

P.Joseph Vs. the Tahsildar

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Court : Chennai

Decided On : Jul-03-2013

Judge : D.Hariparanthaman

Appellant : P.Joseph

Respondent : The Tahsildar

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

03. 07.2013 CORAM: THE HONOURABLE MR. JUSTICE D.HARIPARANTHAMAN W.P.No.17954 of 2013 & M.P.No.1 of 2013 P.Joseph .. Petitioner v 1.The Tahsildar, Tiruchengode Taluk, Tiruchengode. 2.The Revenue Divisional Officer, Tiruchengode . 3.The District Colelctaor, Namakkal District, Namakkal. .. Respondents Petition filed under Article 226 of the Constitution of India for the issuance of writ of Certiorarified Mandamus calling for the records on the file of the First Respondent in proceedings Na.Ka.No.23808/2012/A3 dated 31.10.2012 and quash the same and consequently direct the Respondents herein to reinstate the Petitioner with all consequential benefits For Petitioners : Mr.M.Ravi For Respondents : Mr.V.Subbiah, S.G.P.

ORDER

With the consent of both parties, the writ petition itself is taken up for final disposal.

2. Heard both sides.

3. The petitioner was appointed as Village Assistant by an order dated 26.12.1989 in Kumarapalayam Agraharam Village, Tiruchengode Taluk, Namakkal District. At the time of joining service he produced the medical certificate for his age. As per the medical certificate, the age of the petitioner is 33 years. In the service record, based on the medical certificate, the date of birth was recorded as 1.6.2006. While so, one Thiru Samuel Raj gave a complaint that the petitioner studied in a Government Higher Secondary School at Kumarapalayam and the date of birth is different one that was recorded in the service record. Hence, the said school was contacted and the school record was obtained. As per the school record, the date of birth of the petitioner was 15.6.1947. The father of the petitioner was a Scavenger, as per the school record.

4. Based on the school record, the petitioner was sought to be retired from service on 31.10.2012 by the impugned order dated 31.10.2012. It is stated therein that as per the date of birth, as recorded in the school record, the petitioner should have been retired from service on 30.06.2007.

5. However, the impugned order states that he was retired from service on 31.10.2012.

6. While so, the impugned order sought to recover the salary from 01.07.2007 to 31.10.2012.

7. The writ petition is filed to quash the aforesaid order dated 31.10.2012 and to direct the respondent to reinstate him with all benefits.

8. At the time of hearing, the learned counsel for the petitioner submitted that the petitioner would be satisfied if a portion of the impugned order seeking to recover the wages for 5 years four months from 01.07.2007 to 31.10.2012 is quashed. It is further submitted that the petitioner is not inclined to continue in service and he will treat it as retirement.

9. Learned Special Government Pleader has submitted that there is no illegality in recovering the wages for the period from 01.07.2007 to 31.10.2012, as the date of birth of the petitioner is 15.6.1947, as per the school record.

10. I have considered the submission made on either side.

11. The entire exercise was done by the first respondent behind the back of the petitioner. The first respondent obtained certain records from the Government Higher Secondary School, Kumarapalayam, and based on the same, the petitioner is sought to be retired from service on 31.10.2012.

12. Though the petitioner has filed this writ petition to quash the order retiring him from service, he has confined his relief in so far as the recovery that was ordered.

13. The impugned order was passed without notice and hence, the recovery for the wages paid from 01.07.2007 to 31.10.2012 without notice is bad and illegal. Further more, the petitioner served for these period and earned wages. Therefore, there is no reason to deprive wages, which the petitioner earned for these period. Even the petitioner has not chosen to question the order retiring him from service on 31.10.2012. But, according to him, the wages paid from 01.07.2007 to 31.10.2012 shall not be recovered, since the wages was earned by him by rendering service. In my view, the learned counsel for the petitioner is correct in his statement. No recovery could be ordered recovering the earned wages.

14. For all the aforesaid reasons, the portion of the impugned order seeking to recover the amount of wages paid from 01.07.2007 to 31.10.2012 is quashed.

15. Since the petitioner is retired from service on 31.10.2012 by the impugned order, the respondents shall pay all the retirement benefits without delay. The wages for the period from 01.07.2007 to 31.10.2012 shall not be deduced from his retirement benefits or otherwise. The retirement benefits shall also be paid to the petitioner at the earliest.

16. The writ petition is ordered in the above terms. No costs. Consequently, connected miscellaneous petitions are closed. 03.07.2013 Index : Yes Internet: Yes rj To 1.The Tahsildar, Tiruchengode Taluk, Tiruchengode. 2.The Revenue Divisional Officer, Tiruchengode . 3.The District Collector, Namakkal District, Namakkal. D.HARIPARANTHAMAN, J rj W.P.No.17954 of 2013 03.07.2013