

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.9.2008

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THE HON'BLE MR.JUSTICE M.JAICHANDREN

W.P.Nos.5157 and 5158 of 2001

K.Venkatachalam

.. Petitioner in both
the writ petitions

vs.

State of Tamil nadu
rep. by Secretary
Public (Administration-1,
(M.S.M.) Dept)
Fort St. George, Chennai-9

.. first respondent

in W.P.No.5157 of 2001

and the second respondent in

W.P.No.5158 of 2001

The State of Tamil Nadu
rep. by the Secretary
Legislative Assembly Secretariat
Fort St. George, Chennai-9

.. second Respondent in

W.P.No.5157 of 2001

and the first respondent in

W.P.No.5158 of 2001

W.P.No.5157 of 2001:

This writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to G.O.Ms.No.1053 dated 7.8.2000 issued by the first respondent and quash the same and direct the first respondent to pass orders after hearing the petitioner's objections.

W.P.No.5158 of 2001:

This writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to letter No.1252/2000/1, Legislative Assembly, Pension-I dated 12.7.2000 issued by the Secretary Legislative Assembly Secretariat the first respondent herein and quash the same and direct the first respondent to pass

orders after hearing the petitioner's objections.

For petitioner : Mr.R.Subramanian

For Respondents : Mr.T.Seenivasan
Additional Government Pleader

C O M M O N O R D E R

Since the issues involved in the above writ petitions have arisen out of the same facts and circumstances, a common order is passed.

2. It has been stated that the petitioner had contested in the elections for the Tamil Nadu State Legislative Assembly from Lalgudi Assembly constituency during the year, 1984. The petitioner had been declared as elected as he had secured more votes than A.Swamikkannu, who was the opposing candidate. However, the election of the petitioner had been challenged before this Court. A learned single Judge of this Court had held that there is a bar, under Article 329 (b) of the Constitution of India, for challenging an election, except by way of an election petition filed under Section 81 of the Representation of Peoples Act, 1950. On appeal filed before the Division Bench, an order had been passed holding that the petitioner is not entitled to sit in the Tamil Nadu State Legislative Assembly. Thus, the petitioner was restrained from functioning as a Member of the Tamil Nadu State Legislative Assembly. An appeal had been filed before the Supreme Court in C.M.P.No.12958 of 1986 in Civil Appeal NO.1719 of 1986. The Apex Court had suspended the order passed by the Division Bench of the High Court, in W.A.No.1157 of 1985. Accordingly, the petitioner had been discharging his duties as a Member of the Legislative Assembly by attending the Assembly Sessions. While so, the Supreme Court, by an order, dated 26.4.1999, made in Civil Appeal No.1719 of 1986, had confirmed the order of the Division Bench of this Court. While passing the final order, the Supreme Court had held that since the petitioner had completed his term as a Member of the Legislative Assembly, it is for the second respondent to intimate the State Government as to how many days the petitioner had been sitting as a member of the Assembly and that it would be open to the State Government to recover certain amounts from the petitioner by way of penalty, in accordance with Article 193 of the Constitution of India. Thereafter, a Government order had been passed directing the petitioner to pay a sum of Rs.80,500/-, at the rate of Rs.500 per day of sitting, for 161 days. By another letter, dated 12.7.2000, the petitioner had been asked to repay the pension amount of Rs.1,30,719/-. The said letter has been challenged by the petitioner in W.P.No.5158 of 2001.

3. At this stage of the hearing of the writ petition, the learned

counsel appearing for the petitioner had submitted that in view of the judgment of the Supreme Court in C.A.No.1719 of 1986, the impugned order in G.O.Ms.No.1053, dated 7.8.2000, had been passed imposing a penalty of Rs.80,500/- on the petitioner for having sat as a Member of the Tamil Nadu State Legislative Assembly, in terms of Article 193 of the Constitution of India. In the said Government order, dated 7.8.2000, it was stated that the petitioner was imposed with the said penalty for having sat in the assembly between February, 1985 and January, 1988. However, the details of the days when the petitioner is alleged to have been sitting in the assembly have not been furnished. Therefore, the learned counsel appearing for the petitioner had submitted that the respondents may be directed to furnish the details of the days on which the petitioner had sat in the assembly.

4. The learned counsel appearing for the respondents had placed before this Court a statement showing the details of the days on which the petitioner had attended the meeting of the legislative assembly for the period from 1985 to 1988 amounting to 161 days. Since the learned counsel appearing for the petitioner had not disputed the details furnished before this Court, no further orders are required to be passed in the present writ petition. However, with regard to W.P.No.5158 of 2001, the learned counsel appearing for the petitioner had submitted that no opportunity was given to the petitioner before the impugned letter No.1252/2000/1, Legislative Assembly, Pension-I, dated 12.7.2000, was issued to the petitioner by the Secretary Tamil Nadu Legislative Assembly Secretariat, the Tamil Nadu Legislative Assembly, directing the petitioner to pay a sum of Rs.1,30,719/- being the pension amount paid to the petitioner since he had been disqualified from the membership of the assembly.

5. The learned counsel appearing for the petitioner had further submitted that no provision of law has been quoted in the impugned order, under which the recovery has been ordered. Therefore, it has been prayed that the impugned order, dated 12.7.2000, is to be quashed.

6. The learned counsel appearing for the respondents had stated that the petitioner had submitted a letter of undertaking, dated 27.1.1989, wherein the petitioner had stated that he would repay the amount received by him by way of legislator's pension in the event of the Civil Miscellaneous Petition No.12958 of 1986 being dismissed by the Supreme Court. Since the Civil Miscellaneous Petition had been dismissed by the Supreme Court, the petitioner is liable to repay the amount, which he had received as pension, as he had been disqualified as a Member of the Tamil Nadu State Legislative Assembly.

7. However, the learned counsel appearing for the respondents is not in a position to show the particular provision of law under which the amount paid to the petitioner as legislator's pension is sought

to be recovered by the impugned order. In such circumstances, the impugned letter No.1252/2000/1, Legislative Assembly, Pension-I, dated 12.7.2000, issued to the petitioner by the Secretary Tamil Nadu Legislative Assembly Secretariat, the Tamil Nadu Legislative Assembly, is set aside, directing the respondents to pass appropriate orders, based on the materials available, on merits and in accordance with law, to recover the legislator's pension paid to the petitioner, after giving the petitioner, sufficient opportunity to putforth his case.

8. Accordingly, the writ petitions stand disposed of. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

Lan

To:

1. The Secretary,
State of Tamil Nadu
Public (Administration-1,
(M.S.M.) Dept)
State of Tamil nadu
Fort St. George, Chennai-9

2. The Secretary, State of Tamil Nadu
Legislative Assembly Secretariat
The State of Tamil Nadu
Fort St. George, Chennai-9

1 CC To Mr.R.Subramanian, Advocate, SR NO.56068 & 56069

1 CC to the Government Pleader, SR NO.56562

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pmk/30.10.2008.