

P. Rajendran Vs. the Member-secretary, Chennai Metropolitan Development Authority and Others

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Court : Chennai

Decided On : Nov-27-2012

Reported in : 2013(2)MLJ267

Judge : K. Chandru

Appeal No. : W.P.No.29256 of 2012 and M.P.Nos.1 to 3 of 2012

Appellant : P. Rajendran

Respondent : The Member-secretary, Chennai Metropolitan Development Authority and Others

Advocate for Pet/Ap. : For the Petitioner: G. Jeremiah for K.M. Ramesh, Advocates. For the Respondents: R1, A. Kumar for CMDA, R2 to R4, V. Subbiah, Spl.G.P.

Judgement :

(Prayer: Petition under Article 226 of the Constitution of India praying for a Writ of certiorari, calling for the records of the first respondent in Memo No.E6/1693/2011 dated 25.10.2012 and quash the same.)

The petitioner has filed the writ petition, seeking to challenge an order dated 25.10.2012 issued by the first respondent viz., Member-Secretary, Chennai

Metropolitan Development Authority (for short CMDA), wherein and by which, he had posted one B.Ravichandran, Planning Assistant Grade II, Enforcement Cell as Planning Officer to St.Thomas Mount Panchayat Union and Chitlapakkam Town Panchayat on working arrangement in the place of the petitioner, who is said to be under suspension. The said Ravichandran, who is now been posted has been made as 5th respondent in the writ petition. It was also stated that he has to visit St.Thomas Mount Panchayat Union on all Mondays to Thursdays and Chitlapakkam Town Panchayat on all Fridays.

2. It is not clear as to how the petitioner has chosen to challenge the posting order given to the 5th respondent with which he is no way concerned with. The contention of the petitioner was that posting the 5th respondent in his place was not valid since the said posting was made as if he was under suspension and there was a vacancy.

3. It is seen from the records M/s.R.Ramamoorthy and Mahalakshmi filed a writ petition, being W.P.No.17173 of 2012, challenging the order passed by the Zonal Office, Corporation of Chennai, Sholinganallur dated 28.05.2012 and also seeking for plan approval and construction put up by them in building at No.2/585 A, Singaravelar Nagar Cross Street, S.No.82/15, Neelankarai, Chennai -41.

4. When the matter came up on 02.08.2012, the Division Bench before which the matter came found that the building in question was allowed by the petitioner to be constructed, which is a huge palatial building and it was completed in a span of two years and all along, no action was taken to stop the construction. The building was constructed without any approval and planning permission as required under Section 49 of the Tamil Nadu Town and Country Planning Act. Though a counter affidavit was filed by the CMDA, since the entire construction was unauthorised, the Division Bench directed the Government Pleader to get instructions as to why the matter should not be entrusted to the Central Bureau of Investigation for further investigation and also to fix the responsibility on the officers, who had allowed the said writ petitioners to go ahead with the construction. The matter was directed to be posted after two weeks.

5. It was in the mean while, the District Collector, Kancheepuram by order dated 20.08.2012 placed the petitioner under suspension based upon preliminary enquiry held. The petitioner was accused that he failed to take necessary action to demolish the unauthorised construction, which was put up by the owners of the building of the place. In the mean while, when W.P.No.17173 of 2012 came up for hearing on 24.09.2012, the Division Bench by an order dated 24.09.2012 recorded the submission of the learned Government Pleader that enquiry was initiated against the concerned officers and directed the respondent State to complete the departmental enquiry and to pass final orders as expeditiously as possible, preferably within a period of two months. The writ petition was directed to be listed on 20.12.2012 to enable the Government Pleader to submit the result of the enquiry.

6. However, notwithstanding the fact that the matter has been seized by the Division Bench and the Division Bench is monitoring the enquiry, the petitioner filed a writ petition before this Court being W.P.No.23967 of 2012 challenging the order of suspension. The said matter came to be heard by a learned Judge and was allowed by an order dated 12.09.2012 and the petitioner was directed to be reinstated within seven days. Though in the said order, a reference was made to the interim order passed by the Division Bench on 02.08.2012, but the matter which was subsequently posted for further orders was not set out. But however, the order of suspension has been quashed on technical ground.

7. Alleging the said order has not been obeyed, the petitioner filed Contempt Petition No.1569 of 2012 which is still pending before this Court. But in the mean while, CMDA, on coming to know that planning permission has been stalled in 15 Panchayats has made an interim arrangement to take care of the post held by the petitioner and therefore, posted the 5th respondent on a working arrangement basis to visit local bodies as per the impugned order.

8. It is not clear as to how the petitioner can challenge the said order. The petitioner has no vested right to have a posting subsequent to the suspension being set aside by this Court. As he himself has held, he is an employee of the CMDA holding the post of Planner and therefore, if at all the order passed by this

Court has become final, it is for the CMDA to place him at an appropriate place depending upon work exigency and also the nature of enquiry to be held against the petitioner.

9. It is now stated by the learned Special Government Pleader that as against the order passed by the learned single Judge, writ appeal has been filed, which is at the SR Stage in WASR No.90208 of 2012. Unless the result of the Division Bench is obtained, the petitioner's restoration of service cannot be granted. Even otherwise, if any suspension is revoked pending enquiry, this Court time and again has held that such persons without prejudice to the enquiry can be posted only to a non-sensitive place far off from the present place of posting, where alleged irregularities took place. A reference may be made to the Division Bench of this Court in *State of Madras v. Joseph* reported in AIR 1970 Mad 155. Merely because the CMDA has made working arrangement, that itself is not a ground for the petitioner to challenge the same, as he has no locus standi to question such posting order as it does not relate to the case of the petitioner. Further, after revoking suspension, if any made by the CMDA, it is not a requirement that petitioner should get the same post which itself is only on a foreign service basis and not regular posting.

10. In the light of the above, no case is made out. Accordingly, the writ petition stands dismissed. No costs. Connected miscellaneous petitions are closed.

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