



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.09.2016

CORAM:

THE HON'BLE DR.JUSTICE S.VIMALA

W.P(MD) No.17755 of 2016

P.Jaisanker

... Petitioner

-vs-

The Executive Officer,
Udangudi Town Panchayat,
Tuticorin District.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the Respondent in Na.Ka.No.281/15 dated 04.08.2016 and to quash the same and consequently direct the respondent to reinstate the petitioner into service as Sanitary Worker with all consequential and other attendant benefits.

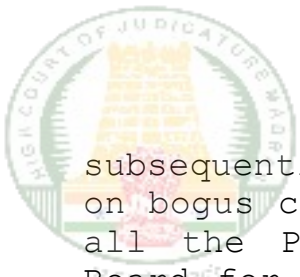
For Petitioner : Mr.G.Sankaran
For Respondent : Mr.T.S.Mohamed Mohideen
Addl. Govt. Pleader

O R D E R

This petition has been filed, seeking to quash the impugned order dated 04.08.2016 passed by the respondent in Na.Ka.No.281/15, by which, the petitioner was suspended from service as per Rule 5(b) of Town Panchayat Employees (D&A) Rules, 1988. The petitioner also sought direction to the respondent to reinstate him into service as sanitary worker with all consequential and other attendant benefits.

2. Heard the learned counsel on either side.

3. The case of the petitioner is that he belongs to Backward Community and is a graduate in B.Sc. (Physics); that he is suffering from physical disability of 40% hearing impairment as per the medical test conducted by the District Medical Board, Tirunelveli; that pursuant to registration of his disability, the District Employment Officer referred the petitioner to appear before the Medical Board on 06.06.2007, wherein it was declared since he was suffering 40% disability of hearing impairment, based on which, he was appointed as Sanitary Worker on 01.08.2007; that



subsequently, due to some appointments made under PH quota based on bogus claim in various Town Panchayats in Tirunelveli District, all the PH quota appointees were referred to Regional Medical Board for verification; that though the said Board found that he was suffering the disability of hearing impairment, the percentage of disability was noted only as 9%; that the subsequent reports taken at the Private Hospital as well as at the Tuticorin Government Medical College Hospital revealed the percentage of disability as 55 and 65 respectively, based on the report of the Regional Medical Board, the petitioner was straightaway placed under suspension, challenging which, the petitioner is before this Court with the relief stated supra.

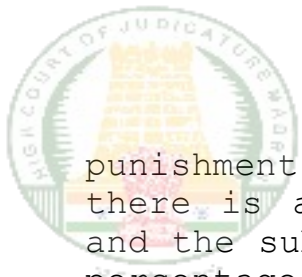
4. Learned Additional Government Pleader would submit that there was a scam that a lot of appointments were made under PH quota in Town Panchayat and various persons got appointment by producing fake certificates; that since the petitioner was also appointed during that time, he was subjected to medical examination, wherein it was found that there was variance in the percentage of disability and therefore, the petitioner was immediately suspended from service vide impugned order, which does not call for any interference by this Court.

5. When the matter was taken up for hearing on 19.09.2016, it was represented on behalf of the petitioner that the petitioner is willing to submit himself for medical examination before any hospital chosen by the respondent and accordingly, as suggested by the respondent, this Court directed the petitioner to subject himself for the medical examination before the Dean, DNT Department, Government Medical College Hospital, Tuticorin with direction to the Dean to submit a report to this Court on 27.09.2016 (today).

6. Today, learned Additional Government Pleader has produced the report of the Dean, Tuticorin Government Medical College Hospital, Tuticorin, wherein it has been stated the percentage of disability of the petitioner is 38%.

7. Learned counsel for the petitioner would contend that there would certainly be petty variance between two reports, which is purely based on the quality of the instrument being used in the particular hospital and the experience of the Doctor, who conducts such examination. He would further submit that the slight variance cannot be the reason for suspending the petitioner from service, which is ex-facie illegal, arbitrary and against law and therefore, the impugned order is liable to be quashed.

<https://hcservices.courts.gov.in/> 8. The force in the contention raised by the petitioner as to the cause for variation between reports and minor variation cannot be the ground for the respondent to impose major



punishment, i.e., suspension from service. Even assuming that there is a variance between the one submitted by the petitioner and the subsequent report submitted by the Dean, the difference in percentage of disability is only 2 and not beyond that and therefore, the impugned order passed by the respondent has no legs to stand and is liable to be set aside.

9. Accordingly, this Writ Petition is allowed and the impugned order dated 04.08.2016 is set aside. The respondent is directed to reinstate the petitioner into service as Sanitary Worker with all consequential and other attendant benefits within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/

Assistant Registrar(C.S-II)

/TRUE COPY/

Sub Assistant Registrar

To:

The Executive Officer, Udangudi Town Panchayat,
Tuticorin District.

+1cc to M/s.G.Sankaran, Advocate, in SR No.57225.

W.P(MD) No.17755 of 2016
27.09.2016

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