

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.12604 of 2013
and
W.M.P.No.28440 of 2016

C.Elumalai

.. Petitioner

Vs.

1.The Superintendent of Police,
District Police Officer,
Kanchipuram District @
Kanchipuram.

2.The Deputy Inspector General
of Police, Kanchipuram Range,
Kanchipuram.

3.The Director General of Police,
Tamil Nadu, Chennai - 4.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records pertaining to the order of the first respondent herein passed in his J1/P.R.No.76/2001 under Rule 17(b) dated 02.04.2002 dismissing the petitioner from service and quash the same and consequently direct the respondents herein to reinstate the petitioner in service in the light of the acquittal in C.C.No.398/2002 dated 22.11.2012 with all consequential service and monetary benefits.

For Petitioner .. Mr.Ravi Shanmugam

For Respondents.. Mr.T.M.Pappiah,
Spl. Govt. Pleader

ORDER

The petitioner has approached this Court seeking the following relief:

to issue a writ of certiorarified mandamus to call for the records pertaining to the order of the first respondent herein passed in his J1/P.R.No.76/2001 under Rule 17(b) dated 02.04.2002 dismissing the petitioner from service and quash the same and consequently direct the respondents herein to reinstate the petitioner in service in the light of the acquittal in C.C.No.298/2002 dated 22.11.2012 with all consequential service and monetary benefits.

2.The case of the petitioner is that he was appointed as Sweeper on 06.11.1995 by the Commandant, Tamil Nadu Special Police, Avadi, Chennai. The qualification for appointment to the post of Sweeper as per the Special Rules for Tamil Nadu Basic Service which was prevalent at the time of appointment was only to read and write Tamil. It appears that at the time of appointment, the petitioner had produced a school certificate certifying that he had passed 8th standard, which was found to be bogus subsequently by the authorities. In the said circumstances, he was chargesheeted under Tamil Nadu Civil Services (Discipline and Appeal) Rules for major penalty proceedings (17b charges). Simultaneously, the petitioner also proceeded with criminally under Sections 468 and 471 I.P.C. in Crime No.74 of 2000.

3.An enquiry was conducted into the charges in which the petitioner did not participate on the ground that already criminal case was pending and therefore he may be compelled to disclose his defence. However, the enquiry proceeded exparte and report was submitted establishing the charges against the petitioner. Thereafter, the petitioner was dismissed from service by the first respondent on 02.04.2002.

4.While matter stood thus, in the criminal case, the petitioner came to be honourably acquitted vide order dated 22.11.2012 and the acquittal has become final. In the said circumstances, the petitioner preferred a representation on 12.04.2013 seeking for his reinstatement in service. Since the same was not considered, the petitioner is before this court

seeking to challenge the order of dismissal from service dated 02.04.2002 pursuant to the enquiry proceedings initiated against him.

5.Mr.Ravi Shanmugam, learned counsel appearing for the petitioner would submit that in similar circumstances, this Court in W.P.No.42342 of 2006 passed an order on 23.04.2009 in the case of one Sekar, who was working as Barber and his services came to be dispensed with on the ground that he produced a forged school certificate. A learned Judge of this Court in the said proceedings had adverted to the various decisions passed by this Court including the Division Bench and finally ordered reinstatement of the petitioner therein without backwages and also further directed the respondents to impose any other lesser punishment for the production of false certificate. The findings of the learned single Judge in respect of alleged claim of the petitioner therein as reasoned in paragraphs 6 to 8 are extracted below:

6.In the light of the report of the District Elementary Educational Officer, Vellore and having regard to the undisputed fact that the petitioner got the certificate issued by the Headmaster of Panchayat Union Elementary School, Chitteri Village, Arakonam, the petitioner is qualified to be appointed as Barber in terms of Tamil Nadu Basic Service Rules viz., Rule 5 (2). Hence the dismissal order passed against the petitioner, even though he is qualified to be appointed as a Barber cannot be sustained. The petitioner though produced a certificate claiming that he passed 8th standard was found wrong and by producing the same he has not persuaded the authority to ignore the claim of other candidate. Similar issue was considered by a Division Bench of this Court in W.P.No.38962 of 2002. By order dated 07.03.2005, the Division Bench has held as follows:

"The question is whether production of such false document had in any way, persuaded the appointing authority to give appointment to the first respondent or whether the production of such bogus certificate had excluded the claim of any meritorious candidate. As found by the Tribunal, the qualification for the post in which the first respondent was appointed is that one must know to read and write Tamil. No other educational qualification is prescribed. Therefore, probably, out of anxiety, the first respondent would

have produced the said certificate, which is wholly uncalled for. The availability of such a certificate on file, assuming it had not been detected, would not give him any additional rights in the matter of promotion. Therefore, in the above noted circumstances, we do not find any illegality at all in the Tribunal setting aside the order of punishment of dismissal and remitting the case to the original authority to impose a lesser punishment, as he may deem fit. The writ petition is accordingly dismissed."

7. In W.P.No.29511 of 2002 etc., batch, a Division Bench of this Court by order dated 20.02.2006 has taken a similar view. The relevant portion of the order reads as follows:

"2....Three Original Applications along with other Original Applications have been filed by Salai Paniyalargal, who have been removed from service on the ground that at the time of initial applications and subsequent appointments, they have produced false Educational Certificates showing as if they have passed Class V. During the course of enquiry, it was found that, in fact all these applicants have got higher qualifications, even some of them have passed S.S.L.C. but, they have produced the class V educational qualification with a view to get the employment, thinking that higher qualified person may not be selected. The Tribunal taking into account these factors, held that, even though they were guilty of producing the wrong certificates, instead of removal, the punishment of stoppage of five increments with cumulative effect may be imposed.

3. These orders have not been challenged by the concerned individual employees. However, the State Government has filed the present writ petitions. The main contention of the State Government is to the effect that since delinquency had been found, the Tribunal should not have interfered with the punishment.

4. Ordinarily, the Administrative Tribunal is not supposed to interfere with the order of punishment once delinquency is found, unless such order of punishment is grossly disproportionate to the nature of delinquency. In the present case, we find that the Tribunal has referred to relevant aspects and has interfered with the order of punishment. In the peculiar facts and circumstances of the case, we do not find any reason to interfere with the discretionary order passed by the Tribunal."

8. Again in the decision in P.Sekar Vs. Registrar, Tamil Nadu Administrative Tribunal, Chennai and Others ((2008) 5 MLJ 646), a Division Bench of this Court taken the same view. In Tamil Nadu Electricity Board while appointing helpers on the basis of recommendations of Hon'ble Justice Khalid Commission, certain helpers obtained orders of appointment by producing bogus certificates. Disciplinary proceedings was initiated and on the suggestions made by the Division Bench of this Court, the Board resolved to reinstate the helpers who were dismissed and ordered to reduce the pay for three years which will operate for future increments. The said decision was approved by the Division Bench of this Court in W.P.No.16521 of 2002 etc., batch by order dated 05.02.2003.

6. Learned counsel appearing for the petitioner would submit that as far as the present case on hand, the claim of the petitioner herein is placed on a better footing for the reason that the criminal case launched against him has ended in acquittal and the acquittal has become final. This fact has not been disputed by the learned Special Government Pleader appearing for the respondents. More so, the Basic Service Rules provides for qualification for persons to be appointed as Sweeper, as per which, the workers appointed under various categories of Class IV can be able to read and write in Tamil.

7. As regards the non-participation in the departmental enquiry, the learned counsel would submit that in view of the pendency of the criminal case, the petitioner had chosen not to participate in the departmental enquiry as that would really prejudice his case before the criminal Court. In any event, subsequently, the criminal case has ended in acquittal. In the said circumstances, he would urge this Court to allow the writ petition but would submit that the date of dismissal was of the year 2002 and therefore, any further direction for passing orders imposing lesser penalty, as directed by the learned single Judge in respect of the above cited writ proceedings, would cause irreparable hardship to the petitioner.

8. Upon notice, Mr.T.M.Pappiah, learned Special Government Pleader entered appearance on behalf of the respondents and counter has been filed. He has not disputed the facts as narrated by the learned counsel appearing for the petitioner. However, he would submit that the petitioner, having produced

the bogus certificate, cannot be let off without any punishment and therefore he would submit that a direction may be issued for substituting the punishment of dismissal from service into one of lesser penalty.

9.This Court has considered the rival submissions of the learned counsels and also perused the materials and the pleadings placed on record. There is considerable force in the contention of the learned counsel appearing for the petitioner that the qualification for appointment in the basic service is a person must know to read and write Tamil and therefore, the production of school certificate that the petitioner had passed 8th standard assumes no significance at all, in which case, the production of certificate was not the basic factor which was taken into consideration while appointing the petitioner as Sweeper. Moreover, the decision by this Court as extracted supra squarely covers the issue raised in the present writ petition except that in that case, there was no criminal case and therefore the learned Judge was constrained to issue consequential order directing the respondents to impose lesser penalty and also denied the backwages to the petitioner therein. As far as the present case on hand, there was a criminal case launched against the petitioner, which ended in honourable acquittal and that acquittal had become final. Moreover, the petitioner was dismissed from service as early as in the year 2002 i.e. 15 years before and therefore the denial of full backwages for the entire period would be unjust in the facts and circumstances of the case. Therefore, this Court has no hesitation in allowing the writ petition and set aside the order of dismissal from service dated 02.04.2002 and the petitioner is ordered to be reinstated in service forthwith and he is also entitled to 50% of the backwages and all other attendant benefits like continuity of service etc., The order of reinstatement shall be passed as above within a period of one month from the date of receipt of a copy of this order.

10.The writ petition stands allowed on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Superintendent of Police,
District Police Officer,
Kanchipuram District @
Kanchipuram.
- 2.The Deputy Inspector General
of Police, Kanchipuram Range,
Kanchipuram.
- 3.The Director General of Police,
Tamil Nadu, Chennai - 4.

+1 cc to Mr.Ravi Shanmugam Advocate sr 60739

W.P.No.12604 of 2013

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