18.10.1993 and pass further orders on his representation.

2. When the matter came up on 22.01.2011, notice of motion was granted. On notice from this Court, third respondent has filed a counter affidavit, dated "nil January 2011. The representation referred to namely dated 07.12.2010, a copy of which was found enclosed in Page Nos.39 to 42, the petitioner described himself as Advocate Clerk residing at Kovilpatti and he also states that the third respondent in the name of vehicle checkup, had ill-treated and tortured him and made a false complaint. He had also made complaints to the State Human Rights Commission and other higher authorities.

3. The second respondent stated that only after completion of the court case any action can be initiated against the third respondent. But however, the petitioner wants to rely upon the G.O.Ms.No.368, Personnel and Administrative Reforms Department, dated 18.10.1993 and Government Letter No.90586/94-2 PSAR, dated 17.05.1995 and on the strength of the said Government order and Government letter, he seeks for cancellation of the promotion made in favour of the third respondent from the post of Sub Inspector of Police to Inspector of Police.

4. In the counter affidavit, it is admitted that charge sheet was laid before the Judicial Magistrate No.1, Kovilpatti in C.C.No.387 of 2005 and the petitioner was acquitted in the criminal case. Mere acquittal of the petitioner, cannot lead to a conclusion that the case registered against her was a police case. In any event, the promotion given to her cannot be cancelled on the reasons set out by the petitioner and the pendency of the complaint before the State Human Rights Commission also cannot be a ground to deny her promotion. However, the petitioner has not made out any case for issuing the direction of this nature.

5. The Supreme Court in Dr. Duryodhan Sahu and Others Etc. Etc. Vs. Jitendra Kumar Mishra and Others Etc. Etc., held that a third party to a service person cannot file a writ petition seeking for a direction against the person in service to take action. In such cases, the writ petition is not maintainable. In paragraphs 18 and 19, the Supreme Court held as follows:

18. The constitution of Administrative Tribunals was necessitated because of the large pendency of cases relating to service matters in various courts in the country. It was expected that the setting up of Administrative Tribunals to deal exclusively in service matters would go a long way in not only reducing the burden of the courts but also provide to the persons covered by the Tribunals speedy relief in respect of their grievances. The basic idea as evident from the various provisions of the Act is that the Tribunal should quickly redress the grievances in relation to service matters. The definition of "service matters" found in Section 3(q) shows that in relation to a person, the expression means all service matters relating to the conditions of his service. The significance of the word "his" cannot be ignored. Section 3(b) defines the word "application" as an application made u/s 19. The latter section refers to "person aggrieved". In order to bring a matter before the Tribunal, an application has to be made and the same can be made only by a person aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal. We have already seen that the word "order" has been defined in the explanation to sub-section (1) of Section 19 so that all matters referred to in Section 3(q) as service matters could be brought before the Tribunal. If in that context Sections 14 and 15 are read, there is no doubt that a total stranger to the service concerned cannot make an application before the Tribunal. If public interest litigations at the instance of strangers are allowed to be entertained by the Tribunal, the very object of speedy disposal of service matters would get defeated.

19. Our attention has been drawn to a judgment of the Orissa Administrative Tribunal in Amitarani Khuntia v. State of Orissa. The Tribunal after considering the provisions of the Act held that a private citizen or a stranger having no existing right to any post and not intrinsically concerned with any service matter is not entitled to approach the Tribunal. The following passage in the judgment is relevant:

... A reading of the aforesaid provisions would mean that an application for redressal of grievances could be filed only by a "person aggrieved" within the meaning of the Act.

Tribunals are constituted under Article 323-A of the Constitution of India. The above article empowers Parliament to enact law providing for adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government and such law shall specify the jurisdiction, powers and authority which may be exercised by each of the said Tribunals. Thus, it follows that Administrative Tribunals are constituted for adjudication or trial of the disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts. Its jurisdiction and powers have been well defined in the Act. It does not enjoy any plenary power.

We agree with the above reasoning.

6. Assuming that the petitioner has any role to play the Government order and the Government letter will have no relevance in the matter of promotion to any service persons as the effect of the letter referred to by the petitioner as well as the Government letter came to be considered by the Full Bench of this Court in reported in [The Deputy Inspector General of Police and The Director General of Police Vs. V. Rani](#), After analysing all the Government Orders including the Government order referred by the petitioner, in paragraph 28 has observed as follows:

28.3. The detailed instructions issued by the Government in G.O.Ms.No.368, Personnel and Administrative Reforms Department dated 18.10.1993 issued by the Chief Secretary to Government by order of the Governor, cannot be equated to the statutory rules framed under the proviso to Article 309 of the Constitution of India and it can utmost be administrative instructions issued under Article 162 of the Constitution of India. In any event, the said Government Order does not deal with the case of promotion of a Government servant during the currency of punishment.

28.4. The Government letter No.18824/S/2005-2, Personnel and Administrative Reforms (S) Department dated 7.10.2005 with annexures 1 to 7 and the letter No.248 (P&AR) Department dated 20.10.1997 are not statutory rules framed under proviso Article 309 of the Constitution of India and cannot be read either with the

Tamil Nadu Government Servants Conduct Rules, 1973 or under the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules.

K. Chandru

7. In the light of the above, the prayer of the petitioner cannot be countenanced by this Court. Hence, the writ petition stands dismissed. No costs.