

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2015

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI

AND

THE HON'BLE MR.JUSTICE K.K. SASIDHARAN

W.A. No.1323 of 2015

T. Ilayaperumal

Appellant

vs.

1 The Director
O/o the Commissioner of Employment
and Training
Thiru. Vi.Ka. Complex
Alandur Road
Guindy, Chennai 600 032

2 The General Manager (Mines-1)
Neyveli Lignite Corporation Ltd.
Block No.26, Neyveli

Respondents

Writ Appeal preferred under Clause 15 of the Letters Patent
challenging the order dated 11.08.2009 passed in W.P. No.27004 of
2003.

WP.No.27004 of 2003:Petition filed Under Article 226 of the
constitution of India to issue a Writ of Certiorari Calling for the
records of the 1st Respondent in his proceedings RC.31362/G1/83 and
quash the order dated 31/07/1985

For appellant Mr. S. Balasubramanian

JUDGMENT

(delivered by SATISH K. AGNIHOTRI, J.)

The instant intra-Court appeal arises from the order dated 11th
August 2009 rendered in W.P. No.27004 of 2003.

2 For the sake of brevity, clarity and convenience, the
parties are referred to as per their litigative status in the instant
intra-Court appeal.

3.1 Shorn of the unnecessary details, the brief facts germane for the disposal of this case are that the appellant sought employment as Industrial Worker/Trainee with the second respondent-Corporation on 28 November 1978, on the strength of his mark sheet of XI standard school examination. On enquiry, it came to light that in fact, the appellant had obtained only 19 marks in English and 17 marks in Mathematics. Thereafter, an alteration was carried out in the mark sheet to change 19 marks secured in English to 99 marks and similarly, 17 marks secured in Mathematics to 77 marks. The said alteration of marks was discovered subsequently, which led to passing of the proceedings dated 31 July 1985 by the first respondent, viz., the Director of Employment and Training, Chepauk, Chennai, annulling the National Trade Certificate issued to the appellant, due to his admission in the Industrial Training Institute, Paramakudi, by unfair means.

3.2 Pursuant thereto, a departmental enquiry was initiated regarding cancellation of the National Trade Certificate based on alteration in the mark sheet. Eventually, the appellant was dismissed from service vide order dated 23 October 1986. The said dismissal order was confirmed by the Appellate Authority vide order dated 13 January 1987.

3.3 The dismissal of the appellant from service was the subject matter in the writ petition being W.P. No.10267 of 1987, which was allowed by a learned Single Judge on 06 August, 1996. The writ appeal being W.A. No.857 of 1996 filed thereagainst by the respondent-Corporation was dismissed by this Court on 26 September 1996. The said judgment dated 26 September 1996 was taken in appeal to the Supreme Court by the respondent-Corporation.

3.4 The Supreme Court, considering all aspects of the matter, including alteration made in the mark sheet, allowed the appeal in favour of the second respondent on 26 September, 1997, observing as under:

"In view of the fact that the basic qualification for appointment on the post of Industrial Worker/Trainee is the holding of an ITI certificate and the appointment of the respondent was made only because he was holding such a certificate, the respondent could not claim to continue in employment with the Corporation after ITI certificate had been cancelled by the competent authority. If the respondent had any grievance against the cancellation of his National Trade Certificate, he should have taken necessary steps to have that order of cancellation set aside by a competent court. Till the said order is set aside, it has to be enforced and the appellants could proceed on the basis that the said certificate has been cancelled and that he is not entitled to continue in service. In view of the fact that the National Trade Certificate issued in favour of the

respondent had been cancelled, the High Court, in our opinion, was in error in setting aside the order of dismissal in exercise of its jurisdiction under Article 226 of the Constitution. We are, therefore, unable to uphold the impugned judgment of the High Court."

The appellant did not question the correctness of the cancellation of the National Trade Certificate issued to him, till the filing of the instant writ petition in 2003.

4 The issue which arises for consideration in this intra-Court appeal is as to whether the cancellation of the National Trade Certificate on account of the appellant's admission in the Industrial Training Institute, Paramakudi, by unfair means, can be agitated at this stage.

5 At this juncture, it is to be felicitously pointed out that the issue has been discussed at length by the Supreme Court, in its decision *supra*. While allowing the appeal preferred by the respondent-Corporation, the Supreme Court observed in no uncertain terms that "he should have taken necessary steps to have that order of cancellation set aside by a competent court".

6 The aforestated observation clearly indicates that before the order was passed by the Supreme Court or before the dismissal was confirmed, the appellant ought to have exercised his right to question the validity of the order of cancellation of his National Trade Certificate.

7 Thus, at this stage, on the same facts which have been established at every stage and more so, when a clear statement was made by the appellant's father that the appellant had made alteration of marks, a show cause notice would not have served any purpose and the same will remain only an empty formality.

8 The learned Single Judge, relying on the judicial pronouncements of the Supreme Court in *M.C. Mehta vs. Union of India*¹ and *Gadde Venkateswara Rao vs. Government of Andhra Pradesh*², has come to the right conclusion that issuance of a show cause notice could have been only an empty formality.

9 We have considered the submissions advanced by the learned counsel for the appellant at length and also perused the pleadings and documents appended thereto. We do not notice any infirmity or irregularity in the order sought to be impugned, which is just and proper, warranting no interference whatsoever.

1 (1999) 6 SCC 237

2 (1965) 2 SCR 172

10 Resultantly, this intra-Court appeal fails and is accordingly dismissed. Costs made easy.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

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O/o the Commissioner of Employment
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