



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.02.2017

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

WEB COPY

W.P.(MD) No.11407 of 2016

A.Sivakumar

... Petitioner

-vs-

1. The Executive Officer,
Pathamadai Town Panchayat,
Pathamadai, Ambasamudram Taluk,
Tirunelveli District.

2. The Assistant Director,
Pathamadai Town Panchayat,
Pathamadai, Ambasamudram Taluk,
Tirunelveli District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus, calling for the records relating to the proceeding of the 2nd respondent in Na.Ka.No.148/2015 dated 14.12.2015 and quash the same and allow the petitioner to continue the work.

For Petitioner :M/s.V.Jeyarani

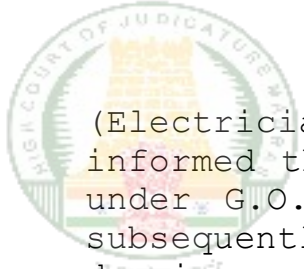
For Respondents :Mr.M.Rajarajan
Govt. Advocate

O R D E R

This writ petition has been filed, seeking to quash the order of the 2nd respondent dated 14.12.2015 passed in Na.Ka.No.148/2015, by which the petitioner was suspended from service on the allegation that he has given a false handicapped certificate. The petitioner also sought a direction to the respondents to allow him to continue the work.

2. The case of the petitioner is as follows:

i) The petitioner has completed his technical course in IIT in the year 1992 and registered his name in the employment office on 07.07.1995; that on 16.02.2001, he received a call letter from the Pathamadai Town Panchayat through the employment office of Tirunelveli and attended the interview on 26.02.2001 with all certificates; that since I was not a handicapped person, he had not issued any certificate to that effect nor entered his name in any Physically Handicapped Welfare Board; that he was called for Services in (Civil Services) Post and a handicapped person could not be fit for the said post; that he was appointed as a Lineman



(Electrician) by producing the Denotified Certificate and he was informed that he has been selected in General Turn (MBC) category under G.O.Ms.No.242 BOV, NMP & SW Dept, dated 28.03.1989; that subsequently, he was made as a permanent Lineman and has been drawing salary from Allahabad Bank; that to his shock and surprise, he was suspended from service without giving any show cause notice and enquiry; that he has been suspended by invoking Rule 5(b) G.O.No.205 (Punishment and Appeal) Rule, 1988, whereas the said Rule can be invoked for the purpose of suspension only when there is a complaint against a person for criminal offence or trial and therefore, the petitioner seeks to quash the impugned order.

3. The 1st respondent has filed a counter, wherein it has been stated as under:

i) The Tirunelveli District Employment Officer, on the basis of the request sent by the Panchayat, sponsored suitable candidates for appointment to the post of Electrician (Lineman) on 05.02.2011; that the said post was on consolidated wage basis and shall be filled up with open competition General Priority Category; that the petitioner's name was also sponsored under the category of Physically Handicapped Person quota, which comes under the General Priority and the petitioner also concealed the same at the time of interview; that the averment made by the petitioner that the District Collector was included in the committee of Pathamadaai Town Panchayat was not correct, as the appointment committee of Pathamadaai Town Panchayat consists of Chairman and Executive Officer alone; that the petitioner has himself admitted that he is not a handicapped person, thereby he cheated the administration with ulterior motive;

ii) The petitioner was working as Electrical (Helper) on consolidated wage basis from the year 2001 and that the post of Electrician (Lineman) is meant for a originally priority persons and Electrical (Lineman) post would have been filled up with a genuine physically handicapped person provided that the disability would not be a deterrent to do the work, which is being curtailed by the petitioner; that the said fraudulent act came to light, when the District Collector, vide ROC No.6577/2013/P1 dated 28.08.2015 ordered to examine the persons appointed on priority basis through the District Medical Board, which in turn reported vide Lr.No.14162/2015 dated 31.10.2015 that the petitioner was not a physically handicapped person; that a charge memo dated 30.03.2016 was also served on the petitioner by the Executive Officer, Pathamadaai Town Panchayat for his fraudulent activities and an Enquiry Officer was also appointed to enquire in the matter against the petitioner; that a case in Crime No.3 of 2015 was also registered by the CBCID on the issue of appointment of persons under Physically Handicapped Person quota and the case is under investigation; that after his suspension, he has been paid subsistence allowance of 50% of pay and other allowances upto date and therefore, it is

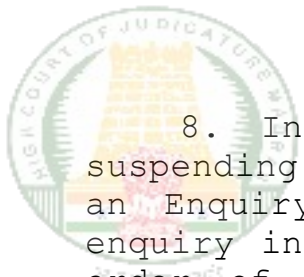
prayed that this petition has to be dismissed in limine.

4. Learned counsel for the petitioner has submitted that the petitioner has been selected for the post of Lineman through Employment Exchange, which involves claiming of poles with the help of knees and transferring heavy equipment and the same cannot be done by a person with disability and therefore, the contention of the respondents that the petitioner joined the said post by producing false medical fitness certificate cannot be accepted. He has further submitted that the petitioner has at no point of time produced any disability certificate either to the employment office or to the respondents and the petitioner alone cannot be faulted for the wrong sponsorship made by the Employment Exchange under Physically Handicapped Quota.

5. Learned Government Advocate appearing for the respondents would contend that the Panchayat, by clearly indicating that the post of Electrician (Lineman) would be filled up through open competition General Priority on consolidated wage basis, which otherwise comes under the category of physically handicapped person quota, called for names of suitable candidates from the employment exchange, in which the petitioner's name found place. The Employment Exchange on its own cannot add the petitioner's name under physically handicapped quota without any certificate in support thereof and therefore, it is vividly clear that the petitioner acted with the intention to cheat the public administration.

6. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents.

7. On a conspectus reading of the facts of the present case, it would reveal that based on the request of the respondents, the District Employment Office sponsored names of persons, who were physically challenged for induction into service under Physically Challenged Quota. From the averments pleaded by both parties, unless a detailed enquiry / investigation has been conducted into the matter, real truth cannot be unearthed, as involvement of Employment Officers, Officers in the Municipality etc., is prima facie apparent on the face of record. It is indeed sad to note that disability fraud can be harder to detect than other forms of fraud, as the majority of people receiving disability payments (at least 90%) do not use a wheelchair or walker, while at the same time, many people who need wheelchairs would not qualify for disability payments. According to a recent report, it has become a habit for a few Government Doctors to issue such fake certificates, charging between Rs. 500 and 1,000 and the same are used by "healthy" or "partially" handicapped persons not only to ~~secure jobs~~ through back door entry but also to travel in Railways along with an "escort" on concession basis.



8. In this case, the respondents have stated that after suspending the petitioner, a charge memo has also been issued and an Enquiry Officer was also appointed for conducting thorough enquiry into the matter. It is pertinent to mention here that an order of suspension is not a punishment and the relationship between the employer and the employee subsists even during the period of suspension. When there is master and servant relationship, the suspension can be effected by the employer and it cannot be questioned except on certain grounds like competence of the Authority issuing the said order, want of jurisdiction, contrary to the Rules, etc. Hence, as long as the competency of the authority issuing the suspension order is not challenged, this Court cannot interfere with the order of the suspension.

9. Hence, pursuant to initiation of departmental proceedings against the petitioner, this Court directs that the enquiry shall be conducted on day to-day basis without adjourning the matter beyond one week at any point of time so as to bring the issue to a logical end at the earliest.

10. Before parting with the matter, this Court wants to express its view that it is very unfortunate to see that the vacancies solely meant for physically challenged are grabbed by healthy persons by means of back door entry, which is not at all possible without the involvement of higher officials. It was represented by the respondents that already a case in Crime No.3 of 2015 has been registered by the CBCID Police for investigating into the issue of appointment on production of fake certificates. Therefore, the State shall consider, entrusting the investigation to be done by a high level investigating agency, namely Central Bureau of Investigation.

With the above observation and direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/
Assistant Registrar(CS I)

/TRUE COPY/

Sub Assistant Registrar

To:

1. The Chief Secretary to Government
Government Of Tamil Nadu,
Fort St George,
Chennai -9.



2. The Executive Officer,
Pathamadai Town Panchayat,
Pathamadai, Ambasamudram Taluk,
Tirunelveli District.

WEB COPY

3. The Assistant Director,
Pathamadai Town Panchayat,
Pathamadai, Ambasamudram Taluk,
Tirunelveli District.

+1cc to M/s.V.JEYARANI, Advocate, in SR No.10173

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AAM-CM MSA SAR1/03.3.2017/5P-5C.

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