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V.Selvakumar Vs. the District Collector

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Court : Chennai

Decided On : Mar-21-2012

Judge : V.Dhanapalan, J.

Acts : Indian Penal Code (IPC) - Sections 153(A), 188 and 34; Constitution of India - Article 14, 21

Appeal No. : W.P.(MD)No.1874 of 2012

Appellant : V.Selvakumar.

Respondent : The District Collector

Advocate for Pet/Ap. : Mr.P.Rathinam, Adv.

Judgement :

ORDER

1. By consent, the writ petition itself is taken up for disposal. Heard Mr.P.Rathinam learned counsel for the petitioner and Mr.Saravanan for Mr.M.Muniasamy, learned Standing Counsel for the respondent corporation.

2. The petitioner is before this Court questioning an order passed by the third respondent in N30/03/2012a.Ka.A5/78/2011, dated 03.12.2011 in and by which, the petitioner has been relieved from the post of Supervisor. Seeking to quash the same and for consequential direction to reinstate him with all service benefits, the

petitioner has filed the present writ petition.

3. According to the petitioner, he was appointed as a Shop Supervisor on 29.11.2003 by the third respondent after following the due process i.e. by sponsoring his name by the employment exchange concerned and after conducting interview. Thereafter, the petitioner deposited a sum of Rs.50,000/- as security deposit and since then, he was working as Shop Supervisor in Paramakudi Five Corner Road TASMAC bearing No.6806. He claims that he worked sincerely without any blemish.

4. While so, on 16.11.2011, the petitioner was arrested by the Paramakudi Town Police Station and he was falsely implicated in Crime No.363 of 2011 under Sections 153(A), 188 and 34 IPC and his name was not mentioned in the First Information Report. He was produced before the Judicial Magistrate, Paramakudi in connection with the above-said crime number. The allegation found against him in the remand report was that he accompanied with one Punniyamoorthy while the said Punniyamoorthy approached the police official to get permission to conduct Public Meeting. He was illegally detained in Madurai Central Prison from 16.11.2011 to 10.12.2011.

5. Thereafter, one A.Murugan filed H.C.P.(MD).No.1065 of 2011 for declaring the petitioner's arrest is in violation of Articles 14 and 21 of the Constitution of India and his remand was obtained by the Inspector of Police, Paramakudi Police Station by misleading the Judicial Magistrate, Paramakudi and for a direction to the Superintendent of Central Prison, Madurai to release him as his arrest and remand was without any basis in Cr.No.363 of 2011 and also further direction to the Secretary, Home Department of State of Tamil Nadu to pay just and fair amount of compensation to him for the sufferings and the agonies which he experienced due to the detention and confinement in the prison.

6. The Division Bench called for entire records from the Judicial Magistrate, Paramakudi regarding the petitioner's arrest. After perusing the entire records, the Division Bench has held in paragraph 22A as follows:- As for as the case on hand in concerned, it is relevant to reproduce the remand order of the learned Magistrate which reads hereunder:- 16.11.2011 at 9.30 p.m.

Accused produced.

Offences explained. No complaints.

Remand to JC till 30.11.2011

The above order was written by the Learned Magistrate at the end of the remand report itself. The Learned Magistrate has not even stated that he has perused the documents along with the remand report. The learned Magistrate need not pass an elaborate and detailed order while remanding the accused to judicial custody. However, the said remand order should reflect the application of mind and satisfaction of the learned Magistrate to the the effect that well-founded grounds of remand were made on the basis of the perusal of the documents. The basis requirement is atleast to state in the remand order as to what are all the documents produced and perused to establish the application of mind by the Learned Magistrate. Even such fundamental requirement is totally absent in the remand order passed by the Learned Magistrate. As far as the case on hand is concerned, as we have already held that only two documents, namely, F.I.R. and the remand report alone were produced at the time of production of the accused and we have also held that the two documents does not disclose any offence committed by the detenue V.Selvakumar and such being the position, the remand order is unsustainable in law.

23. In view of the same, the remand order dated 16.11.2011 passed by the learned Judicial Magistrate, Paramakudi is liable to be set aside. As we have held that the remand order itself is not sustainable in law, the consequential detention of the detenue V.Selvakumar would amount to illegal detention. Accordingly, we are constrained to set him at liberty. The Superintendent of Central Prison, Madurai namely the fourth respondent herein is directed to release the detenue V.Selvakumar forthwith, unless his presence is required in connection with any other case.. And this Hon'ble Court allowed the Habeas Corpus Petition in H.C.P.(MD).No.1065 of 2011 on 09.12.2011.

7. On 10.12.2011 at 10.30 a.m. the petitioner was released from the Central Prison, Madurai and he was illegally detained in Madurai Central Prison from

16.11.2011 to 10.12.2011. The petitioner received the impugned order passed by third respondent dated 03.12.2011 through courier and the same was issued without issuing a memo to him and without considering his submissions. In the impugned order it was mentioned that on 03.12.2011 the third respondent visited the Shop No.6806 and found that the petitioner was absent continuously in the TASMAC Shop bearing No.6808 and for administrative reasons, the authority passed the impugned order and discharging him from the service. Therefore, the petitioner assails the above-order on the ground that the order of the third respondent is arbitrary, illegal and violates the principles of natural justice and the Division Bench held on 09.12.2011 that the order of arrest of the petitioner is illegal and hence, the impugned order should be quashed as it runs counter to the principles and objects enshrined under Articles 14 and 16 of the Constitution of India and in violation of Principles of natural justice as it was passed without any notice and therefore, the same is bad in law.

8. This matter is posted today for counter and disposal. At the time of hearing, the learned counsel for the respondent corporation produced a copy of the proceedings in Na.Ka.No.3944/11/m dated 20.03.2012 in and by which the second respondent has passed an order reinstating the petitioner and posted him in Shop No.6806 in a vacant place and also passed another proceedings in Na.Ka.No.3944/11/ m dated 20.03.2012 whereby the petitioner has been posted to the above shop. The two proceedings are taken on record.

9. After noticing the above proceedings, the learned counsel for the petitioner would consistently plead that in view of the Division Bench Order, the impugned order passed by the respondent is ex facie illegal and contrary to the established principles as there was no notice and enquiry and without affording an opportunity of hearing, the third respondent has proceeded to pass the impugned order. Therefore, the learned counsel for the petitioner now seeks all the consequential benefits in view of the order passed by the second respondents on 20.03.2012.

10. The petitioner having already reinstated, with regard to the prayer for a direction for disbursement of the entire benefits, he is directed to make a claim before the second respondent by way of a representation, within a period of two

weeks from the date of receipt of a copy of this order, in which event, the second respondent shall calculate the benefits for which the petitioner is entitled and pay the same to the petitioner, within a period of four weeks thereafter.

11. Writ Petition is disposed of with the above direction. No costs.

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