

i.Arulanandam Vs. the Director of Rural Development and ors.

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Court : Chennai

Decided On : Nov-30-2011

Judge : K.Chandru, J.

Acts : Tamil Nadu Societies Registration Act; [Constitution of India](#) - Article 12

Appeal No. : W.P.(MD)No.7106 of 2009 & M.P.(MD).Nos.1 & 2 of 2009

Appellant : i.Arulanandam

Respondent : The Director of Rural Development and ors.

Advocate for Def. : Mr.M.Govindan, Adv.

Advocate for Pet/Ap. : Mr.V.Paneerselvam, Adv.

Judgement :

1. The writ petition is filed by the petitioner seeking to challenge an order of the third respondent, the District Project Manager, Vazhndhukattuvom Project, Tirunelveli District, dated 30.01.2009 and seeks to set aside the same.

2. When the writ petition came up on 30.07.2009, notice of motion was ordered. At that time, no interim order was passed by this Court though an application in M.P.(MD).No.2 of 2009 was filed to that effect. After 8 months of the notice of motion, the learned Judge of this Court (N.Kirubakaran,J) by an order dated 29.04.2010 held that the affidavit filed by the respondent cannot improve the

impugned order as it had been passed without reasons. Therefore, the order of termination was stayed and the main writ petition was directed to be posted on 12.07.2010.

3. On notice from this Court, the third respondent has filed a counter affidavit dated 20.11.2009 together with supporting documents in the form of a typed set.

4. It is seen from the records that the petitioner was working as a Facilitator in the Vazhndhukattuvom Project, Kuruvikulam North Part Cluster, Tirunelveli District. The contract appointment was given by the Tirunelveli District 'Vazhndhukattuvom Project' Society, which is a Society registered under the Tamil Nadu Societies Registration Act with registration No.122 of 2005.

5. A contract of appointment was given to the petitioner for a period of two years from 11.12.2006 to 11.12.2008. The contract itself came to an end. The agreement of contract of appointment as a Facilitator was signed on behalf of the Society by the third respondent. Paragraph 4 clearly says that the Society can terminate the service at any time by giving one month notice or payment in lieu thereof. Paragraph 17 of the agreement reads as follows:- “Notwithstanding anything contained herein before rules, regulations, bye- laws, instructions, lawful orders, etc as and when framed and issued by DVKS relating to the conditions of the service and additions, amendments, modification, alterations, etc made in the said conditions of service from time to time shall apply to you irrespective of whether these matters are provided for herein or not.”

6. The third respondent by an order dated 06.09.2008 informed the petitioner that he was not adhering to the advice by not residing in the place where the workers of the Facilitators should reside. He was placed under suspension between 06.09.2008 and 28.09.2008.

7. Subsequently, the petitioner had given an undertaking that he will stay in the same place of the contract. However, the third respondent by an order dated 30.01.2009 held that the review of the work was undertaken as there is no progress in the work, as per the clause relating to the appointment agreement, he was terminated from service with effect from 31.01.2009. On the condition

precedent he was given one month pay by way of a cheque dated 06.02.2009.

8. In the counter affidavit it was emphasised that the Society under which the petitioner secured employment is not a State coming within the meaning of Article 12 of the Constitution. It is only a registered society. Therefore, invoking a clause of the agreement, the petitioner was terminated from services. Though the counter affidavit was served on 20.11.2009, the petitioner has not filed a rejoinder to the counter affidavit. Therefore, the stand is that he was appointed pursuant to the agreement and that the agreement had provided for a clause for termination by giving one month's notice or paying in lieu of one month's notice. In this context it is necessary to refer to the following two judgments:-

i) Gopal Krishna Potnay Vs. Union of India reported in AIR 1954 SC 632, wherein it was held as follows :

On the hypothesis that the plaintiff had in fact executed a service agreement which invariably contained a clause that services would be terminated on one month's notice on either side and that there is no suggestion that, that agreement in terms was different from the usual form of such service agreement as to be found in the rules, the plaintiff cannot be heard to say that no charge-sheet had been formulated against him and proceedings had not been taken thereunder, before giving him one month's pay in lieu of notice of discharge from service.

ii) Secretary, Ministry of Works and Housing Government of India, Vs. Mohinder Singh Jagdev reported in (1996) 6 SCC 229, wherein it was held as follows:-

He was placed under suspension after a report was laid under the provisions of IPC. Exercising the power under R.5 his services were terminated. The respondent on acquittal by the Criminal Court filed a suit for declaration that the termination of his service was illegal. Rule 5 of the Rules contemplates that services can be terminated in terms of appointment. The terms of appointment clearly mentions that it can be terminated at any time without notice. Under those circumstances, the termination is in exercise of the statutory power under Rule 5 of the Rules. Until the temporary services matures into a permanent, he has no right to the post. At any point of time before that right accrues, it is open to the

employer to terminate the service in terms of the order of appointment.

9. The above cases arose in the context of a temporary Government Servant covered under Rule 5 of CCS (CCA) Rules, that was the case for even Government Servants, the petitioner is only an employee of a Society cannot have a better right. The respondent society is, not amenable to the writ jurisdiction of this Court, governed by the terms of contract between the parties.

10. Therefore, the writ petition will stand dismissed. The interim stay already granted is vacated. Consequently, the miscellaneous petitions are closed. No costs.

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