

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2016

CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.34372 of 2007 and
M.P.No.1/2007

C.Subramanian

.. Petitioner

Vs

The District Educational Officer,
Vellore.

... 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 order made in Na.Ka.No. 2619/A1/2006 dated 29.08.2007 passed by the respondent and quash the same and direct the respondent to reinstate him in service with all attended benefits.

For Petitioners : Mr.G.Ethirajulu
For Respondent : Mr. K.Rajendra Prasad
Govt. Advocate

ORDER

The prayer is for a writ of certiorarified mandamus, calling for the records relating to the order made in Na.Ka.No. 2619/A1/2006 dated 29.08.2007 passed by the respondent and quash the same and direct the respondent to reinstate him in service with all attended benefits.

2. It is a classic case where a person on the strength of a forged certificate has got a Government Job and continued in the said job for a quarter century and ultimately, when his misdeeds was found at a belated stage by the authorities concerned, he has approached the Court of law with full of falsified statements.

3. The petitioner claimed to have born on 3.7.1956 and completed VIII Std at a Government School, namely, Government Higher Secondary School, Pallikonda and since he was not able to continue IX std, he applied for transfer certificate on

10.6.1970 and the said certificate was issued by the Headmaster of the said school, namely, Government Boys Higher Secondary School on 10.6.1970 and on that strength, he had claimed the post, as office Assistant at Ranipettai Government Teachers Training School for boys and he was appointed so, on 08.2.1982 through the name sponsored by the employment exchange and thereafter, his service was also regularised on 30.6.1983 with effect from 12.2.1982 and his probation also was declared on 26.4.1984. Subsequently, the petitioner was transferred to Government Boys Higher Secondary School, Anaikattu on 3.3.1985 and thereafter, he was promoted as Record Clerk by the proceedings of the respondent dated 29.6.2005 and he was posted at Government Higher Secondary School, Kaniyambadi. However, the petitioner had not accepted the said promotion and he had expressed his willingness to forego the same. Therefore, the said promotion was cancelled by order dated 12.8.2005 and, he was again posted as Assistant in Government Boys Higher Secondary School, Anaikattu. Subsequently, the petitioner was transferred to Government High School Agaram, by order dated 20.2.2007. Therefore, the petitioner had completed 25 years of continuous service.

4. While so, based on the complaint received by the respondent, sometime in December 2005 about the date of birth as well as the educational qualification of the petitioner, the respondent had sent for verification of the certificates produced by the petitioner, for appointment, in April 2006 and on verification, the Transfer Certificate produced by the petitioner did not tally with the school records where he claimed to have studied. Thereafter, a show cause notice was issued by the respondent on 27.7.2007 whereby the respondent directed the petitioner to give show cause as to why he should not be removed from service because of his production of forged certificate claiming a wrong date of birth and qualification. On receipt of the show cause notice, the petitioner had given his reply on 23.8.2007 wherein he had claimed that he had studied up to IX std at Pallikonda Board High School. Thereafter, he had registered his name in the employment exchange, Vellore and after his request in the year 1970 for issuance of Transfer Certificate, the said Transfer Certificate was given in the year 1970 and his date of birth is 03.7.1956 and since he had completed 25 years of service from 1982, the complaint given against the petitioner were false and therefore, accepting the same, the petitioner had requested the respondent, to relieve him from charges.

5. Thereafter, on consideration of the above said factors as well as the explanation given by the petitioner, the respondent since had come to an irresistible conclusion that the petitioner

had produced a forged Transfer Certificate by thus, claiming his date of birth as 3.7.1956, however, his original date of birth is not so and therefore, on that ground the respondent came to the conclusion that the petitioner is liable to be terminated from service. Accordingly, the order impugned dated 29.8.2007 was passed removing the petitioner from service forthwith, as against which, the present writ petition has been filed with the above said prayer.

6. Mr.G.Ethirajulu, the learned counsel appearing for the petitioner would contend that the petitioner was born on 3.7.1956 and he had studied up to IX std at Pallikonda Board High School. He had not completed IX std and in fact discontinued at IX std itself. He had registered his name in the employment exchange with the qualification of VIII std and thereafter, he had applied for Transfer Certificate from the said Pallikonda Board High School where Transfer Certificate in Sl.No.19064, T.C.No.19/70-71 with admission No.3604 was given by the Headmaster of the Government Boys Higher Secondary School, Pallikonda on 11.6.1970 and the same was produced before the respondent at the time of appointment to the post of Office Assistant in the year 1982 and thereafter, the petitioner was appointed and his service was regularised as his probation was declared and ultimately, he was given promotion also. When further promotion was given to the petitioner, he had relinquished the same and thereafter, he had been transferred to some other school and after having completed 25 years of service, suddenly show cause notice was issued allegedly based on the reason of complaint given by some third party, who might have had animosity against the petitioner as they belong to the same village or nearby area where the petitioner belong and only based on which the said show cause notice was issued and the same was suitably replied by the petitioner on 23.8.2007 where he had given proper explanation to the said show cause notice.

7. Thereafter, when the petitioner was expecting that either the proceedings initiated through the said show cause notice would be dropped or still if the respondent feels that it has to be further investigated or probed, a detailed enquiry as contemplated in the manner known to law would be initiated against the petitioner. But without resorting to any of the said two options, the respondent, to the shock and surprise of the petitioner, has passed the impugned order dated 29.8.2007 whereby the services of the petitioner was abruptly terminated and he was removed from service forthwith. Therefore, the impugned order cannot be sustained as no enquiry was conducted in the manner known to law, and the explanation given by the petitioner has not been considered in the proper perspective and therefore, the impugned order at any rate will not stand in the

legal scrutiny. Hence, interference of this Court is very much essential and the writ petition has to be allowed, the learned counsel for the petitioner submitted.

8. On the contrary, Mr. K.Rajendra Prasad, the learned Government Advocate would vehemently contend that the petitioner in fact had produced the Transfer Certificate (copy only) said to have been given by the Government High School/Higher Secondary School, Pallikonda on 10.6.1970 wherein the serial number was noted as 19064 and T.C.No.19/70-71 with admission number shown as 1059 wherein he claimed the date of birth as 3.7.1956. The other particulars which are found in the said Transfer Certificate are that the petitioner was qualified for promotion to the standard of IX and the petitioner had left the school on 31.5.1970. He had applied for the Transfer Certificate on 10.6.1970 and the Transfer Certificate was given to him on 11.6.1970 and in the bottom of the said Transfer Certificate, the petitioner had also signed. Only on the strength of the said particulars as reflected in the Transfer Certificate, his qualification and date of birth was taken into account by the employment exchange as well as the appointing authority and ultimately in the year 1982, the petitioner was appointed as Office Assistant and was posted at Government Teacher Training school. Thereafter, the petitioner has completed probation period and his service was regularised and he was transferred in the year 1985 to Government Boys Higher Secondary School, Anaikattu. Thereafter, on 29.6.2005, he was promoted as Record Clerk and was posted at Government Higher Secondary School, Kaniyambadi which post the petitioner had relinquished. While so, on 14.04.2005, a complaint was received from the local person where the petitioner belongs, according to which, the petitioner had submitted a bogus Transfer Certificate and got appointment by showing false date of birth and qualification. Thereafter, one Kadiravan, who got information under RTI Act had made a complaint against the petitioner stating that the petitioner got appointment by producing forged certificate. Only thereafter, the petitioner's certificate and its genuineness was verified by the District Educational Officer, Vellore during the year 2006. On verification, the Headmaster, High School, K.V.Kuppam has given written report on 04.04.2006 stating that the Transfer Certificate produced by the petitioner is not tallying with the records and the admission No. 1059 and Transfer Certificate No.19/70-71 without mentioning the year are false and the said certificate was not issued by the school.

9. Thereafter, the records were further verified at Government High School, Pallikonda by the Deputy Inspector of

Schools, Vellore where it was found that the Transfer Certificate produced by the petitioner was a false one, since the name of the student is V.Subramaniam, father of the candidate Venkatesh Gounder and his date of birth was 01.07.1945 and the Transfer Certificate No.59/66-67 which was already issued on 14.6.1966 itself and the T.C.No.19/1970-1971 with admission No.3604 was not at all issued by the Government High School, Pallikonda. Moreover, the name of the Headmaster working in the year 1970 in the said school where the petitioner got Transfer Certificate was one N.Natesan. However, the signature shown in the Transfer Certificate produced by the petitioner is something different.

10. In the circumstances, the show cause notice dated 27.7.2007 was issued which was replied by the petitioner on 23.8.2007 denying the allegations. Though the petitioner had denied the allegations, the fact remains that the Transfer Certificate obtained by the petitioner which was produced at the time of appointment is not tallying with any records of school where he had claimed to have studied. The same had been verified for more than one time and after getting report from the concerned officer as well as Headmaster of the school concerned, the respondent has come to an irresistible conclusion that the Transfer Certificate produced by the petitioner through which he claimed that the date of birth is 03.7.1956, is totally a false one. Therefore, based on the false certificate, he was able to obtain job in the Government organization and had been working all along. The respondent had decided to take action by terminating the service and therefore, the impugned order was ultimately, passed removing the petitioner from services on 29.8.2007. Therefore, the said order, which is impugned herein, is fully justifiable and a sustainable one and therefore, no interference of this Court is warranted. Hence, the writ petition is liable to be dismissed.

11. This Court have considered anxiously, the rival submissions made by the learned respective counsel as well as the documents produced before this Court for its perusal.

12. In fact, the files were called for from the respondent and the same has been produced by the learned Government Advocate today. On perusal, a copy of the Transfer Certificate which was submitted by the petitioner at the time of appointment is found. In the said Transfer Certificate, the serial No. was shown as 19064, T.C.No.19/70-71 and Admission No.3604. The date of birth is 03.07.1956. The name of the candidate is mentioned as C.Subramaniam s/o Chinna Swamy. The other information in the said Transfer Certificate are that the petitioner was qualified to be promoted to the next higher standard i.e, IX std

and he had actually left the school on 31.5.1970 and he had applied for the Transfer Certificate on 10.6.1970 and he obtained the said Transfer Certificate on 11.6.1970. In the top of the Transfer Certificate there is a rubber stamp impression in tamil which says, "murpdh; Mz;fs; nky;epiyg;gs;sp. gs;spbfhz;lh 635 809". In the bottom, it was signed by one M.S.Karthick dated 10.6.1970 thereunder there is a rubber stamp impression showing "Head Master, Govt. High School, Pallikonda-635 809. However, in the said rubber stamp, the impression shows "Government High School," on which already some impression appears. Finally, at the bottom of the Transfer Certificate, it was signed by the petitioner, namely, C.Subramaniyan dated 10.6.1970. This is the Transfer Certificate which was claimed to be produced by the petitioner at the time of appointment and the same is found in the files today produced by the respondents.

13. However, the learned counsel for the petitioner disputes this Transfer Certificate, instead, he claimed that the actual Transfer Certificate produced before the authorities is at page No.1 of the typed set of papers filed by the petitioner. In that Transfer Certificate found at page No.1 of the typed set filed by the petitioner the Serial Number shown as 19064 and T.C.No.19/70-71 and admission number was shown as 1059. The name of the petitioner, father's name and date of birth are as the same as found in the one produced before the respondent i.e., C.Subramaniyan s/o Chinna Swamy and date of birth 03.7.1956. The other particulars also such as qualified for promotion IX std actual date of the pupil left the school 31.5.1970, date of application of Transfer Certificate is 10.6.1970 and the date of Transfer Certificate obtained 11.6.1970 are also found. In this Transfer Certificate, there is a rubber stamp impression in the top in tamil which shows "murpdh; Mz;fs; nky;epiyg;gs;sp. gs;spbfhz;lh 635 809"/ In the bottom, the same one Mr.M.S.Karthick with date 10.06.1970, had signed in the Transfer Certificate as Headmaster. But one important difference is found in this Transfer Certificate that the rubber stamp impression below the Headmaster signature is showing as "Headmaster Government Boys Higher Secondary School, Pallikonda 635 809". This Transfer Certificate shown at page No.1 of the typed set of papers filed by the petitioner is the actual Transfer Certificate claimed by the petitioner and there cannot be any dispute on this Transfer Certificate at least from the petitioner's point of view.

14. Assuming that, if this Transfer Certificate is taken into account, the admission number which was shown in the Transfer Certificate produced before the department, which was 3604, differs from this Transfer Certificate where admission number is 1059 but in both the Transfer Certificates, tamil

rubber stamps impression are available which show as "murpdh; Mz;fs; nky;epiyg;gs;sp. gs;spbfhz;lh 635 809"/ However, the difference in the rubber stamp impression below the signature of the Headmaster shown in the Transfer Certificate produced before the department is, "Headmaster, Government High School, Pallikonda" which is infact an overlapping of the already put seal whereas in the Transfer Certificate produced by the petitioner, the rubber stamp impression is very clear to show that "Headmaster, Government Boys Higher Secondary School, Pallikonda". Admittedly, the Transfer Certificate was obtained in the year 1970. Even the date of Transfer Certificate, obtained by the petitioner, is mentioned therein as 11.6.1970.

15. It is a common factor known to everyone that the Higher Secondary scheme of examination/ course (+ 2 system), had been introduced in the State of Tamil Nadu only from the academic year 1978-79. Prior to that, the system was 11+1 i.e., SSLC after that PUC. Therefore, in the year 1970, there was absolutely, no scope for any Higher Secondary School functioning in the State of TamilNadu. When that being so, the Transfer Certificate in the year 1970 could not have been given by a Higher Secondary School. Here, in the case in hand, the very Transfer Certificate produced by the petitioner at page No.1 of the typed set of papers shown that the Transfer Certificate was given by The Headmaster Government Boys Higher Secondary School, Pallikonda on 10.6.1970. This itself show that it is a forged Transfer Certificate and there is no further enquiry need to be conducted to verify this veracity as this Transfer Certificate admittedly, belong to the petitioner, even according to the petitioner. That is the reason why the petitioner dare to produce the same before this Court, in the typed set of papers.

16. From the enquiry, it was revealed that during the relevant period, i.e., in the year 1970, one Mr.Natesan was the Headmaster of the Government Boys High School, Pallikonda whereas in the Transfer Certificate claimed by the petitioner, dated 10.6.1970, it was signed by one Mr.M.S.Karthick, Government Boys Higher Secondary School, Pallikonda. Therefore, this Court have no hesitation to hold that the Transfer Certificate produced by the petitioner, as claimed by him as genuine one at page No.1 of the typed set of papers, is certainly a forged document. When that being so, the date of birth claimed by the petitioner, as entered in the said Transfer Certificate, as 3.7.1956, is certainly a forged date or a false date, based on which if the petitioner had obtained a job from the respondent, then certainly, that appointment is illegal.

17. Moreover, in the reply dated 23.8.2007 given by the petitioner to the show cause notice issued by the respondent, at

paragraph 2, the petitioner has once again reiterated that he had applied for Transfer Certificate in the year 1970 and he got the Transfer Certificate in the year 1970 and his date of birth is 03.7.1956. Further, the petitioner has once again reiterated that the Transfer Certificate produced by the petitioner i.e., at page No.1 of the typed set is the actual Transfer Certificate of the petitioner. Therefore, since there was no chance of getting a Transfer Certificate from a Higher Secondary School in the year 1970, no other conclusion is possible in this case, except to conclude that it is false or forged document at the behest of the petitioner for getting a job.

18. The learned counsel appearing for the petitioner would contend that whatever be the reason, after the issuance of show cause notice and receipt of the reply from the petitioner, an enquiry should have been conducted in the manner known to law. Without having conducted the enquiry, the present impugned order is passed, therefore, it is vitiated. No doubt, principle of natural justice cannot be violated and if it is violated, it will hit Article 14 of the Constitution of India. These are all well settled fundamental and rudimentary principles. However, in a case of this nature, a further enquiry is nothing but an empty formality. For this kind of cases, as the Court have already held, the theory of empty formality can very well be pressed into service. Even if an enquiry is conducted, there can be no improvement on the side of the petitioner as admittedly, he claimed that the Transfer Certificate obtained and produced at page No.1 of the typed set is the actual Transfer Certificate obtained by the petitioner. The fact that the Transfer Certificate could not have been given by a Higher Secondary School in 1970 would pave a way to come to a irresistible conclusion that the Transfer Certificate was a forged one. When it is found, that it is a forged one, then there is no meaning in going for a further enquiry and that enquiry, if it is contemplated, would be an empty formality and therefore, this Court has no hesitation to hold that no further enquiry need to be conducted in this case.

19. As has been referred to in the earlier paragraphs, the petitioner was able to get a job by producing a false or forged certificate and was able to manage in that job, after getting promotion also, for 25 years and more. Ultimately, at the instance of some third parties, the issue was unearthed and the department, after having conducted enquiry by verifying the genuineness of the certificate, ultimately, concluded on the strength of ample proof and ultimately, passed the impugned order of termination. For the sin committed by the petitioner, he should have been punished by referring the matter to appropriate legal forum by setting the criminal law in motion. But the same has not been done by the respondent.

20. Therefore, this Court feels that at this stage, the petitioner's case need not be referred for any criminal prosecution. However, this Court is of the considered view that the impugned order is fully justifiable and sustainable. Since the petitioner having produced a forged certificate and obtained a job and ultimately, the same was unearthed and found against him, order of termination was issued and only after the order of termination was issued, he had requested for Voluntary Retirement on 10.09.2007. This act of the petitioner itself shows that the petitioner wanted to escape from the clutches of law after his crime has been deducted. Therefore, there is no justification on the part of the petitioner to claim any Voluntary Retirement.

21. In the result, the writ petition deserves to be dismissed. This Court is also of the view that for the illegal act on the part of the petitioner, through which, he got job and unjustly enriched the Government money for 25 years, instead of recovering the same, in order to meet the ends of justice, the writ petition is dismissed with exemplary cost of Rs.50,000/- and the said cost shall be paid by the petitioner, to the High Court Legal Services committee, within a period of three months from the date of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kua

To

1. The District Educational Officer,
Vellore.
2. The Secretary,
The High court Legal Services Committee
High court.

+1cc to the Government Pleader, S.R.No.69153

W.P.No.34372 of 2007

RSI (CO)
RS (12/04/2017)