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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.02.2017

DELIVERED ON : 10.04.2017

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS. JUSTICE J.NISHA BANU**

W.A.(MD)No.914 of 2015

and

M.P.(MD).No.1 of 2015

1. The Chairman,
V.O.Chidambaranar Port Trust,
Tuticorin, Tuticorin District.
2. V.O.Chidambaranar Port Trust,
rep. by its Secretary,
Tuticorin,
Tuticorin District.
3. The Deputy Conservator,
V.O.Chidambaranar Port Trust,
Tuticorin,
Tuticorin District.

.. Appellants/Respondents

Vs.

Capt. Paul Nadar Bennet Singh

.. Respondent/Petitioner

Writ Appeal has been filed under Clause 15 of the Letters Patent, against the order dated 31.07.2015, made in W.P.(MD). No.12823 of 2012 by a learned Single Judge of this Court.

Prayer in WP(MD). 12823/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for records relating to order passed by the Respondents dated 02.04.2012 and 30.04.2012 and quash the same and consequently direct the Respondents to reinstate the Petitioner in the post of Pilot Officer in V.O. Chithambaranar Port Trust, Thoothukudi, with consequential benefits including continuity of service, backwages and all other consequential and monetary reliefs.



For appellants : Mr.Yashod Vardhan,
Senior Counsel for Mr.S.Yashwanth

For respondent : Mr.Selvaraj,
for Mr.N.Dilipkumar

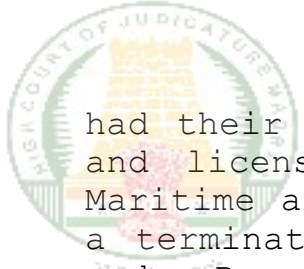
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JUDGMENT**(Judgment of the Court was delivered by R.SUBBIAH, J.)**

The respondents in the writ petition are the appellants herein. This writ appeal has been filed by the appellants as against the order passed by a learned Single Judge of this Court, by order dated 31.07.2015 in W.P.(MD).No.12823 of 2012, whereby and whereunder the learned Single Judge has set aside the termination order passed by the appellants against the respondent and directed the appellants to reinstate the respondent in the post of Pilot Officer with continuity of service.

2.0. The case of the respondent before the learned Single Judge is that the respondent, after completion of school studies, underwent Pre-sea Training Course in Bombay Institute of Advanced Maritime studies approved by the Directorate General of Shipping. Then, he underwent training-on-board in ships for nearly 31 months as in the rank of Deck Cadet (Trainee Officer). He obtained second mate certificate of competency by studying in Singapore Polytechnic College at Singapore. Such certificate is recognised and approved by the Maritime and Port Authority of Singapore. After completion of Advanced Diploma in Maritime Transportation at Singapore Polytechnic College, Singapore, Maritime and Port Authority of Singapore had issued Chief Officers license and Captain License i.e., Master Mariner (Deck Officer Class - I) License in favour of the respondent in the year 2003. The respondent is a full member of the Institute of Chartered Ship Brokers in United Kingdom. He has also obtained certifications in Advanced Tanker Safety, Advanced Chemical Tanker Safety and Advanced Gas Tanker Safety. Thus, he is qualified and certified to sail any vessel as a Master. He was serving in several merchant navy vessels as Master.

2.1. While so, the Tuticorin Port invited applications for appointment in a sanctioned post of Pilot Officer. The respondent has applied for the same and attended interview on 19.03.2008 and he became successful candidate. By proceedings dated 08.04.2008, the Chairman appointed the respondent to the post of Pilot in Tuticorin Port in the scale of Rs.14,500-350-18,700/-. He was placed on probation for a period of two years from the date of joining duty i.e., from 11.04.2008. The respondent rendered meritorious service to the Tuticorin Port. The port authorities



had their own doubts about the eligibility of the certifications and licenses issued in favour of the respondent by Singapore Maritime and Port Authority. On 02.04.2012 the appellants issued a termination notice stating that he is likely to be terminated under Regulation 5(1)(a)(b) of Tuticorin Port Employees (Temporary Service) Regulation of 1979. The respondent has also received the same with protest, since such regulation is not applicable to his appointment. Against that notice, the respondent has filed an appeal to the Chairman on 21.04.2012. But, the same has not been considered till date. While so, by the impugned order dated 30.04.2012, the Deputy Conservator in-charge had terminated the service of the respondent. The said order was served to the respondent on 02.05.2012. Challenging the said orders, the respondent has filed the writ petition before this Court.

3. The case of the respondent was opposed by the appellants by filing a detailed counter affidavit. But, the learned Single Judge, after hearing both sides, held that the reason for termination is not on account of the certificate of competency issued by the Maritime Authority of Singapore, but on the ground that he was a temporary employee and having appointed him in the temporary post and allowed him to attain permanent status, the stand taken by the respondents cannot be sustained. Thus, the learned Single Judge has set aside the impugned orders of termination and directed the appellants to reinstate the respondent in the post of Pilot Officer with continuity of service and so far as the backwages from the date of interim order till the date of his reporting duty is concerned, the arrears of backwages was directed to pay within a period of two months subject to certain conditions. However, the learned Single Judge has made it clear that this order shall not preclude the appellants from examining the validity of the certificate possessed by the respondent, as the certificate of competency issued by the Maritime Authority of Singapore has not been approved by the Indian Administration and the appellants have been given further liberty to pass appropriate orders, based on the instructions given by the Indian Administration with regard to the certificate of competency issued by the Maritime Authority of Singapore, after affording an opportunity of personal hearing to the respondent. As against that order, the appellants have filed this appeal.

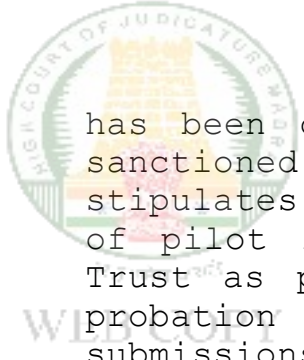
4. The learned senior counsel appearing for the appellants submitted that the respondent herein was appointed as Pilot as per the appointment order dated 08.04.2008. In clause 2(ii) of the appointment order, it has been clearly stated that the appointment is temporary but is likely to continue indefinitely, subject to the conditions that he should qualify in the examination for issue of license to perform the duties of Pilot in TPT as per the Tuticorin Port (Authorisation of Pilots) Regulations, 1979. The qualifications for appointment and for issue of license to a pilot



are governed by the Regulations. As per Regulation 2(e) of the Tuticorin Port (Authorisation of Pilots) Regulations, 1979, "Pilot" means a person lawfully appointed and licensed as such by the Board subject to the authorisation of the Central Government to Pilot in the port any vessel as directed by the Deputy Conservator/ Harbor Master. Further, the learned senior counsel for the appellants submitted that as per Regulation 4(1) of the Tuticorin Port (Authorisation of Pilots) Regulations, 1979, the appointment and grant of license is subject to the sanction of the Central Government.

5. The learned senior counsel for the appellants further submitted that in the appointment order, dated 08.04.2008, itself, it has been expressly stipulated that the appointment would be subject to the respondent qualifying in the examination for issue of pilot license. As per the Regulation 6, the conditions of eligibility for a pilot is to hold a certificate of competency as Master (Foreign-going) issued by the Ministry of Shipping and Transport, Government of India or Board of Trade, U.K. or any other Common Wealth Country whose certificate of competency has Commonwealth validity." The Government of India clarified that the certificate of competency issued by the Maritime Authority of Singapore is not treated as equivalent of the Certificate granted by the Government of India. As the Government of India did not treat the Singapore certificate as equivalent, the appellants could not grant the license. By a communication dated 15.03.2011, the Deputy Nautical Advisor has further clarified that the certificate of competency issued by the Maritime and Port Authority of Singapore, is not recognised under the provisions of the Merchant Shipping Act, 1958 as well as Standard for Training Certification and Watch Keeping Regulation to command an Indian Ship as on that date. Although the post was a regular post, the respondent did not become a member of the service of pilot, as he has not been issued with license for want of qualifications. Since the respondent was not issued with the license, his status was that of a temporary employee. Hence, the appellants had no option but to terminate the services of the respondent under Regulation. He has also filed an appeal against the termination notice and the same is still pending. During the pendency of the said appeal, he has filed the writ petition. But the learned Single Judge, without taking into consideration of the above aspect, has held that the respondent was a permanent employee and he could not have been issued the order of termination as temporary employee and set aside the order of terminations and directed the appellants to reinstate him in service with continuity of service. Thus, he prayed to set aside the order passed by the learned Single Judge.

<https://hcservices.courts.gov.in/hcservices/> On the above submissions, the learned counsel for the respondent invited the attention of this Court to the appointment order and submitted that in the appointment order, it



has been clearly stated that it is a regular appointment in a sanctioned vacancy. Clause 2(ii) of the appointment order stipulates other conditions, including qualifying exams for issue of pilot license to perform duties of pilot in Tuticorin Port Trust as per the Regulations. The respondent was placed under probation for two years and it was also completed. The submissions that the appointment was subject to approval by the Government of India has no factual basis. As per Regulation 4, the license, subject to the sanction of the Central Government, may be issued and be revocable by the Board. Therefore, there is no impediment for issuance of license. Further, the learned counsel for the respondent, inviting the attention of this Court to clause 9 of the Regulations submitted that the Regulation 9 says that in the event of failure to pass the specified examination within a period of 9 months of his appointment, he will be liable to be discharged. In the instant case, the respondent had passed the examination conducted by the committee on 10.02.2009 and the issue of certificate alone was delayed. The respondent had also independently piloted Vessel M.V.Gati Prestige.

7. The learned counsel for the respondent would further submit that on the date of appointment, the qualification of the respondent was recognized. He was also allowed to write the examination conducted by the committee. In fact, the port trust has sought for a clarification from the Nautical Adviser. Since the Nautical Adviser said that the certificate issued by the Government of Singapore cannot be accepted, they issued the termination order. Since the appointment order clearly states that the appointment on regular basis, he was allowed to write the examination and he has also completed the examination. Only considering these factual aspects, the learned Single Judge has come to the conclusion that the respondent has reached the permanent status and accordingly, set aside the impugned orders with a direction to reinstate the respondent. However, liberty was also given to examine the validity of the certificate issued by the Singapore by affording an opportunity of personal hearing to the respondent. Absolutely, there is no infirmity or illegality in the order passed by the learned Single Judge. Thus, he prayed for dismissal of this appeal.

8. Keeping the submissions made on either side, we have carefully gone through the entire materials available on record.

9. Though very many contentions have been raised with regard to the certificate possessed by the respondent, the only issue that has to be decided in this case is as to whether on the date of termination, the respondent has reached the permanent status? <https://hcservices.hcs.gov.in/hcservices/> respondent is entitled to have a personal hearing, while examining the validity of the certificate issued by the respondent?.



10. According to the learned senior counsel for the appellants, the appointment order was issued on 08.04.2008 and all along the respondent was only under training, since he has not possessed necessary certificates. With regard to the validity of the certificate possessed by the respondent, on two occasions, the appellants sought for clarification from the Nautical Advisor and he has categorically stated that the certificate issued by the Singapore is not a valid one. Therefore, the appellants left with no other option except to terminate him from service. But, according to the learned counsel for the respondent, he has reached the permanent status. Therefore, simple termination without any enquiry discharging him from the service is not sustainable.

11. Admittedly, in the appointment order dated 08.04.2008, issued by the first appellant, it is clearly stated that the appointment of the respondent as Pilot is on regular basis in the Tuticorin Port Trust in the scale of pay of Rs.14,500-350-18700. However, in clause 2(ii) of the appointment order, it is stated as follows;

"(ii) The appointment is temporary but is likely to continue indefinitely. This is further subject to the conditions that he should qualify in the examination for issue of Pilot Licence to perform the duties of Pilot in TPT as per Tuticorin Port (Authorisation of Pilots) Regulations, 1979."

A reading of the above clause makes it clear that if the respondent qualified in the examination for issue of Pilot Licence to perform the duties of Pilot in TPT as per the Tuticorin Port (Authorisation of Pilots) Regulations, 1979, the appointment would be continued indefinitely. Admittedly, the respondent has passed in the examination for issuance of Pilot License on 10.02.2009. However, due to delay on the part of the appellants, he has not been issued with the license. The probation period of the respondent has also been completed. As per clause 8(2) of the Tuticorin Port Employees (Recruitment, Seniority and Promotion) Regulations, the period of probation may, if the appointing authority deems fit, extend for a specific period at a time, but the total period of such extension shall not exceed one year. But, the appellants did not produce any such extension. However, only after completion of more than four years of service of the respondent from the date of his appointment, the appellants have issued termination notice to the respondent.

12. When, in the appointment order itself, it is clearly stated that the appointment is on regular basis and the respondent has completed the probation and got himself qualified in the examination for issuance of Pilot license, this Court is of the view that the finding rendered by the learned Single Judge that the respondent has reached the permanent status cannot be found



fault with. Since the Directorate General of Shipping, Ministry of Shipping, Government of India, Mumbai, received a number of representations from industry organizations and stake holders conveying shortage of management level officers and surplus of operational level officers, the Directorate has taken a decision to permit Australia, Singapore, Ireland and New Zealand COC holders of Indian nationality to sail on Indian flag vessels, vide circular in NT/ENGG.Circular No.02 of 2014, dated 27.05.2014. Under such circumstances, we are of the opinion that the appellants can examine the validity of the certificates of the respondent again by affording an opportunity of personal hearing. In fact, though the learned Single Judge has ordered for reinstatement with backwages, he has given liberty to the appellants to examine the validity of the certificates possessed by the respondent by providing him an opportunity of personal hearing. We do not find any infirmity or error in the order passed by the learned Single Judge. Thus, this writ appeal is liable to be dismissed.

13. In the result, this writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

+ 1 CC TO Mr.N.DILIPKUMAR, ADVOCATE IN SR No. 51322

+ 1 CC TO Mr.S.YASHWANTH, ADVOCATE IN SR No. 51431

GCG

TE/SV-MMS/SAR-III : 26/04/2017 : 7P/3C

Judgment made in
Writ Appeal (MD) No.914 of 2015 and
M.P.(MD).No.1 of 2015
10.04.2017