

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 17.3.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P.No.9957 of 2012

M.Jayaseelan

... Petitioner

versus

1.The Chief Engineer (Personnel)
Tamil Nadu Electricity Board,
No.800, Anna Salai,
Chennai 2.

2.The Chief Engineer,
North Chennai Thermal Power Station,
Chennai 600 120.

3.The Superintending Engineer (P&A)
North Chennai Thermal Power Station,
Chennai 600 120.

... respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the entire records made in Lr.No. 080165/G.58/G.581/2004-3 dated 27.10.2004 passed by the 1st respondent and quash the same and direct the respondents to absorb the petitioner as regular helper with effect from 27.10.1999 with all monetary and consequential benefits in the light of the order passed in W.P.Nos.36574 to 36580 of 2004 and W.P.No.1213 to 1215 of 2004 dated 23.11.2009.

For petitioner

Mr.S.N.Ravichandran

For respondents

Mrs.R.Varalakshmi

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O R D E R

This Writ Petition is directed against the letter dated 27 October 2004 whereby and whereunder the first respondent informed the petitioner that he is not eligible for absorption as helper on account of his submission of bogus certificates.

Brief facts :-

2. The petitioner was engaged as Contract Labour in North Chennai Thermal Power Station. The initial engagement is stated to

have been made in 1995. The Tamil Nadu Electricity Board, (hereinafter referred to as "the Electricity Board") issued proceedings in BP(FB) No.17, dated 28 April 1999, for the purpose of absorbing those contract employees who have completed 480 days as on 30 April 1997. The Electricity Board identified the candidates eligible for absorption as on 30 April 1999. Name of the petitioner was included in the said list.

3. Though similarly situated contract labourers were all absorbed, the case of the petitioner was not considered on the ground that he produced bogus certificates.

4. The petitioner having found that this Court has considered similar cases of those who have produced bogus certificates and directed their reinstatement, resulting in issuing proceedings in BP FB No.27 dated 7 November 2002, filed a Writ Petition in W.P.No.24749 of 2004 to consider his case for absorption. This Court issued a Mandamus on 1 September 2004 to consider the case of the petitioner for absorption. The first respondent pursuant to the said order considered the case of the petitioner and once again rejected it on the ground that his case cannot be compared with the case of those who have been terminated on account of production of bogus certificates and later reinstated after imposing punishment. The said letter of rejection is challenged in this Writ Petition.

5. The third respondent filed a counter affidavit admitting the factual position that the petitioner was one among the contract labourers identified by the Committee for absorption. According to the third respondent, the petitioner submitted school certificate evidencing that he has undergone education in Government High School, Subbareddy Palayam. The certificate was sent for verification. The Headmaster, Government High School, Subbareddy Palayam, in his reply dated 11 October 1999, informed that the petitioner was not a student of the said institution and that the certificate was bogus. According to the third respondent, action was taken against other employees while they were in service. However, case of the petitioner is totally different. Even before absorbing him in service, bogus certificate was found and as such, he was not given appointment.

Submission :-

6. The learned counsel for the petitioner by placing reliance on the order dated 23 November 2009 in W.P.Nos.36574 to 36580 of 2004 and the earlier judgment of the Division Bench in W.A.(MD) No.6/2009 contended that the petitioner is similarly situated and as such, the first respondent was not correct in rejecting the claim for absorption.

7. The learned Standing Counsel for the respondents justified the impugned letter. According to the learned counsel, case of the petitioner is entirely different. He was not given appointment on

account of the production of false certificates. The other employees were all terminated originally and thereafter reinstated into service after conducting disciplinary proceedings.

Analysis :-

8. The factual matrix clearly shows that the name of the petitioner was included in the list of contract labourers eligible for absorption. The petitioner attended interview and produced a certificate to show that he was a student of Government High School, Subbareddy Palayam. The respondents suspected the genuineness of the certificate and as such, it was sent for verification. The Headmaster of the institution in his letter dated 11 October 1999 made it very clear that the petitioner has produced a false certificate and that he has not studied in the said institution. The petitioner was therefore not absorbed in service.

9. The petitioner is placing reliance on the judgment of the Division Bench in W.A.(MD) No.6/2009. The Division Bench was concerned with the case of those employees whose services were terminated on account of production of bogus certificates. Subsequently, this Court, in W.P.Nos.36574 to 36580 of 2004, followed the said decision and directed the Electricity Board to absorb similarly situated employees notwithstanding their production of bogus certificate. While deciding those Writ Petitions by order dated 23 November 2009, this Court has not considered the difference between cases of employees who were terminated on account of production of false certificate and those who were not even given appointment again on account of production of such bogus certificates. I am therefore of the view that no reliance could be placed on the judgment of the Division Bench in W.A.(MD) No.6 of 2009 or the order in subsequent Writ Petitions in W.P.Nos.36574 to 36580 of 2004 to contend that the petitioner is similarly situated and as such, he should also be given the benefits of such orders. The issue raised by the petitioner therefore requires to be decided independently, without reference to the earlier orders.

10. The Electricity Board issued proceedings in BP (FB) No.27, dated 7 November 2002, whereby and whereunder contract employees who have been dismissed from service on account of production of bogus certificates were all reinstated, after imposing the punishment of reduction of pay to the minimum scale of pay for a period of 3 years. Even though the said proceedings relate to the employees who were terminated from service, others, whose claim for appointments were rejected on account of production of bogus certificate, should also be given the benefit of the said order, by imposing similar punishment as otherwise, it would amount to discrimination.

11. The Electricity Board restored the services of dismissed employees by imposing the punishment of reduction of pay to the minimum scale of pay. Similar action should have been taken in the

case of the petitioner by punishing him for the misconduct committed by him before absorption. The first respondent has simply stated that case of those covered under BP (FB) No.27 dated 7 November 2002 cannot be compared with the case of the petitioner inasmuch as he was not even absorbed. When it is made out that several people have produced bogus certificates and got employment, and ultimately they were all reinstated with punishment, necessarily, benefit of such orders should be extended to others like the petitioner who were denied absorption on the ground of production of bogus certificate. I am therefore of the view that the petitioner should also be absorbed in service.

12. The next issue is whether the petitioner should be permitted to go scot free, without subjecting to the punishment for production of bogus certificate.

13. It is the admitted case of the parties that the petitioner produced a bogus certificate. The clarification issued by the Headmaster, Government High School, Subbareddy Palayam, to the effect that the petitioner was not a student of the said institution and the certificate produced by him was bogus, has attained finality. The petitioner therefore should undergo punishment for the said misconduct. Therefore, while directing the respondents to absorb the petitioner as regular helper, it is made clear that he would be absorbed only as a fresh candidate and he would not be given benefits of the earlier period of service for any purpose, including monetary benefits. The appointment from the date of issuance of order by denying the benefit of earlier service would be treated as punishment for the misconduct.

14. In the result, the impugned letter is set aside. The first respondent is directed to pass a consequential order appointing the petitioner as regular helper with effect from the date of issuance of the order of absorption. Such exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.

15. The Writ Petition is allowed to the extent indicated above. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Engineer (Personnel)
Tamil Nadu Electricity Board,
No.800, Anna Salai,
Chennai 2.

2.The Chief Engineer,
North Chennai Thermal Power Station,
Chennai 600 120.

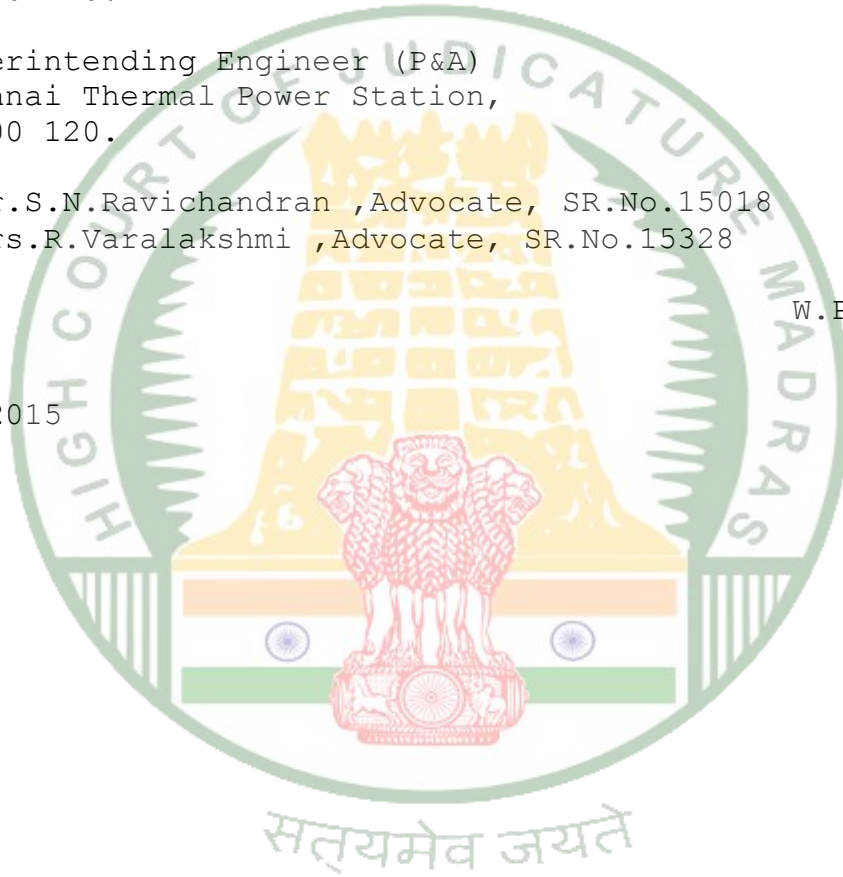
3.The Superintending Engineer (P&A)
North Chennai Thermal Power Station,
Chennai 600 120.

1 cc to Mr.S.N.Ravichandran ,Advocate, SR.No.15018

1 cc to Mrs.R.Varalakshmi ,Advocate, SR.No.15328

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vsn(co)
pmk.10.4.2015



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