

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 07.11.2016

Delivered On: 18.11.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

W.P.No.31686 of 2016

S.Esuprasad

.. Petitioner

vs.

1.The Chief Mechanical Engineer,  
Chennai Port Trust,  
Rajaji Salai,  
Chennai - 600 001.

2.The Deputy Chairman (Appellate Authority),  
Chennai Port Trust,  
Rajaji Salai,  
Chennai-600 001.

3.The Chairman,  
Chennai Port Trust,  
Rajaji Salai,  
Chennai-600 001.

.. Respondents

**Prayer:** 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 order passed by the second respondent in proceedings No.MEE/DA1/1213/2014/Estt. Dated 12.7.2016, confirming the order of removal passed by the first respondent in Proceedings No.MEE/DA1/1213/2014 Estt. Dated 11.5.2016 and quash the same and direct the respondents to reinstate the petitioner in service with full back-wages and all attendant benefits and unrequest reliefs.

For Petitioner : Mr.Vasudevan

For Respondents : M/s.Babitha Sunil

**ORDER**

This Writ Petition has been filed praying for issuance of a Writ of Certiorarified Mandamus to quash the order passed by the second respondent in proceedings No.MEE/DA1/1213/2014/Estt. Dated 12.7.2016, confirming the order of removal passed by the first respondent in Proceedings No.MEE/DA1/1213/2014 Estt. Dated 11.5.2016 and direct the respondents to reinstate the petitioner in service with full back-wages and all attendant benefits.

2. The petitioner joined the respondent organization as Assistant Technician (Mechanical) in the Mechanical Electrical Engineering Department on 30.06.1989 and his father was an ex-employee of the said department and he died in the year 2005. The petitioner belongs to Adi Dravida Scheduled Caste Community. In 1992, the petitioner married one Y.Manohari of Andhra Pradesh and she deserted him within few months of marriage. The petitioner's wife also filed a maintenance case and got attachment of his salary. Due to desertion of his wife and on account of poor health condition, the petitioner had relationship with another lady and also begotten three children. However, due to vindictive attitude of his wife and frequent complaints made by her to the management, departmental enquiry was initiated against the petitioner on the charge of bigamy and forgery and subsequently, he was removed from service. The first respondent issued a show cause notice dated 04.04.2015 for which the petitioner submitted his explanation dated 04.04.2015. The first respondent, vide proceedings dated 14.07.2015 appointed one S.Viswanathan as the Enquiry Officer and Thiru.C.Muthusamy as the presenting officer and enquiry was conducted, wherein no witnesses were summoned. The main charge against the petitioner is that he had fraudulently changed the name of his wife in the family card by allegedly forging signatures in the gazette notification application form and allegedly married another woman during the subsistence of the first marriage and thereby committed the offence of bigamy and forgery and introduced the name of children born out of wedlock to the second wife in the family medical card. On completion of enquiry, a second show cause notice was issued to the petitioner for which the petitioner gave explanation and thereafter, the first respondent passed the order dated 11.05.2016 removing the petitioner from service. Aggrieved by the same, the petitioner preferred an appeal to the second respondent on 08.06.2016, who passed the impugned order dated 12.07.2016 rejecting the petitioner's appeal. Challenging the same, the present writ petition has been filed.

3. When the matter is taken up for consideration, the learned counsel appearing for the petitioner made a detailed submission by adverting to the averments made in the affidavit and would submit that the impugned order suffers lack of jurisdiction as it has been passed by the Chief Mechanical Engineer, the first respondent herein, who is the disciplinary authority who had already passed the order of removal and hence he cannot also function as appellate authority to sit as a judge of his own order. Further more, the Appellate Authority has passed a mechanical and non-speaking order without any application of mind. In this regard, the learned counsel appearing for the petitioner relied upon the judgment of the Hon'ble Supreme Court of India in **Amar Nath Chowdhury v. Braithwaite and Co. Ltd. and Others [(2002) 2 SCC 290]**.

4. *Per contra*, the learned counsel appearing for the respondents has drawn the attention of this Court to the counter affidavit of the respondents and would submit that the Enquiry was conducted in a fair manner and due opportunity of defence was given to the petitioner. In the enquiry, the petitioner was asked whether he want to

defend himself or to engage a defence assistant for which he replied "No" and therefore there is no violation of the principles of natural justice in the conduct of enquiry. Further the Deputy Chairman/Appellate Authority had disposed of the appeal of the petitioner upholding the penalty awarded by a speaking order and hence the statement of the petitioner that the disciplinary authority functioned as appellate authority is baseless and totally incorrect. Thus, the learned counsel for the respondents prays for dismissal of this writ petition.

5. This Court has considered the rival submissions and also perused the entire materials placed before it.

6. Though very many contentions have been raised on factual aspects on either side, at the time of arguments, the learned counsel appearing for the petitioner sought for setting aside the order of the Appellate Authority/second respondent. The main submission of the learned counsel appearing for the petitioner is that the impugned order dated 12.07.2016 suffers from lack of jurisdiction since the Disciplinary Authority who has passed the order of removal cannot act as an Appellate Authority as a judge of his own order. In this regard, the learned counsel appearing for the petitioner relied upon the judgment of the Hon'ble Supreme Court of India in **Amar Nath Chowdhury v. Braithwaite and Co. Ltd. and Others [(2002) 2 SCC 290]**. I find considerable force in the submission made by the learned counsel appearing for the petitioner. The Disciplinary Authority, who passed the order of removal, has passed the order as the Appellate Authority also and therefore, on the sole ground the impugned order warrants interference. That apart from a very reading of the order of the Appellate Authority, it is seen that it is a non-speaking order. Hence the impugned order is vitiated on that ground also.

7. In the result, this Writ Petition is partly allowed and the impugned order passed by the second respondent in proceedings No.MEE/DA1/1213/2014/Estt. Dated 12.7.2016 is set aside and the matter is remanded to the Appellate Authority/second respondent to decide the appeal afresh and pass a speaking order in accordance with law within a period of eight weeks from the date of receipt of a copy of this order. No costs.

jvm

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Sd/-

Assistant Registrar (CS- )

/TRUE COPY/

Sub-Assistant Registrar

To

1.The Chief Mechanical Engineer,  
Chennai Port Trust,  
Rajaji Salai,  
Chennai - 600 001.

2.The Deputy Chairman (Appellate Authority),  
Chennai Port Trust,  
Rajaji Salai,  
Chennai-600 001.

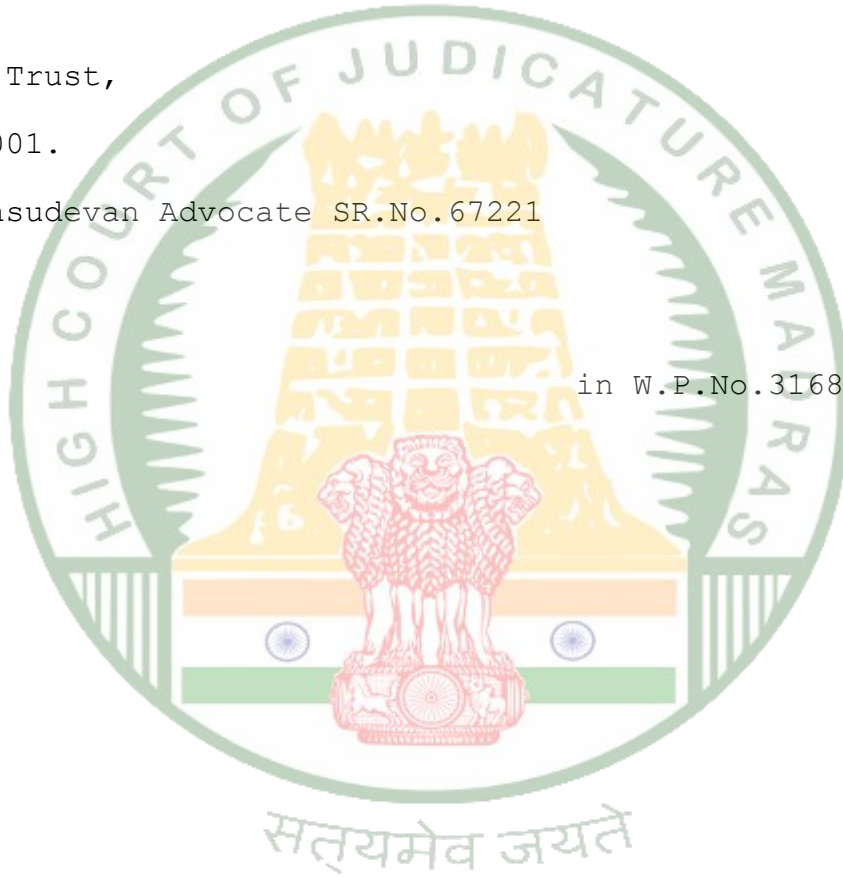
3.The Chairman,  
Chennai Port Trust,  
Rajaji Salai,  
Chennai-600 001.

+1 CC Mr.Vasudevan Advocate SR.No.67221

Order  
in W.P.No.31686 of 2016

NM

MSI 08/12/2016



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