

[2011] 6 S.C.R. 225

S. THILAGAVATHY

v.

STATE OF TAMIL NADU AND ORS.  
(Civil Appeal No. 3991 of 2011)

MAY 6, 2011

**[J.M. PANCHAL AND GYAN SUDHA MISRA, JJ.]**

*Appeal: Appeal against consent order/non-speaking order – Maintainability of – Appellant working as Instructor in grade I in respondent-Board – The Board passed order transferring the appellant – Writ petition by appellant challenging her transfer order – Appellant thereafter not reporting for duty – Order of discharge – Appellant filing writ petition, but withdrawing the same on assurance of reinstatement – Restored back on grade II instead of grade I – Appellant filing writ petition after three years seeking reinstatement on grade I – Single judge of High Court dismissing writ petitions by combined order – Writ appeal dismissed by Division Bench on the ground that since the appellant had agreed to join at the transferred place and given an assurance to that effect to the Single Judge, the appeal was not maintainable – On appeal, held: Division Bench was right in holding that the appellant could not prefer a writ appeal against the order which was passed with her consent as she had given up her challenge before the Single Judge against the order of her transfer – No reason to interfere with that part of the order of the Single Judge – However, Division Bench did not deal with the issue concerning reinstatement on grade II post – In the said circumstance, the appellant ought to have taken steps by way of review petition before the Division Bench and pointed out the error that her appeal arising out of writ petition seeking reinstatement on grade I was not dealt with at all by the Division Bench – It is left open to the appellant to approach Division Bench by way of review.*

A        The appellant was an Organiser-cum-Tailoring  
Instructor in Grade-I in the Labour Welfare Board. The  
Board passed the order transferring the appellant. The  
appellant filed a suit challenging the transfer order. The  
District Munsif granted interim injunction in favour of the  
B appellant. The suit was finally dismissed by the District  
Munsif on the ground that the civil court had no  
jurisdiction in the said matter. The appellant filed another  
writ petition no.9110/1997 challenging the transfer order.  
Meanwhile, in an enquiry against the appellant, the Board  
C found that the appellant had abandoned the service as  
she had failed to report for duty and had also not filed  
any application for grant of leave. The Board passed the  
order of discharge. The appellant filed another writ  
petition but subsequently withdrew the same as  
D accordingly to her, an assurance was given to her by the  
respondent that she would be restored back to the  
service as Grade I Officer on which she was appointed.  
After withdrawal of the said writ petition, the appellant was  
reinstated but on Grade II post. After about 3 years, she  
E filed another writ petition no.4318/1997 before the High  
Court.

The two writ petitions no.9110/97 and 4318/97 were  
clubbed together. By a common order, the Single judge  
of the High Court dismissed writ petition no.9110/97  
F holding that the transfer order was not illegal or vitiated  
in any manner. Writ petition no.4318/97 was also  
dismissed by the Single Judge on the ground that there  
was no evidence to show that there was any assurance  
by the respondent-Board. The Single Judge also took  
G notice of the fact that after her reinstatement on Grade II  
post, the appellant had remained silent for well over a  
period of three years and only after a lapse of three years  
in the year 1997, she filed a writ petition alleging that  
there was an assurance from the respondent-Board to

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reinstate her on Grade I post. The Single Judge inferred that this plea of the appellant was purely an afterthought with no factual basis. She preferred a writ appeal before the Division Bench which was also dismissed. The instant appeal was filed challenging the order of the Division Bench of the High Court.

Disposing of the appeal, the Court

HELD: 1.1. A perusal of the impugned order passed by the Division Bench showed that the Division Bench although dismissed the writ appeal by common order, however, it dealt only with the facts of the case arising out of writ petition No.9110/97 which was filed by the appellant before the Single Judge challenging the order of her transfer and upheld the order passed by the Single Judge by which the writ petition was dismissed since the appellant had failed to establish before the Single Judge that the order of transfer required interference. The Division Bench observed that when the appellant had agreed to join at the transferred place and given an assurance to that effect to the Single Judge, the appeal against the consent order cannot be held maintainable. The Division Bench was right in holding that the appellant could not have been allowed to prefer a writ appeal against the order which was passed with her consent as she had given up her challenge before the Single Judge against the order of her transfer. There is no reason to interfere with this part of the order of the Single Judge passed in the appeal arising out of writ petition No. 9110/97. [Paras 10, 11] [231-H; 232-A-F]

1.2. In so far as appeal arising out of writ petition No 4318/97 was concerned, the Division Bench had not dealt with the case of the appellant wherein she had challenged her reinstatement on Grade II post and had preferred the appeal clearly contending that she should have been

A reinstated on Grade I post on which she initially claimed to have been appointed in the year 1986. But this plea was not dealt with by the Division Bench at all, which amounts to non-consideration of the appeal directed against the order passed in writ petition No. 4318/97. But,  
 B in the said circumstance, the appellant ought to have taken steps by way of a review petition before the Division Bench wherein it was open to the appellant to point out the error that her appeal arising out of writ petition No.4318/97 was not dealt with at all one way or the other  
 C by the Division Bench and this was a factual error on the part of the Division Bench. Although it is quite possible to infer under the circumstance, that the Division Bench has impliedly dismissed the writ appeal arising out of writ petition No. 4318/97 by a non-speaking order, yet it was  
 D necessary for the Division Bench to expressly state whether the appeal arising out of writ petition No.4318/97 was rejected. It is left open to the appellant to approach the Division Bench by way of a review petition pointing out the error apparent on the face of the record to the effect that her appeal directed against the order in  
 E writ petition No.4318/97 was not dealt with at all and has been dismissed without indicating any reason whatsoever. If a review petition to that effect is filed, the same shall be dealt with in accordance with law. [Paras 12-14] [232-G-H; 233-A-G]

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 CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3991 of 2011.

G From the Judgment & Order dated 14.3.2007 of the High Court of Judicature at Madras in Writ Appeal No. 621 of 1998.

Pankaj Kumar, Malini Poduval for the Appellant

T. Harish Kumar, R. Nedumaran for the Respondents.

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S. THILAGAVATHY v. STATE OF TAMIL NADU AND 229  
ORS.

The Judgment of the Court was delivered by

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**GYAN SUDHA MISRA, J.** 1. Leave granted.

2. Heard learned counsel for the contesting parties.

3. This appeal by grant of special leave is directed against the judgment and order dated 14.3.2007 passed by the Division Bench of the High Court of Judicature at Madras in Writ Appeal No.621 of 1998 whereby the learned Judges were pleased to dismiss the writ appeal and upheld the common order dated 19.1.1998 of the learned single Judge given out in two Writ Petitions bearing Nos. 9110 & 4318/97.

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4. In order to explain the controversy with clarity, it may be essential to state that the appellant Smt. S. Thilagavathy who had joined as an Organizer -cum-Tailoring Instructor in Grade I on 27.1.1986 in the Labour Welfare Board, Government of Tamil Nadu, challenged her transfer order from Trichy to Kovilpatti dated 16.6.1993, by filing a suit bearing O.S.No. 1460/93 before the District Munsif, Trichy. The learned District Munsif was pleased to grant interim injunction in favour of the appellant against the transfer order. However, the suit was finally dismissed, by the District Munsif vide judgment and order dated 21.9.1993 on the ground that the civil court had no jurisdiction in the said matter.

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5. Subsequent development in the matter also took place thereafter, as the Secretary, Tamil Nadu Welfare Board, Chennai vide Order dated 29.9.1993 discharged the appellant from service referring to certain omissions and commissions on the part of the appellant after an enquiry was conducted against the appellant, which lasted for over three years. The order of discharge indicated that the appellant had abandoned the service as she had failed to report for duty ever since 24.6.1993 and had also not filed any application for grant of leave. It also stated that the interim injunction granted in favour of the appellant by the District Munsif against the transfer order

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A of the appellant, would not enure any benefit in her favour as it was not obtained within three days of the order of transfer dated 16.6.1993.

B 6. The appellant herein feeling aggrieved with the order of discharge issued by the respondent No.2 herein, filed another writ petition bearing No.18550/93 in the High Court of Judicature at Madras on several grounds but the appellant withdrew the said writ petition as according to her case, an assurance was given to her by the respondent that she would be restored back to the service as Grade I officer on which she has been appointed. It is the specific case of the appellant that she had withdrawn her writ petition in the High Court, in view of the this assurance.

D 7. After withdrawal of this writ petition, the appellant no doubt was reinstated, but it is her case that she was reinstated not on grade I post to which she was appointed and was holding prior to her discharge but on grade II post although she was entitled to be restored to her original post of grade I on which she had been appointed, and she could not have been E reinstated on a lower grade II post. It is her further case that in view of the dire necessity or pressing need of her livelihood, she was compelled to join on a lower grade II post although she should have been reinstated on grade I post. But she continued making representations which did not meet with any response F from the authorities concerned. She, therefore, filed another writ petition No.4318/97 in the High Court of Madras in March 1997.

G 8. The two writ petitions filed by the appellant challenging her transfer order bearing writ petition No.9110/97 and her writ petition No. 4318/97 assailing her reinstatement on grade II post of Organizer –cum-Tailoring Instructress and not on grade I post of Organizer-cum-Tailoring Instructor, were both clubbed together along with two more writ petitions which the appellant had filed before the High Court but with which we are not H concerned, as the writ appeal filed by the appellant before the

Division Bench was only against the common order passed in writ petition Nos. 4318 and 9110/97, which the learned single Judge was pleased to dismiss by a common order as it was held that the order of transfer was not fit to be interfered with since the same was not illegal or vitiated in any other manner. In the result, writ petition No.9110/97 had been dismissed due to which the appellant had sought a week's time from the court, to report for duty at the place to which she had been transferred.

9. The learned single Judge was also pleased to dismiss the writ petition No.4318/97 as the learned single Judge noticed that the appellant had joined the service of the second respondent on 27.1.1986 and after discharge of service, she was reinstated on 17.3.1994 as Organizer -cum- Tailoring Instructress grade II in the scale of Rs. 905-1500/-. The learned single Judge however dismissed her writ petition refusing to hold that she was entitled to be reinstated on grade I post on the ground that the appellant was unable to produce any record containing such assurance although the respondent-Board by its affidavit filed through its Secretary had denied having given any assurance or promise to the appellant. The learned single Judge also took notice of the fact that after her reinstatement on grade II post, the appellant had remained silent for well over a period of three years and only after a lapse of three years in the year 1997, she filed a writ petition alleging that there was an assurance from the respondent-Board to reinstate her on grade I post. The learned single Judge inferred that this plea of the appellant was purely an afterthought with no factual basis and hence the writ petition was dismissed. Thus the two writ petitions filed by the appellant which included the challenge to her transfer order as also her reinstatement on grade II post instead of grade I post, were dismissed by the learned single Judge by a common order on 19.1.1998 against which she preferred a writ appeal before the Division Bench which was also dismissed.

10. However, on perusal of the impugned order passed by the Division Bench, it is quite apparent that the learned

A Judges of the Division Bench although were pleased to dismiss the writ appeal by its common order dated 14.3.2007, it dealt only with the facts of the case arising out of writ petition No.9110/97 which had been filed by the appellant before the learned single Judge challenging the order of her transfer and  
 B upheld the order passed by the learned single Judge by which the writ petition was dismissed since the appellant had failed to establish before the learned single Judge that the order of transfer required interference. The Division Bench was pleased to observe that when the appellant had agreed to join at the  
 C transferred place and given an assurance to that effect to the learned single Judge, the appeal against the consent order cannot be held maintainable and hence the appeal against the same was dismissed by the Division Bench vide the impugned order under challenge in this appeal.

D 11. But having heard the learned counsel for the appellant, we do not find any ground to interfere with the aforesaid reason assigned by the learned single Judge as the appellant had already given up her contest before the learned single Judge against the order of her transfer and hence it had rightly not  
 E been allowed to be challenged by the Division Bench. As we agree with the view of the Division Bench that the appellant could not have been allowed to prefer a writ appeal against the order which was passed with her consent as she had given up her challenge before the single Judge against the order of her  
 F transfer, we see no reason to interfere with this part of the order of the learned single Judge passed in the appeal arising out of writ petition No. 9110/97.

G 12. However, we have noticed that the learned Judges of the Division Bench have not dealt with the case of the appellant in so far as her appeal arising out of writ petition No 4318/97 is concerned, wherein the appellant had challenged her reinstatement on grade II post and had preferred the appeal clearly contending that she should have been reinstated on grade I post on which she initially claimed to have been  
 H appointed in the year 1986. But it appears that this plea has

S. THILAGAVATHY v. STATE OF TAMIL NADU AND 233  
ORS. [GYAN SUDHA MISRA, J.]

not been dealt with by the Division Bench at all, which amounts to non-consideration of the appeal directed against the order passed in writ petition No. 4318/97. A

13. But, in the aforesaid circumstance, the appellant in our considered view ought to have taken steps in the High Court by way of a review petition before the Division Bench wherein it was open to the appellant to point out the error that her appeal arising out of writ petition No.4318/97 has not been dealt with at all one way or the other by the Division Bench and this was a factual error on the part of the Division Bench. Although it is quite possible to infer under the circumstance, that the Division Bench has impliedly dismissed the writ appeal arising out of writ petition No. 4318/97 by a non-speaking order, in view of the observation of the single Judge that the plea of the appellant on this count was an afterthought on the part of the appellant claiming reinstatement on grade I post, since she had discharged duties on grade II post for a long period of three years and thereafter by way of an afterthought, filed a writ petition challenging that her reinstatement on grade II post was illegal and arbitrary, yet it was necessary for the Division Bench to expressly state whether the appeal arising out of writ petition No.4318/97 was rejected. B C D E

14. However, since the learned Judges of the Division Bench have not passed any order in the writ appeal dealing with this plea of the appellant arising out of writ petition No. 4318/97, we leave it open to the appellant to approach the Division Bench by way of a review petition pointing out the error apparent on the face of the record to the effect that her appeal directed against the order in writ petition No.4318/97 has not been dealt with at all and has been dismissed without indicating any reason whatsoever. If a review petition to that effect is filed, the same shall be dealt with in accordance with law. Subject to this liberty, we dismiss this appeal but in the circumstance without any order as to costs. F G

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Appeal disposed of. H