

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03-11-2016

(Orders reserved on 24-10-2016)

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.10632 of 2016

and

W.M.P.No.9234 of 2016

M.Dhanasekar

.. Petitioner

Vs.

The District Forest Officer,
Thiruvannamalai North Division,
Polur,
Thiruvannamalai District.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the respondent in Proceedings No.1304/2014/Pa1, dated 18.12.2015 and to quash the same and consequently directing the respondent to re-instate the petitioner into service with all consequential and other attendant benefits.

For Petitioner : Mr.G.Sankaran

For Respondent : Mr.N.Inbanathan, Govt. Advocate

ORDER

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the respondent in Proceedings No.1304/2014/Pa1, dated 18.12.2015 and quash the same and consequently direct the respondent to re-instate the petitioner into service with all consequential and other attendant benefits.

2. It is the case of the petitioner that his father was employed as Record Clerk in the Forest Department at Thiruvannamalai District in the Office of the District Forest Officer, Thiruvannamalai Division, Polur. He suffered paralysis in the year 2001 and was medically incapacitated to continue to work and he was discharged from service on medical incapacitation on 23.11.2011. Hence, the petitioner submitted application for appointment on compassionate grounds. The

petitioner has passed SSLC examination in October 1994 and further passed Higher Secondary Examination in September 1997. Based on his qualification, the petitioner applied for the post of Junior Assistant in the respondent-Forest Department. In view of the ban imposed by the State Government, his claim for appointment on compassionate grounds, was not considered immediately. However, after more than 12 years, he was given appointment as Junior Assistant and allotted to Vellore Region as per the proceedings of PCCF, Chennai-15, dated 17.09.2013. On his appointment, the petitioner produced all the certificates to the office of the respondent and based on the same, the correctness of the certificates produced by the petitioner, had been duly verified and the respondent issued proceedings in Na.Ka.No.5119/2013/Pa.1, dated 21.10.2013 stating that all the certificates are genuine. Thereafter, the petitioner was given appointment to the post of Junior Assistant as per the proceedings of the respondent, dated 29.11.2013 and he joined the post on the same day, i.e. on 29.11.2013. From the date of appointment, the petitioner has been continuously working in the office of the respondent.

3. While so, suddenly, the petitioner was issued with the impugned order dated 18.12.2015 by the respondent dismissing him from service by cancelling the order of appointment, dated 29.11.2013 on the ground that Xth Standard certificate produced by the petitioner for securing appointment on compassionate grounds, is a forged one, since the marks in the certificate were altered as per the report received from the Director of Government Examination. It is stated by the petitioner that he has written Xth Standard Examination and was issued with mark statement by the Department of Government Examinations, which was produced to the Department for consideration at the time of appointment. He wrote SSLC Examination in April 1994 and cleared Tamil, Science and Social Science and failed in English and Mathematics. In the subsequent examination conducted in October 1994, the petitioner appeared and wrote the examination in English and Mathematics and secured 48 and 44 marks respectively and declared pass. That being so, the petitioner was issued with the impugned order of dismissal without providing an opportunity of hearing and in violation of the principles of natural justice. Hence, challenging the said order, dated 18.12.2015, the petitioner has filed this Writ Petition.

4. When the Writ Petition is taken up for hearing, learned counsel for the petitioner made detailed arguments by adverting to the averments made in the affidavit. He specifically submitted that the impugned order of dismissal from service has been passed against the petitioner without following the procedures established by law and without providing an opportunity of hearing to the petitioner, and hence, it is in violation of the rights guaranteed under Article 311 of the Constitution of India. Learned counsel further submitted that in

the impugned order, it is stated that the petitioner was appointed on temporary basis on condition that the petitioner would be terminated from service without any notice and therefore, the respondent is having power to dismiss the petitioner from service without notice and without providing an opportunity. He further contended that the impugned order is ex-facie punitive and stigmatic and no such order can be passed without complying with the principles of natural justice, and hence, he submitted that it is liable to be quashed.

5. Learned Government Advocate appearing for the respondent, by filing detailed counter affidavit, submitted that the petitioner applied for the post of Junior Assistant on compassionate grounds and his application is dated 25.01.2002, which was kept in seniority list. According to his turn, the petitioner was selected for appointment as Junior Assistant by the Principal Chief Conservator of Forest, Chennai, as per Ref.No.W2/20132/2009, dated 17.09.2013. His certificates and mark-sheets pertaining to SSLC and Higher Secondary education had been verified and he was issued with posting orders for the post of Junior Assistant. While issuing the posting orders in Proceedings No.5119/2013/E1, dated 29.11.2013, it was clearly mentioned that the postings are purely temporary and if any irregularities are noticed subsequently, he will be terminated from service without any notice. Thereafter, the mark-sheets of SSCL and Higher Secondary education produced by the petitioner, have been sent to the Directorate of Government Examinations with a request to give bona-fides of the Certificate, vide District Forest Officer, Thiruvannamalai North Division in Ref.No.1304/2014/E1, dated 13.03.2015. It is further submitted by the learned Government Advocate that the Director of Government Examinations, vide Ref.No.104641/V12/2015, dated 26.11.2015, informed that the SSLC certificate bearing No.AA2777582 with Register No.428672 produced by the petitioner, had been verified with reference to the original Register maintained in the Directorate and it was found to be false and the petitioner has not passed English and Mathematics subjects, whereas, from the Certificate produced by the petitioner, it is seen that he had passed in both the subjects. Hence, it was recommended to initiate criminal proceedings with Police Department, as well as departmental action. Thereafter, the petitioner was dismissed from service by the impugned order. A complaint was also lodged with the Inspector of Police, Polur, vide District Forest Officer, Thiruvannamalai North Division Ref.No.1304/14/E1, dated 18.12.2015 and 22.12.2015, which is pending action at their end. Learned Government Advocate therefore submitted that there is no impediment for passing the impugned order and he prayed for dismissal of the Writ Petition.

6. Keeping in mind the above submissions, I have considered the same and perused the materials available on record.

7. There is no doubt that in the appointment order itself, it has been stated that the posting is purely temporary and if any irregularities are noticed, the petitioner will be terminated from service without any notice. In this regard, learned counsel for the petitioner relied on a decision of the Supreme Court reported in 2000 (3) SCC 239 (V.P.Ahuja Vs. State of Punjab), wherein the Apex Court held that the order should not ex-facie be stigmatic and punitive and a temporary servant is also entitled to certain protection and his services cannot be terminated arbitrarily, nor can those services be terminated in a punitive manner without complying with the principles of natural justice. Learned counsel for the petitioner also relied on a decision of the Supreme Court reported in 2010 (8) SCC 220 (Union of India Vs. Mahaveer C.Singhvi), wherein also, the same view was taken by the Apex Court holding that if an order is passed as a punitive measure without giving an opportunity of defending/hearing, the same would be invalid and liable to be quashed.

8. From a reading of the above judgments of the Supreme Court, it is seen that a dismissal order, even in respect of temporary employee, cannot be passed arbitrarily without giving an opportunity of hearing or without complying with the principles of natural justice. In the instant case, no opportunity of hearing was given to the petitioner before passing the impugned order. Hence, the impugned order is liable to be quashed.

9. Accordingly, the impugned order is quashed. The Writ Petition is allowed. The respondent is directed to give an opportunity of personal hearing to the petitioner by issuing a notice to him, and thereafter, by conducting enquiry, appropriate orders be passed by the respondent, on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. No costs. W.M.P. is closed.

Sd/-

Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

Copy to
The District Forest Officer,
Thiruvannamalai North Division,
Polur, Thiruvannamalai District.
+1 cc to Mr.G.Sankaran, advocate, sr.62712
+1 cc to Govt.Pleader, sr.62868.
gj (co)
krd 1/12

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