

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2018

CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.1085 of 2016

E.Rengammal

..

Appellant

Vs

1. The Superintendent

The Office of the Superintendent
Govt R.S.R.M.Hospital
Chennai - 600 013.

2. The Director of Medical Education,
Poonamallee High Road,
Kilpauk, Chennai - 600 010.

..

Respondents

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent to set aside the order dated 12.12.2013 passed by the learned Single Judge in W.P.No.38368 of 2005.

WP.No.38368 of 2005 has been filed under Article 226 of Constitution of India praying to issue writ of certiorarified mandamus as in the nature of a writ to call for the records of the 2nd respondent in the order dated 11.8.2005 passe din ROC.No.16535/SCTI(2)2005 quash the same and direc tthe respondent to reinstate the petitioner in service with full back wages.

For Petitioner : Mr.T.Sundar Rajan

For Respondents : Mr.K.Karthikeyan

Government Advocate

JUDGMENT

[Judgment of the Court was made by P.VELMURUGAN, J.]

This writ appeal has been filed against the order dated 12.12.2013, passed by the learned Single Judge in W.P.No.38368 of 2015.

2 The brief facts of the appellant's case in the writ petition is as follows :-

2.1 The case of the appellant before the writ court is that she was initially appointed as substitute worker, which comes under the category of Clause-IV, at Government RSRM Hospital, Chennai, during October, 1973. Subsequently, she was absorbed as Female Nursing Assistant Grade II in a regular scale of pay w.e.f.27.05.1983. The prescribed qualification for

Clause-IV employees is only to read and write Tamil language, as per the Tamil Nadu Basic Service Rules. While the appellant was in service, the first respondent initiated disciplinary proceedings against her under Clause 17(b) of the Tamilnadu Civil Services (Discipline & Appeal) Rules, for producing bogus certificate.

2.2 According to learned counsel for the appellant as per G.O.Ms.No.292, Personnel and Administrative Reform Department, dated 31.03.1988, the qualification for appointment as a Class-IV employee is only to read and write Tamil language, but, without considering the said aspect, the first respondent on completion of enquiry, issued a show cause notice dated 10.12.2004 and upon receiving the same, the appellant submitted her explanation on 07.01.2005. However, the first respondent passed a final order dated 31.01.2005, removing the appellant herein from service. Against the order dated 31.01.2005, the appellant preferred an appeal before the second respondent. Since the second respondent did not pass any orders on her appeal, she filed a writ petition No.13150. This Court by order dated 20.04.2005, directed the second respondent to dispose of the appellant's appeal, within a period of twelve weeks. Pursuant to the said order of this Court dated 20.01.2015, the second respondent passed an order dated 11.08.2015, confirming the dismissal order dated 31.01.2005, passed by the first respondent.

2.3 Aggrieved by the same, the appellant has filed the writ petition No.38368 of 2005, before this Court. After considering the submissions made on either side, the learned Single Judge by an order dated 12.12.2013, dismissed the writ petition.

3 Aggrieved against the order of this Court dated 12.12.2013, made in W.P.No.38368 of 2005, the appellant preferred the present writ appeal.

4 The learned counsel for the appellant would submit that the appellant was working as substitute worker, which comes under the category of Clause-IV, at Government RSRM Hospital, Chennai, in October, 1973. Subsequently, she was absorbed as Female Nursing Assistant Grade II in a regular scale of pay w.e.f.27.05.1983. He would further submits that when the qualification for Clause-IV employees is only to read and write Tamil language, as per the Tamil Nadu Basic Service Rules, there was no need for the appellant to submit any bogus certificate as alleged by the 1st respondent. The learned Single Judge, failed to consider this aspect and simply confirmed the decision rendered by the respondents and dismissed the writ petition.

5 The learned Government Advocate appearing for the respondents contended that when the appellant was appointed as substitute worker, there was no qualification prescribed. Subsequently, she was absorbed as Female Nursing Assistant Grade II in a regular scale of pay w.e.f.27.05.1983. The appellant made an application before the first respondent seeking order of

completion for her probation. The first respondent while verifying the service records, apprehending the genuineness of the certificate produced by the appellant, examined the Educational Authority, who in turn, certified that the certificates produced by the appellant is fabricated and bogus one. Thereafter only, the appellant was removed from service.

6 It is not in dispute that the appellant was initially appointed as Substitute Worker, at Government RSRM Hospital, Chennai, in October, 1973. Subsequently, she was absorbed as Female Nursing Assistant Grade II in a regular scale of pay w.e.f.27.05.1983. The appellant made an application before the first respondent seeking order to declare her probation. While verifying the genuineness of the certificate produced by the appellant, it was found as bogus. Therefore, the first respondent has initiated disciplinary proceedings against the appellant for producing bogus certificate and a charge memo was also issued. Subsequently after the enquiry she was removed from service by impugned order dated 31.01.2005. The main contention of the appellant is that the educational qualification for Clause-IV employee is only to read and write Tamil language, as per the Tamil Nadu Basic Service Rules and therefore, there was no necessity for the appellant to produce any kind of bogus certificate.

7 According to the learned Government Advocate, the post of Female Nursing Assistant Grade II, comes under Tamil Nadu Medical Servant Service Rules. Therefore the contention of the learned counsel for the appellant that the educational qualification for Clause-IV employees is only to read and write Tamil language as per the Tamil Nadu Basic Service Rules, is baseless and the appeal filed by the appellant has no merits and deserves to be dismissed.

8 However, the first respondent has taken a too strict view in the matter and removed the appellant from service. Though, this Court do not want to interfere with the order dated 12.02.2013 passed by the learned Single Judge in W.P.No.38368 of 2005, dismissing the writ petition, and the findings recorded by the Disciplinary Authority, considering the nature of service rendered by the appellant, we are of the view that leniency should be shown on the appellant.

9 In view of the above discussions, we modify the punishment of removal from service into one of compulsory retirement. The first respondent is directed to disburse the statutory retiral benefits, to the appellant within a period of three months from today.

10 In the result, the writ appeal is partly allowed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

cgi/tar

To

1. The Superintendent
The Office of the Superintendent
Govt R.S.R.M.Hospital
Chennai - 600 013.
2. The Director of Medical Education,
Poonamallee High Road,
Kilpauk, Chennai - 600 010.

+1cc to Mr.T.Sundarrajan, Advocate Sr.No.5973

ERS(CO)
RRK:27.2.2018

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