

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. No.29388 of 2011

and

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

P.Muthusamy

... Petitioner

vs.

1. The Commissioner & Secretary,
Animal Husbandry Department,
Fort St. George,
Chennai - 600 009.
2. The Director of Animal Husbandry
Animal Husbandry Department,
DMS Compound, Teynampet,
Chennai - 600 006.
3. The Regional Joint Director,
Animal Husbandry Department,
Villupuram.
4. The Assistant Director,
Animal Husbandry Department,
Kallakuruchi.
5. The Labour Officer,
Cuddalore.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India to issue of Writ of Certiorarified Mandamus calling for records relating to the third respondent's order made in Ref.No.Na.Ka.No.5468/A2/03, dated 8.7.2004, to quash the same and consequently direct to extend all benefits both service and monetary.

For Petitioner : Mr.G.Elanchezhiyan

For Respondents: Mr.R.Govindasamy,
Special Government Pleader

O R D E R

Heard Mr.G.Elanchezhiyan, learned counsel for the petitioner and Mr.R.Govindasamy, learned Special Government Pleader for respondents.

2. Though various grounds have been raised in the Writ Petition challenging the dismissal order, a specific question was put forth to the petitioner stating whether the respondent has admitted the Secondary School Leaving Certificate (SSLC), produced by the petitioner.

3. The learned counsel for the petitioner would submit that though they had admitted in nutshell, the punishment imposed was grossly disproportionate to the charges, to substantiate his submissions, the learned counsel would submit that the initial post in which the petitioner was appointed does not require qualification of SSLC and that the passing of SSLC is required only for the next promoted post of Veterinary Livestock Inspector. In this connection, the learned counsel relied on a Division Bench Judgment of this Court in P.Sekar, S/o.Ponnan Vs. The Registrar,

Tamil Nadu Administrative Tribunal, Chennai and others reported in 2008 (3) CTC 23 dated 16.02.2013.

4. Relying upon the said decision, the learned counsel for the petitioner submits that the punishment of dismissal could be modified into reversion. In the said decision, it has been held as follows :-

"It is next contended by the learned counsel for the petitioner that punishment imposed is grossly disproportionate and at any rate the petitioner could have been allowed to continue in the lower post as Flock Man by ordering reduction in rank as a punishment, which is also a major penalty.

7. There is no dispute that for the initial post in which the petitioner had been appointed, there was no requirement of passing SSLC. Passing of SSLC is required only for the promotion to the post of Veterinary Livestock Inspector. The petitioner claims that he had simply forwarded the mark-sheet which he had received. It is not in dispute that a Criminal Case is pending and therefore the question as to whether the petitioner had knowingly utilised the false mark-sheet would be decided in such Criminal Case. Incidentally the post held by the petitioner was very insignificant post of Flock Man.

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.

9. With the above modification relating to punishment, the Writ Petition is disposed of. However, it is made clear that this order should not be construed as expressing any opinion in the pending Criminal case which should be decided on its own merits without being influenced by any of the observation made in this order. It is also made clear that in case the petitioner is convicted in such Criminal Case, at that stage, it would be open to the respondents to take further action in accordance with law and this reinstatement is obviously subject to the result of the pending Criminal case. No costs".

5. The same propositions has been followed in various other decisions of this Court and also in W.P.No.26940 of 2009, dated 22.12.2014 The learned Judge of this Court, in the said Writ Petition, after following the decision of the Hon'ble Division Bench, cited supra, has held as follows :-

"5. The said ratio was followed in the other cases referred to supra. The decision rendered by this Court was implemented by the proceedings dated 23.07.2009 and 14.06.2012 respectively for some of the petitioners therein. Considering the same, the order impugned in this writ petition is set aside. Consequently, the punishment imposed is modified to that of reversion. Since, it is submitted by the learned counsel for the petitioner that the petitioner is no more, the respondent will have to compute the retrial benefits due to the legal heirs of the petitioner within twelve weeks from the date of receipt of a copy of this order. However, there is no entitlement for backwages.

6. With the above direction, the writ petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed".

6. I am of the view that the above judgments are squarely applicable to the facts of this case also. In the result, the punishment of dismissal imposed on the petitioner is modified to one of reversion. The respondents are directed to compute the retirement benefits due to the petitioner within a period of twelve weeks from the date of receipt of copy of this order. There shall be no order for back wages.

7. With the above directions, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The Commissioner & Secretary,
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5. The Labour Officer,
Cuddalore.

+1cc to Mr.G.Elanchezhiyan, Advocate, S.R.No.64166

+1cc to the Government Pleader, S.R.No.64345

SV(CO)
Eu(09/12/2016)

W.P. No. 29388 of 2013