

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

Writ Petition No.1659 of 2012
and M.P.No.1 of 2012

R.KRISHNAKUMAR

[PETITIONER]

Vs

- 1 THE CHIEF ENGINEER
TAMIL NADU GENERATION AND DISTRIBUTION
CORPORATION LTD (TANGEDCO)
144 ANNA SALAI, CHENNAI-2.
- 2 THE SUPERINTENDING ENGINEER
PUBLIC WORKS DEPARTMENT BAWANI BASIN CIRCLE
TOWN HALL COIMBATORE-641 001.
- 3 THE SECRETARY
STATE SCHOOL EXAM BOARD
DIRECTORATE OF GOVERNMENT EXAMINATIONS
CHENNAI-6.
- 4 THE JOINT DIRECTOR OF SCHOOL EXAM BOARD
DIRECTORATE OF GOVERNMENT EXAMINATIONS
CHENNAI-6.
- 5 THE HEAD MASTER
P.S.G.SARAJANA HIGHER SECONDARY SCHOOL
PEELAMEDU COIMBATORE-641 004.

[RESPONDENTS]

Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of certiorarified mandamus calling for the records of the 2nd respondent order bearing Ref.No.T6/ 305/09 dated 03.01.2012 and quash the same and consequently direct the 1st and 2nd respondent not to proceed further till the conflicting view of the 3rd and 5th respondent relating to petitioner SSLC Certificate is resolved.

For Petitioner : Mr.V.Stalin

For Respondents : MR.S.Gunasekaran, AGP (R1-4)
R-5-No appearance

ORDER

Mr.V.Stalin, learned counsel is present on behalf of the writ petitioner. Mr.S.Gunasekaran, learned Additional Government Pleader is present on behalf of respondents 1 to 4. Though respondent No.5, who is the Headmaster of P.S.G.Sarajana Higher Secondary School is duly served and his name is duly printed in the cause list today, no one has entered appearance on his behalf.

2. By consent of both counsel, main writ petition itself is taken up for disposal.

3.1 It is submitted that writ petitioner is working as Junior Assistant in the State Public Works Department (hereinafter PWD for brevity).

3.2 In the course of his service, his 10th standard mark sheet, was subjected to verification.

3.3 The matter was first taken up with the 5th respondent School.

3.4 The School stated that the writ petitioner did study in the school. He did appeared for Board Examination (10th standard) in 1993. The School further goes on to say that originally he obtained 32 marks in English Paper. School would further say that writ petitioner applied for re-totalling and in re-totalling, the School has revised the mark as 52. Therefore, the writ petitioner passed in English also after re-totalling. It is noticed that English Paper is the only paper in which the writ petitioner had failed originally.

3.5 However, the 3rd respondent being the Directorate of Government Examinations would say that their records do not reveal any re-totalling or revaluation in English paper for the writ petitioner in the relevant Board Examination.

3.6 Owing to the above said scenario, two conflicting versions emerged. 5th respondent School in which the writ petitioner studied would say that 10th standard mark sheet of the writ petitioner showing his score as 52 in English Paper is correct and genuine, but the 3rd respondent Directorate of Government Examinations would say that there is no record evidencing revaluation or re-totalling of the said paper for the writ petitioner.

3.7 Notwithstanding the conflicting stands taken by the School and the Directorate, employer of the writ petitioner (PWD) speaking through the 2nd respondent namely Superintending Engineer, passed an order dated 03.01.2012 bearing Ref.No.T6/ 305/09. By this order, the 2nd respondent held that the 10th standard mark sheet of the writ petitioner should be presumed to be unacceptable, owing to the stand taken by the 3rd respondent dated 03.01.2012. On this basis, the 2nd respondent, in the said order, directed departmental enquiry to be initiated against the writ petitioner and also further directed a police complaint to be lodged against the writ petitioner in this regard.

3.8 When things stood as above, the writ petitioner approached this Court assailing the above said order dated 03.01.2012 bearing Ref.No.T6/ 305/09, passed by the 2nd respondent (hereinafter referred to as “the impugned order” for the sake of clarity).

4. The impugned order was called in question in the instant writ petition. Instant writ petition was admitted and Rule NISI was issued by this Court on 24.01.2012. On the same day, in M.P.No.1 of 2012, this Court also passed an order of interim stay of the impugned order.

5. It is not in dispute that the interim order continues to operate and that the writ petitioner continues to work in PWD as Junior Assistant

until this day.

6. The 2nd respondent in the writ petition, the Superintending Engineer, PWD has filed a counter affidavit. In the counter affidavit, particularly in paragraph No.9, it has been stated by PWD that owing to the order of interim stay of this Court, as set out above, the writ petitioner was allowed to continue in service, without any departmental enquiry or police action. Therefore, it is clear that no departmental enquiry or police action has been initiated against the writ petitioner pursuant to the impugned order.

7. When the matter was listed today, learned counsel for the writ petitioner restricted/abridged his submissions in assailing the impugned order to only one point namely that no notice or opportunity was given to the writ petitioner before passing the impugned order. However, the writ petitioner's counsel would submit that if the Court is inclined to accept this plea, all other means should be left open and he should be allowed to agitate the same before the authority concerned before passing fresh orders.

8. Learned Additional Government Pleader, would reiterate that they would act only on the basis of the stand of the Directorate of

Government Examinations. However, there is no dispute or disagreement that the writ petitioner was not given an opportunity before passing the impugned order.

9. Learned counsel for the writ petitioner placed before me an order dated 11.11.2003 made in W.A.No.3713 of 2003, wherein, a Division Bench of our High Court in somewhat similar circumstances, has held that the employee concerned should be given an opportunity before such orders are passed directing departmental enquiry and police complaint.

10. It is noticed that the 2nd respondent has filed one more counter affidavit dated 24.11.2016, wherein, in paragraph No.8, it is stated as follows:

“8. I respectfully submit that based on the report of the 3rd respondent stated in the previous para, a show cause notice was issued to the petitioner to prove the genuineness of the said mark sheet submitted was a genuine one. It is submitted that the petitioner submitted his explanation on 29.12.2011 that he has received the mark sheet endorsed and issued by the 5th respondent is a genuine. It is submitted that the above statement of petitioner is false, incorrect and unsustainable as the 3rd respondent clearly stated that the mark sheet was corrected and managed to obtain manipulated by the petitioner is not acceptable one. Therefore, the 2nd respondent not satisfied with the petitioner's explanation as the petitioner did not submit any supporting evidence to prove his SSLC mark sheet is a

genuine one and hence the departmental action was initiated against the petitioner”.

11. Reacting to this, writ petitioner's counsel would submit that this is not sufficient opportunity and that a personal hearing has to be given. Considering the nature of the case, there would be no prejudice or harm that would be caused to PWD employer, if one more opportunity is given (assuming it is a second opportunity), on the contrary, it is the case of the writ petitioner that an opportunity said to have been given is no opportunity at all and therefore, prejudice has been caused.

12. Under the stated circumstances, the impugned order bearing Ref.No.T6/ 305/09 dated 03.01.2012 made by the 2nd respondent is set aside on the sole ground that no opportunity was given to the writ petitioner before passing the order. All other means are left open for both parties.

13. The respondents, particularly employer PWD is at liberty to initiate proceedings afresh against the writ petitioner in this regard. However, if the employer PWD embarks upon passing any orders in this regard, an opportunity shall be given to the writ petitioner before passing any orders in this regard. Opportunity will include a personal hearing, wherein the writ petitioner will be permitted to produce documents if any and have a say.

14. Main writ petition is disposed of on the above terms. No costs.
In view of the order passed in the main writ petition, the miscellaneous petition is closed as unnecessary.

21.02.2017

rg

To

- 1 THE CHIEF ENGINEER
TAMIL NADU GENERATION AND DISTRIBUTION
CORPORATION LTD (TANGEDCO)
144 ANNA SALAI, CHENNAI-2.
- 2 THE SUPERINTENDING ENGINEER
PUBLIC WORKS DEPARTMENT BAWANI BASIN CIRCLE
TOWN HALL COIMBATORE-641 001.
- 3 THE SECRETARY
STATE SCHOOL EXAM BOARD
DIRECTORATE OF GOVERNMENT EXAMINATIONS
CHENNAI-6.
- 4 THE JOINT DIRECTOR OF SCHOOL EXAM BOARD
DIRECTORATE OF GOVERNMENT EXAMINATIONS
CHENNAI-6.

M.SUNDAR. J.
rg

Writ Petition No.1659 of 2012

21.02.2017