

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 16.09.2016

Delivered On : 29.09.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

W.P.Nos.6427 of 2013 and 30109 of 2015

and M.P.Nos.1 of 2013 and 1 of 2015

E.Sugirtha ... Petitioner in both W.Ps.

vs.

1.The Chief Executive Officer,
Tamilnadu Khadi & Village Industries Board,
Kuralagam, Chennai-108. ... Respondents in both W.Ps.

2.The Chairman/The Secretary to Government,
Tamilnadu Khadi & Village Industries Board,
Handloom & Textiles Department,
Fort St.George, Chennai-9. ... R2 in W.P.No.6247 of 2013

Prayer in W.P.No.6427 of 2013: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the respondents in connection with the impugned orders passed by them in Na.Ka.No.2485/11/E3/3 dated 19.07.2012 and Khadi Board proceedings B.No.2 dated 11.02.2013 respectively and quash the same.

Prayer in W.P.No.30109 of 2015: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the entire records relating to the impugned letter passed by the respondent in his Letter Na.Ka.No.15078/12/E3(3) dated 20.08.2015 and quash the same and consequently directing the respondent to disburse the Special Provident Fund, Earned Leave Surrender Encashment and Un-earned Leave on Private Affairs Encashment to the petitioner.

For Petitioner
in W.P.No.6427 of 2013 : Mr.M.Muthappan,
in W.P.No.30109 of 2015 : Mr.C.Prakasam

For Respondents : Mr.S.K.Bose
for R1 in W.P.No.6427 of 2013
and W.P.No.30109 of 2015
Mr.S.Gunasekaran,
Additional Govt. Pleader
for R2 in W.P.No.6427 of 2013

C O M M O N O R D E R

Since both the writ petitions are interrelated to each other, they are disposed of by this common order.

2. W.P.No.6427 of 2013 has been filed praying for issuance of a Writ of Certiorari calling for the records of the respondents in connection with the impugned orders passed by them in Na.Ka.No.2485/11/E3/3 dated 19.07.2012 and Khadi Board proceedings B.No.2 dated 11.02.2013 respectively and quash the same. W.P.No.30109 of 2015 has been filed praying for issuance of a Writ of Certiorari Mandamus calling for the records relating to the impugned letter passed by the respondent in his Letter Na.Ka.No.15078/12/E3(3) dated 20.08.2015 and quash the same and consequently directing the respondent to disburse the Special Provident Fund, Earned Leave Surrender Encashment and Un-earned Leave on Private Affairs Encashment to the petitioner.

3. The case of the petitioner is that she entered the service in Khadi and Village Industries Board on 12.12.72 and at that time, the qualification for the post is read and write and during the relevant time when he entered the service, he studied SSLC XI standard in the year 1970. The petitioner was subsequently promoted as Masalji (Office Assistant) cadre on 10.07.1975 and at that time, +2 system was introduced in Tamil Nadu and she appeared for 10th standard and passed in October 1992 and since the petitioner had completed 11 years of schooling, it is not necessary that she should pass 11th standard for promotion as Junior Assistant. The petitioner was promoted as Junior Assistant in the year 1993 and thereafter promoted as Assistant in the year 1998. When she became due for superannuation on 31.05.2012, she was placed under suspension on 07.02.2012 without mentioning any reason and a charge memo dated 03.03.2012 was issued under Section 34(B) of the T.N. Khadi & Village Industries Board Regulations stating that the petitioner has submitted forged SSLC mark sheet with ulterior motive for the purpose of getting promotion as Junior Assistant and

thereby, cheated the Department as well as violated the Government Servants Conduct Rules.

4. The petitioner has submitted his detailed explanation dated 08.03.2012 to the charge memo denying the charges and thereafter, an Enquiry Officer was appointed and after completion of enquiry, the Enquiry Officer submitted an Enquiry Report holding that the charges framed against the petitioner are proved and submitted a proved minute to the Disciplinary Authority on 15.06.2012. The Enquiry Officer's report was served on the petitioner on 21.06.2012, for which the petitioner submitted her explanation dated 29.06.2012 and however, the disciplinary authority concurred with the findings of the Enquiry Officer and passed an order dated 13.09.2012 imposing a punishment of removal from service for the proven charges. The petitioner preferred a statutory appeal before the second respondent through proper channel on 10.08.2012 and however the second respondent passed an order dated 11.12.2013 rejecting the claim of the petitioner and hence, the petitioner has come forward with this petition.

5. The first respondent has filed a counter affidavit stating that the petitioner, for the purpose of getting promotion, has furnished forged SSLC mark sheet by making corrections in 4 subjects and given a pass certificate, but actually she failed in 3 subjects as per the original records and that is the reason, she was placed under suspension on 07.02.2012 and hence charges were framed on 03.03.2012 under Regulation 34(b) of Tamilnadu Khadi and Village Industries Board Service Regulations and after receipt of petitioner's explanation, Enquiry Officer was appointed and enquiry was conducted and the Enquiry Officer, after giving sufficient opportunity to the petitioner, completed the enquiry holding that the charges against the petitioner were proved and hence, the petitioner was dismissed from service, which was also confirmed by the Appellate Authority. The learned Additional Government Pleader, reiterating the above, prays for dismissal of this writ petition.

6. When the matter was taken up for consideration, the learned counsel appearing for the petitioner submitted that the petitioner was appointed as Khalasi on 12.12.1972 and at the time of appointment, the petitioner was SSLC fail and for the purpose of getting promotion she took SSLC examination and produced the mark sheet in October 1992 and based on which she was promoted as Junior Assistant in the year 1993 and thereafter as Assistant in the year 1998 and when she become due to superannuation on 31.05.2012, she was placed under suspension stating that she has submitted forged mark sheet with ulterior

motive with a view to get promotion as Junior Assistant. The learned counsel appearing for the petitioner would further submit that criminal case initiated against the petitioner in C.C.No.331/2012 on the file of the Judicial Magistrate No.I, Poonamallee had ended in acquittal, vide judgment dated 26.08.2014 and in the said judgment, the Criminal Court has clearly observed that absolutely there is no evidence to show that forged document was produced only by the petitioner and since the petitioner was acquitted in the criminal case, the impugned order passed by the respondents dismissing the petitioner from service is liable to be set aside. Alternatively, the learned counsel appearing for the petitioner by relying upon the Division Bench judgment of this Court in P.Sekar v. Registrar, Tamil Nadu Administrative Tribunal, Chennai and Others [(2008) 5 MLJ 646] submitted that in identical situation, this Court modified the punishment imposed by the respondents therein by directing them to revert the petitioner therein to the post of Flock Man in that case and hence, following the same, similar order may be passed.

7. Keeping the submissions made on either side, I have gone through the entire materials placed before it.

8. I find that for appointment to the post of Khalasi, SSLC fail is sufficient and only for the purpose of promotion, the petitioner produced the certificate for SSLC as pass and he continued to work in the promoted post for nearly 19 years and just before attaining superannuation, she was placed under suspension and thereafter, enquiry was conducted by appointing Enquiry Officer and ultimately she was dismissed from service. I further find that the Criminal Court has also acquitted the petitioner holding that there is no evidence to prove that the petitioner has produced forged SSLC mark sheet. Therefore, on this factual background, I am of the opinion that the punishment imposed on the petitioner shall be modified by following the judgment of the Division Bench of this Court in P.Sekar's case (cited supra) and it is relevant to extract the following portion of the said judgment:

"5. Therefore, the contention of the petitioner that the enquiry report and the order of punishment are based on no evidence is not acceptable. In a departmental enquiry, technical rules of the Evidence Act are not strictly applicable. On behalf of the Department, the letter of the Director of Government Examinations dated 7.11.2001 had been produced indicating that the marks reflected in the mark sheet submitted by the petitioner did not tally with the marks available from the original records. The

petitioner himself was examined during the departmental enquiry and the questions put and the answers given are available on record. Except baldly stating that the petitioner has got mark sheet from the school, there is no other acceptable material or detail has been given. It is not even the case of the petitioner that he had actually passed and the report given by the Director of the Government Examinations is incorrect. Since the petitioner had submitted a mark sheet, which was found to be incorrect, it was within the subject knowledge of the petitioner as to the source of obtaining such mark sheet and it was for him to explain such aspect by adducing proper evidence. To that extent, the Tribunal was correct in coming to the conclusion that the charge has been found against him.

....

8. Keeping in view the fact that there is no finding nor any material to indicate that the petitioner had knowingly submitted a false mark sheet and such question would be ultimately decided in the pending criminal case and taking into consideration the social strata from which the petitioner comes, we feel in the interest of justice that punishment of termination of service is required to be modified and instead we direct that the petitioner shall be reverted to the post of Flock Man and shall not be considered for promotion to any other post. As a consequence of such order, it is further directed that the period during which the petitioner has not worked, shall not be counted for any purpose."

I am also of the opinion that the petitioner had served in the respondent Board from 1972 onwards and had put in 39 years of service and therefore, instead of dismissing her from service, it would be appropriate to revert her to the post of Masalji (Office Assistant) for which SSLC fail is sufficient.

9. In view of the reasons assigned above, W.P.No.6427 of 2013 is partly allowed and the impugned proceedings passed by the respondents in Na.Ka.No.2485/11/E3/3 dated 19.07.2012 and Khadi Board Proceedings B.No.2 dated 11.02.2013 are set aside and the punishment of dismissal from service is modified to one of reversion to the post of Masalji (Office Assistant). W.P.No.30109 of 2015 is disposed of with a direction to the respondents to workout all the attendant and terminal benefits payable to the petitioner by treating his service as Masalji and pass orders with regard to payment of terminal benefits within a period of eight weeks from the date of receipt of a copy of this

order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jvm

To

1.The Chief Executive Officer,
Tamilnadu Khadi & Village Industries Board,
Kuralagam, Chennai-108.

2.The Chairman/The Secretary to Government,
Tamilnadu Khadi & Village Industries Board,
Handloom & Textiles Department,
Fort St.George, Chennai-9.

+1 CC to M/s. M. Muthappan, Advocate Sr.No.56733

+1 CC to S.K. Bose, Advocate Sr.No.56405

W.P.Nos.6427 of 2013 and 30109 of 2015

NR (CO)
MD : 26/10/2016

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