

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2017

CORAM

THE HON'BLE MR.HULUVADI G.RAMESH, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE RMT. TEEKAA RAMAN

W.A.No.270 of 2017

Tamilnadu Khadi and Village Industries Board
rep. by its Chief Executive Officer
Kuralagam,
Chennai - 600 108. Appellant/1st Respondent

Vs.

1 Sugirtha 1st Respondent/Petitioner

2. The Chairman/Secretary to Government
Tamilnadu Khadi & Village Industries Board
Handlooms and Textiles Department
Fort St. George,
Chennai - 9. 2nd Respondents/2nd Respondent

PRAYER: Appeal against the order passed by the learned Single Judge on 29.9.2016 in W.P.No.6427 of 2013 which was filed under Article 226 of the constitution of India praying for issuance of a Writ of Certiorari calling for the records of the respondents in connection with the impugned orders passed by them in Na.Ka.No.2485/11/E3/3 dated 19.07.2012 and Khadi Board proceedings B.No.2 dated 11.02.2013 respectively and quash the same.

For Appellant

: Mr.S.K.Bose

For Respondents

: Mr.M.Muthappan
for 1st respondent

Mr.R.Vijayakumar
Addl. Government Pleader
for 2nd respondent

JUDGMENT

(Delivered by the Acting Chief Justice)

Mr.M.Muthappan, learned counsel takes notice for the first respondent and Mr.R.Vijayakumar, learned Additional Government Pleader takes notice for the second respondent.

2. Aggrieved by the order passed by the learned Single Judge on 29.9.2016 in W.P.No.6427 of 2013, the first respondent in the writ petition has filed this appeal.

3.1. The facts in a nutshell are as under: The first respondent herein entered the service in Khadi & Village Industries Board on 12.12.1972. Subsequently, she was promoted as Masalji (Office Assistant) on 10.7.1975. She claims that she appeared for X Standard and passed in October, 1992. The petitioner was promoted as Junior Assistant in the year 1993 and thereafter promoted as Assistant in the year 1998. However, when she was about to retire on superannuation on 31.5.2012, she was placed under suspension on 7.2.2012 on the ground that she submitted forged SLSC mark sheet for the purpose of securing promotion as Junior Assistant.

3.2. Consequent to the same, departmental enquiry was initiated against the first respondent and ultimately, the punishment of removal from service was imposed by the appellant herein. The statutory appeal preferred by the first respondent before the second respondent was also rejected.

3.3. Calling into question the said orders passed by the appellant and the second respondent, the first respondent herein filed a writ petition. The learned Single Judge, by the order under challenge, partly allowed the writ petition and modified the punishment of dismissal from service to one of reversion to the post of Masalji (Office Assistant).

3.4. Challenging the same, the employer has filed this appeal.

4. We have heard the learned counsel for the parties and perused the order passed by the learned Single Judge.

5. The first respondent was initially working as Kalasi on daily wages and was temporarily appointed as Masalji with effect from 10.7.1975 and at that time, her qualification was SSLC (failed). During 1992, the first respondent submitted a certificate to the appellant/Board as if she passed in SSLC

Examination and requested the Board to make necessary entries in her service register. On the basis of her qualification and service rendered in the feeder category, the first respondent was promoted as Junior Assistant in the year 1993 and was further promoted as Assistant. However, on the verge of her retirement, she was placed under suspension and was removed from service.

6. It is not in dispute that the criminal case initiated against the first respondent ended in acquittal. In C.C.No.331 of 2012, the learned Judicial Magistrate-I, Poonamallee, vide judgment dated 26.8.2014, categorically observed that there is no evidence to show that forged document was produced by the first respondent.

7. In almost identical circumstances, a Division Bench of this Court in P.Sekar v. Registrar, Tamil Nadu Administrative Tribunal, Chennai, (2008) 5 MLJ 646, has held as under:

"5. Therefore, the contention of the petitioner that the enquiry report and the order of punishment are based on no evidence is not acceptable. In a departmental enquiry, technical rules of the Evidence Act are not strictly applicable. On behalf of the Department, the letter of the Director of Government Examinations dated 7.11.2001 had been produced indicating that the marks reflected in the mark sheet submitted by the petitioner did not tally with the marks available from the original records. The petitioner himself was examined during the departmental enquiry and the questions put and the answers given are available on record. Except baldly stating that the petitioner has got mark sheet from the school, there is no other acceptable material or detail has been given. It is not even the case of the petitioner that he had actually passed and the report given by the Director of the Government Examinations is incorrect. Since the petitioner had submitted a mark sheet, which was found to be incorrect, it was within the subject knowledge of the petitioner as to the source of obtaining such mark sheet and it was for him to explain such aspect by adducing proper evidence. To that extent, the Tribunal was correct in coming to the conclusion that the charge has been found against him.

....

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."

(emphasis supplied)

In our considered view, the reasoning given in the above said decision applies on all fours to the case on hand. Even in the case on hand there is no iota of evidence to show that the first respondent had knowingly submitted a false mark sheet. That apart, the criminal court had acquitted the first respondent.

8. In such circumstances, the learned Single Judge, in our considered opinion, had rightly modified the punishment of dismissal from service to one of reversion to the post of Masalji (Office Assistant). We do not find any illegality or impropriety in the order passed by the learned Single Judge.

For the foregoing reasons, we dismiss the appeal and confirm the order passed by the learned Single Judge. We further direct the appellant to settle all the terminal benefits due to the first respondent forthwith, since it is reported that the first respondent has retired from service in the interregnum. No costs. Consequently, C.M.P.No.4243 of 2017 is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sasi

To:

The Chairman/Secretary to Government
Tamilnadu Khadi & Village Industries Board
Handlooms and Textiles Department
Fort St. George, Chennai - 9.

+lcc to Mr.S.K.Bose, Advocate Sr.17773

W.A.No.270 of 2017

vgm[col]

srg 7/4/2017