

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28-03-2018

CORAM

THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.No.31031 of 2014

And

M.P.No.1 of 2014

R.Thiruvengadam

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Petitioner

-vs-

1.The Management,
The Lakshmi Vilas Bank Ltd.,
Administrative Office,
Karur-639 006.

2.The Presiding Officer,
Central Government Industrial Tribunal-cum-
Labour Court,
Sastri Bhavan,
Chennai-600 006.

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Respondents

सत्यमेव जयते

Writ Petition is 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 second respondent relating to the Award dated 22.7.2014 in I.D.No.59 of 2013, quash the same and grant the relief prayed for in I.D.No.59 of 2013, by directing the Management to reinstatement the petitioner in service with all consequential benefits.

For Petitioner

- Mr.J.Muthukumaran

For Respondent-1

- Mr.T.R.Sathiyamohan

ORDER

Heard the learned counsel for the petitioner and the learned counsel for the first respondent.

2. It appears that the petitioner, who was working as a sub-staff, having all the required qualifications for the sub-staff, in the course of his employment with the first respondent was promoted as a Clerk i.e., an ward staff. But sometimes, thereafter, it was found that he had fabricated the proof of qualification for such promotion and had got such appointment. Hence, he was dismissed from service. Challenging his dismissal, he approached the Central Government Industrial Tribunal-cum-Labour Court in I.D.No.59 of 2013 which was disposed of with an order, modifying the punishment of removal from service to one discharge of service with superannuation benefit. Challenging the same, the writ petitioner has filed this writ petition inter alia on the ground that the aforesaid order of the learned Tribunal is perverse, being contrary to the materials on record inasmuch as even though there was no proper enquiry, an order of removal was passed. The Tribunal, overlooking the materials on record, however did not interfere with the same, but substituted the removal to one of discharge with superannuation benefit. Hence, the same is liable to be quashed; consequently the order of discharge is also liable to be

quashed and the petitioner is entitle to reinstatement with the consequential benefit or in alternative revert him to his original service as Sub-staff.

3. A counter-affidavit has been filed indicating the fact that such contention of the petitioner in the writ petition challenging the order of the Tribunal is without any substance inasmuch as ample materials on record are there indicating the fact that the petitioner for the purpose of promotion submitted a spurious certificate indicating the requisite qualifications required for promotion to the post of Clerk which the first respondent-Bank have proved by examining the Controller of Examination of the University concerned that no such certificate was issued in favour of the petitioner. Therefore, the order of the Tribunal in finding guilty of the petitioner for being submitting a fabricated certificate for the purpose of obtaining promotion, cannot be said to be perverse and hence the same needs no interference on merit. In so far as the ground with regard to the substitution of punishment is concerned, since the writ petitioner perpetrated fraud and forgery, he does not deserve any sympathy. More particularly, when much sympathy has been shown to him by the learned Industrial Tribunal substituting the punishment of removal from service to one with discharge from service with superannuation benefit.

4. During the course of hearing of the writ petition, however,

the counsel for the petitioner does not challenge the finding that the petitioner by submitting a spurious certificate and got the promotion although he was having no such requisite qualifications. However, the only submission is that since the certificate furnished by the petitioner to get appointment for the post of sub-staff in genuine one and he was serving as a sub-staff sincerely with the first respondent-Bank and there was no allegations against him of any misconduct as sub-staff, this Court may substitute the order of discharge by directing the reversion of the petitioner to the post of sub-staff in which he was working on the date of his promotion.

5. Reliance in this regard has been placed by the learned counsel appearing for the petitioner on a decision of the Apex Court in **Navdeep vs. State of Punjab and Others [(2006) 9 SCC 500]**. So also the reliance has been placed on a Division Bench judgment of this Court in **V.Boopathy and others vs. Joint Registrar of Co-operative Societies and Another [W.A.Nos.949 to 954 of 2012 decided on 9.12.2014]**, wherein this Court in similar facts and circumstances, have directed for re-employment of them.

6. In response to the same, the learned counsel appearing for the first respondent-Bank, submits that the petitioner is guilty of serious misconduct. He has fabricated the document to get promotion.

Therefore, he having the propensity of committing such a serious crime, needs no sympathy inasmuch as the first respondent is a Bank and the entire affair of the Bank is run on trust. If a person of the petitioners nature is allowed to serve in such institution, the trust of the customers in that Bank shall be lost and in that event the Bank shall suffer as well as the customers. Therefore, he submits not to allow such prayer of the petitioner.

7. As it appears in the case of **Navdeep vs. State of Punjab and others** (cited supra), the petitioner therein had fabricated the marksheet for the purpose of obtaining certain percentage of mark to get admission in higher course and had taken advantage of his selection in Government job as a Teacher. On that ground, the petitioner was removed from service. The Court, while upholding the finding of the Enquiry Officer that the petitioner is guilty of such tampering of the mark sheet, as the petitioner therein had rendered 10 years of unblemished service and otherwise possessed academic record, directing the authority to consider to give appointment to the petitioner, ignoring his such misconduct, however, the aforesaid order was held to be not a mandate of the Court.

8. As it appears in the case of **V.Boopathy and others vs.**

Joint Registrar of Co-operative Societies and Another (cited

supra), that said **V.Boopathy and others** who were appointed there, had submitted false certificates and got appointments as such they were removed from service. Then when they filed writ petitions before this Court, challenging the same were dismissed. But a Division Bench of this Court in the writ appeal filed vide the aforesaid case at Paragraph No.13 held as follows :-

"13. In the light of the above facts and circumstances as well as the law laid down by the Hon'ble Supreme Court and by this Court, we are of the view that the appellants' claim may be considered by the 2nd respondent by accepting the undertaking given before this Court that they will not claim any promotion. However, having regard to the fact that the appellants have produced the bogus certificates and claimed promotion, which is now admitted, the appellants may be imposed with lesser punishment, other than the dismissal/removal from service. For that purpose, the matters are remitted to the 2nd respondent to impose lesser punishment, other than dismissal/removal from service. The said exercise is directed to be completed by the 2nd respondent, within a period of four weeks from the date of receipt of a copy of this order."

11. Hence, after hearing the learned counsel for the parties and going through the materials on record as well as the

decisions cited supra, though the petitioner has not made out a case for reinstatement in the lower post, but considering the fact that the petitioner was serving as a sub-staff unblemishedly and there is no allegations of any misconduct except the fact that he got the promotion by submitting a fabricated certificate, this writ petition is disposed of with a direction to the first respondent-Bank to consider the case of the petitioner for employment on daily wage basis as a sub-staff in any of the office or institution of the first respondent-Bank, within three months from the date of receipt of a copy of this order. However, it is made clear that after his such appointment as a daily wage basis, the petitioner shall not be entitled to claim any regularisation and other service benefit for the same. Further more, if at any point of time, the authority after engage him, finds him to be unsuitable may disengage him without any notice if the authority so like. But, the above direction for consideration to appoint the petitioner on daily wage basis in any of its Office shall not be considered as a mandate of this Court. No costs. Consequently, all the connected Miscellaneous petitions stand closed.

28-03-2018

Speaking/Non speaking order

Index : Yes/No

Internet: Yes/No.

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Note : Issue order copy on 03.05.2018

SATRUGHANA PUJAHARI, J.

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To

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