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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.09.2016

CORAM:

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

and

THE HONOURABLE MS. JUSTICE V.M. VELUMANI

W.A. (MD) Nos. 1467 & 1468 of 2015

and

C.M.P (MD) Nos. 6739 & 6740 of 2016

and

M.P. (MD) Nos. 1 and 1 of 2015

1. S. Periyasamy ... Appellant in WA.No.1467/2015

2. Jesu Antony ... Appellant in WA.No.1468/2015

Vs.

The Executive Officer,
Ayakudi Town Panchayat,
Tirunelveli District

... Respondent in both W.As.

PRAYER: The Writ Appeal is filed under Clause 15 of the Letters Patent, to set aside the common order passed by this Court in W.P. (MD) Nos. 22900 and 22901 of 2015, dated 18.12.2015.

Prayer in WP(MD). 22900/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records of the respondent in its Na.Ka. No. 8/2015/A1 dated 01.12.2015 and quash the same.

Prayer in WP(MD). 22901/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records of the respondent in its Na.Ka. No. 8/2015/A1 dated 01.12.2015 and quash the same.

Prayer in CMP(MD). 6739/ 2016 IN W.A. (MD) No. 1467/2016 :

To direct the respondent to revoke the order of suspension and reinstate the petitioner back to the service.

Prayer in CMP(MD). 6740/ 2016 IN W.A. (MD) No. 1468/2016:

To direct the respondent to revoke the order of suspension and reinstate the petitioner back to the service.

For Appellants
(in both W.As)

: Mr.V.Vijayashankar

For Respondent
(in both W.As)

: Mr.A.K.Baskarapandian
Special Government Pleader

**COMMON JUDGMENT**

(Judgment of this Court was made by M.SATHYANARAYANAN, J.)

By consent the Writ Appeals are taken up for final disposal.

2. The appellant in W.A(MD)No.1467 of 2015 is the petitioner in W.P(MD)No.22900 of 2015 and according to him, he registered his name in the Employment Exchange. Pursuant to which, his name was sponsored for appointment of 'Jump Operator' in the respondent Town Panchayat during June 2001 and after his appearance in the interview, he was selected and he was also issued with an appointment order on 09.07.2001. The appellant / writ petitioner was also subjected to medical examination and after completion of all formalities, he was given the appointment initially on a consolidated pay a Rs.2000/- per month and subsequently, brought into time scale of pay, after completion of three years, with effect from 23.06.2006. The petitioner would claim that though after completion of three years his services could have been regularized, but it has not been done so and his services were confirmed only with effect from June 2006.

3. The grievance expressed by the petitioner is that all of a sudden, during September, 2015, the petitioner was called upon by the respondent to appear for medical examination along with his disability certificate. The petitioner on his appearance before the Medical Board informed them that he was not appointed with physically challenged category, but on a regular basis and as such, he was not in a position to submit the disability certificate. However, to his shock and surprise, he was issued with the impugned order of suspension, dated 01.12.2015 stating that he obtained employment under the physically handicapped quota and therefore, pendency of the enquiry, he is placed under suspension and challenging legality of the said order, has filed the Writ Petition.

4. The appellant in W.A(MD)No.1468 of 2015 is the petitioner in W.P(MD)No.22901 of 2015 and according to him, he got his name registered with the Employment Exchange and pursuant to which, his name was sponsored for appointment of 'Hand Pump Operator' in the respondent Town Panchayat, during June 2001 and after interview, got selected and offered appointment vide order dated 09.07.2001 and after subjecting the petitioner to the Medical examination and completion of other formalities, the petitioner was given appointment initially on a consolidated basis on Rs.1500/- per month to be brought into time scale of pay of three years of service. The petitioner was issued with orders on 01.08.2016 appointing him on time scale of



pay with effect from 23.06.2006. Though the petitioner made a complaint that he should have been brought into regular appointment it was not done so. Later on, his services have been confirmed and so far put in 14 years of service.

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5. The petitioner was called upon to appear before the Medical Examination along with disability certificate evidencing that he is physically handicapped. The petitioner on his appearance before the respondent informed them that since he was selected on a regular basis and that he is also not physically handicapped, the production of disability certificate does not arise. However, to his shock and surprise, he was issued with the impugned order of suspension, dated 01.04.2015 that he has obtained employment under the physically challenged quota. Pendency of the enquiry, he was placed under suspension. Challenging the legality of the same, he filed W.P.(MD)No.22901 of 2015.

6. The Writ Petitions were entertained. The Learned Judge vide common order dated 18.12.2015 had observed that whether the petitioners were appointed under the regular category; whether they have suppressed the fact; whether they got employment through other means, it is a matter for departmental enquiry and the Writ Petitions lack merits and therefore, dismissed both the Writ Petitions and hence, the Writ Appeals.

7. Mr.V.Vijayashankar, the learned counsel appearing for the appellants / writ petitioners has invited the attention of this Court to the typed set of documents and would submit that at no point of time the petitioners, had disclosed as if they belonged to handicapped category and drawn our further attention to the Employment Registration Certificate as well as the Certificate of Medical Examination done after selection and would submit that even as per those certificates, they are only falling under the General Category and nearly after 14 years, they had placed under suspension on the ground that they got employment under the physically handicapped quota. It is the further submission of the learned counsel appearing for the appellants that the extreme step of suspension is resorted to only in the event of the disciplinary authority, is of the opinion that they are likely to tamper with the records or witnesses. In this case, it is not so and therefore, there is no need to place the petitioners under suspension and the departmental proceedings can be expedited and prays for allowing the Writ Appeals.

8. Per contra, Mr.A.K.Baskarapandian, the learned Special Government Pleader appearing for the respondent would draw the attention of this Court to the typed set of documents and would submit that the petitioners have sponsored under General Priority Category, which is meant for physically handicapped category and



in the light of the order passed by this Court in a Public Interest Litigation complaining about the selection of regular candidates under physically handicapped quota, a thorough enquiry was conducted and thereafter, the appointment of the appellants / writ petitioners under the said category came into light and therefore, they were rightly placed under suspension and would further submit that the departmental proceedings had already been initiated and final orders would be passed within a stipulated time and prays for dismissal of these Writ Appeals.

9. This Court paid its best attention to the rival submissions and also perused the materials placed before it.

10. A perusal of the typed set of documents filed along with Writ Appeals would prima facie disclose that the petitioners got themselves registered with the Employment Exchange only under the General Category and even after their appointment on consolidated basis, they were subjected to medical examination. The report of the said examination would also disclose that they are not physically challenged / handicapped. No doubt, in terms of the order passed by this Court in a Public Interest Litigation, verification was done and the respondent became aware of the fact that though they fall under the general category and got selected under the priority category. It is pertinent to point out at this juncture that the appellants / writ petitioners are under employment for nearly 14 years and all of a sudden, they are placed under suspension on that ground.

11. The learned counsel appearing for the appellants is right in his submission that only in the case of tampering of records or evidence, the suspension will be resorted to and in the light of the materials placed by them in the typed set of documents, suspension need not be resorted to. This Court finds considerable force in the said submission. This Court in the light of the above facts and circumstances is of the considered view that the order of suspension is not warranted.

12. In the result, the Writ Appeals are allowed and the impugned order, dated 18.12.2015 passed in W.P.(MD)Nos.22900 and 22901 of 2015, as well as the impugned orders of suspension 01.12.2015, are set aside and the respondent is at liberty to expedite the departmental proceedings and pass final orders in accordance with law, as expeditiously as possible. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/
Assistant Registrar(CS-I)



To

The Executive Officer,
Ayakudi Town Panchayat,
Tirunelveli District.

+2cc to M/S.V.Vijay Shankar, Advocate in SR.No.55290

W.A. (MD) Nos.1467 & 1468 of 2015
23.09.2016

mpk

PA/SK-SKN/SAR III/28.09.2016/5P/4C