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W.P. No.11858 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.06.2023

Pronounced on : 22.08.2023

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.11858 of 2011

and

M.P. Nos.1 of 2011 and 1 of 2015

K.Sivagami

... Petitioner

V.

1.The Secretary to Government
Social Welfare & NMP Department,
Fort St.George, Chennai-9.

2.The Director of Social Welfare,
Chepauk, Chennai-5.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the 2nd Respondent herein in R.C.No.17943/Admn5(3)/2003 dated 08.05.2007 and quash the same and consequently direct the Respondents herein to regularize the suspension period as duty for all purposes and confer all the benefits with due regards to petitioner seniority.

For Petitioner : Mr.R.S.Anandan

For Respondents : Mrs.Geetha Thamaraiselvan
Special Government Pleader



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ORDER

WEB COPY The writ petition has been filed challenging the order of the 2nd Respondent herein dated 08.05.2007 and quash the same and to direct the Respondents herein to regularize the suspension period and count the same as on duty for all purposes and confer the benefits including seniority.

2. Brief facts:

2.1. The petitioner was appointed as a Child Welfare Organizer by the Block Development Officer (BDO) and joined in the non-classified service post on 01.04.1975. The post was absorbed thereafter under Tamil Nadu Integrated Nutrition Project, Phase-I under Department of Social Welfare. The petitioner was promoted as Community Nutrition Supervisor (CNS) and joined the said post on 07.07.1993 under Tamil Nadu Integrated Nutrition Project (TINP) Phase-II. The said post was re-designated as Supervisor Grade-II.

2.2. The petitioner's post was thereafter termed as surplus and given alternative appointment as Junior Assistant on adhoc basis until vacancy arose in the cadre of Supervisor Grade-II.



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2.3. While the petitioner was working as Junior Assistant/ Supervisor Grade-II, in the Integrated Child Development Scheme (ICDS), Thirukovilur, a charge memo was issued by the 2nd Respondent in No.17943/Admn 5(3)/03 dated 13.09.2004 on 14.10.2004 wherein the following charge was framed viz., the petitioner had fraudulently claimed to have passed SSLC on the strength of fake certificates and obtained appointment to the post of Community Nutrition Supervisor.

2.4. The charge memo relied upon copy of the following documents:

- i) Copies of Mark Sheets Bearing S.No.A573613 Register No. 536807 during April, 1991.
- ii) Letter No.15769/V 2-2/03 dated 01/04/2003, from the Secretary, Board of Examination, Chennai.

2.5. Thereafter, an enquiry officer was appointed vide proceedings dated 13.03.2007. The petitioner submitted her explanation vide letter dated 09.04.2007 before the Enquiry Officer. On consideration of the explanation submitted by the petitioner and also taking into account the fact that the petitioner was about 50 years, the following punishment was imposed vide impugned order dated 08.05.2007:



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"1. Her promotion to Supervisor Level-2 on 07.07.1993 is

cancelled.

2. All the financial benefits received by her from 07.07.1993 through this promotion should be properly calculated and deducted from her.

3. She shall be deemed to have continued to work as a Child Welfare Organizer from 07.07.1993 till 30.10.2003 i.e., the date on which she passed all the subjects in the SSLC examination. She is entitled to the monetary benefits only for the said post.

4. She was reinstated from temporary dismissal and promoted to Supervisor Level 2 on 30.10.2003. In case of promotion as supervisor her interse-seniority should be placed at the appropriate place in the seniority list on par with her juniors from 30.10.2003.

5. She is said to have passed the M.A. Degree examination without the basic educational qualification. It is directed to write to the Registrar of Annamalai University along with supporting documents to cancel the degree in Sociology and to take further action in accordance with the University norms."

2.6. Aggrieved by the above order, the petitioner filed an appeal before the 1st Respondent herein on 16.07.2007. Thereafter, the petitioner submitted a representation dated 12.11.2007 requesting the 1st Respondent i.e., the Appellate Authority to defer further proceedings as she had sought for document from the 2nd Respondent which was relied upon in the disciplinary proceedings. The petitioner also submitted a representation before the 2nd Respondent requesting to furnish the documents relied in the



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charge memo, the relevant portions of the same is extracted hereunder:

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“As I came to know of the same recently about the seriousness and effect of the punishment and the 60 days time given for appeal getting lapsed I have submitted a formal appeal to the Secretary to Government, Social Welfare & NMP Dept. Chennai 9 on 16.07.2007 well within the time limit. Now in order to file a detailed appeal, I may be furnished with the two document relied as per Annexure III of the charge memo to frame the charges and also the enquiry officer report to prove the guild charges.”

3. It is submitted by the learned counsel for the petitioner that despite the above request, the petitioner was not furnished with the copies of the above documents. While so on 18.04.2011, recovery proceedings were sought to be initiated on the basis of the directions of the Principal Accountant General. The petitioner was served with a letter enclosing the audit objection for recovery of Rs.5,00,914/- representing the alleged excess pay drawn by the petitioner while working as Supervisor Grade-II post. In the meanwhile, the petitioner submitted a representation on 26.10.2015 for release of retirement benefits. In W.P.No.27592 of 2018, this Court while considering the above representation was pleased to pass the following order:



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"13. In that view of the matter, this Court feels that the following orders can be passed in the Writ Petition:

(1) There shall be a direction to the respondents to calculate the pay benefits payable to the petitioner in the post of Child Welfare Organizer from 07.07.1993 till 30.10.2003 and thereafter, from 30.10.2003 till the date of superannuation i.e. 30.06.2015 in the post of Community Nutrition Supervisor and based on such calculation, the pensionable benefits shall be calculated and be paid including arrears to the petitioner.

(2) Such order to be passed and the payment to be made as indicated above certainly shall be subject to the outcome of the decision to be made by this Court in W.P.(MD) No.11858 of 2011.

(3) The needful, as indicated above, shall be undertaken by the respondents within a period of 8 weeks from the date of receipt of a copy of this order.

(4) It is needless to mention that insofar as the services rendered by the petitioner as Noon Meal Organizer between 1975 and 1993 is concerned, what is the portion of such service as pensionable service, as per the extant rule/Government orders shall also be taken into account by the respondent before passing the order, as indicate above."

4. The learned counsel for the petitioner would submit that the impugned proceedings cannot be sustained inasmuch as the petitioner had not furnished any fake certificate as alleged but only submitted the



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certificate issued by the School authorities. Secondly, it was submitted that the enquiry officer had not examined any witness. The enquiry officer had only examined the petitioner by putting questions to the petitioner. In the absence of any witness and without any documents having been marked in the course of the disciplinary proceedings, the entire disciplinary proceeding would stand vitiated.

5. To the contrary, it is submitted by the learned counsel for the Respondents by placing reliance upon the counter that the petitioner had obtained appointment to the post of Community Nutrition Supervisor (which was re-designated as Supervisor Grade-II) by furnishing fake/forged SSLC Certificate. The above forgery was informed to the Respondents vide communication dated 01.04.2003 by the Secretary to the Board of Examination and the following table in the counter was relied upon by the learned counsel for the respondents to submit that the petitioner had submitted a fake / forged certificate. The same is extracted hereunder:



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CERTIFICATE ISSUED BY THE SCHOOL EDUCATION & THE ORIGINAL MARKS SCORED BY THE DELINQUENT IN EXAM		CERTIFICATE FURNISHED BY THE DELINQUENT FOR OBTAINING PROMOTION BY FORGING THE MARKS	
4. NAME: K.SIVAGAMI 5. REGN. NO./ SESSION : 576807/ APR 1991 6. DATE OF BIRTH : 06.06.1957		1. NAME : M.KALAISELVI 2. REGD. NO./ SESSION : A 576131/ APR 1991 3. DATE OF BIRTH : 06.06.1957	
Subjects	Marks	Subjects	Marks
TAMIL	XXX	TAMIL	XXX
ENGLISH	XXX	ENGLISH	XXX
MATHEMATICS	XXX	MATHEMATICS	XXX
SCIENCE	3	SCIENCE	53
SOCIAL SCIENCE	16	SOCIAL SCIENCE	46
TOTAL	019	TOTAL	099

6. This Court is informed by the learned counsel for the Respondents that there was a major fire accident in the office of the 2nd Respondent on 16.01.2012 and the files and records were destroyed. It was thus submitted that the documents which was relied upon in the charge memo is no longer available and the respondents are thus not in a position to furnish the same to the petitioner now, in case the same has not been furnished earlier.



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7. Heard both sides and perused the materials on record.

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8. Before I proceed to deal with the merits of the case, it may be relevant to note on receipt of the punishment order of the 2nd Respondent dated 08.05.2007, the petitioner had preferred an appeal before the 2nd Respondent as early as on 16.07.2007. The fire accident in the Respondent Authority's office resulted in the documents getting destroyed and thus it seems doubtful if any purpose would be served by remitting the matter back to the Appellate Authority, more so, after having kept the writ petition pending for more than 10 years. Though normally this Court would not entertain a writ petition once a statutory remedy is availed, however in view of the peculiar facts of the case, I shall proceed to examine the legality of the proceedings dated 08.05.2007.

9. The thrust of the petitioner's submission is that the documents relied upon in the charge memo has not been furnished and that she has only submitted the certificates issued by the School Authority and it was not forged. The above submission of the petitioner does not seem to have any



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merit inasmuch as the petitioner had admitted in her explanation to the charge memo and also in the explanation before the enquiry officer that the document was fake. The following portions of the response of the petitioner would make the above position clear:

”2. மேற்படி தேர்வில் நான் வெற்றி பெற்றதாக மதிப்பெண் பட்டியல் எனது வீட்டு முகவரிக்கு பதிவு தபால் மூலம் பெற்றேன். நான் 7.7.1993ம் ஆண்டு மேற்பார்வையாளராக பணி உயர்வு வழங்கப்பெற்றேன்.

4. என்னுடைய மதிப்பெண் சான்றிதழ் போலி என்றுதேர்வுத் துறையால் கூறப்பட்டதை கேட்டு மிகவும் அதிர்ச்சியுற்றேன். அந்த சான்றிதழ் போலியானது என்பதை இன்றுவரை நம்பவில்லை.

.....

அய்யா அவர்கள் எனக்குத் தெரியாமல் நேர்ந்த நிகழ்வுக்கு மனம் வருந்தி மன்னிப்பு கேட்டுக்கொள்கிறேன். மேற்குறிப்பிட்டுள்ள எனது விளக்குத்தினை ஏற்று குற்றச்சாட்டில் இருந்து என்னை விடுவிக்கும்படியும் நான் அறியாமல் நிகழ்ந்த இந்நிகழ்வுக்கு அறிந்தோ அறியாமலோ காரணமாகிவிட்டேன் என்று அய்யா அவர்கள் முடிவு செய்தால் எனக்கு குறைந்தபட்ச தண்டனை வழங்கியும் இப்பதவியில் 13 ஆண்டுகளுக்கு மேலாக பணிபுரிந்ததை கருத்தில் கொண்டும் என்னை மன்னித்து இக்குற்றச் சாட்டிலிருந்து விடுவித்து தொடர்ந்து நான் பணிபுரிய ஆணைகள் வழங்கி இந்த ஏழையின் குடும்பத்தை காத்தருள வேண்டுமாய் பணிவுடன் வேண்டிக் கேட்டுக் கொள்கிறேன்.”



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10. Importantly, even before the Appellate Authority, the petitioner had not disputed the certificate that was submitted and on the basis of which she was appointed to the post of Community Nutrition Supervisor was fake/forged. The only contention of the petitioner was that she had nothing to do with the fake certificate which is stated to have been furnished to her by the School Authorities. The above submission is unconvincing and unacceptable. As a matter of fact, the only prayer before the Appellate Authority was for reduction of punishment. It is only 4 months after filing the appeal the petitioner submitted the representation before the 2nd Respondent requesting her to furnish the documents relied upon in the charge memo.

11. I do not see any merit in the case of the petitioner for the petitioner has on more than one occasion admitted that the mark sheets were fake/forged. It was only submitted that she had no role in making such fake/forged certificate. It is well-settled that admission has evidentiary value and constitutes a substantive piece of evidence and has the effect of shifting the onus of proving to the contrary on the party against whom it is produced. In



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the present case, before the Enquiry Officer as well as the Appellate

Authority, the petitioner had admitted that the certificate was fake / forged.

The only defense has been that she has only submitted the mark sheet which was furnished to her by the authorities. The contention of the petitioner is unconvincing rather puerile. The submission of fake certificate to secure employment / appointment / promotion is a grave offence and the explanation / contention of the petitioner having been found lacking merit, this Court has no hesitation in dismissing the writ petition.

12. For all the above reasons, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

22.08.2023

Index: Yes/No
Speaking Order: Yes/No
Neutral Citation: Yes/No
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To:

1. The Secretary to Government
Social Welfare & NMP Department,
Fort St. George, Chennai-9.

2. The Director of Social Welfare,
Chepauk, Chennai-5.



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MOHAMMED SHAFFIQ, J.

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Pre-Delivery order in
W.P. No.11858 of 2011
and
M.P. No.1 of 2011 and 1 of 2015

22.08.2023