

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2018

CORAM

THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.No.15151 of 2018
WMP. No.17964 of 2018

R.Manikandan

...Petitioner

..vs..

1. The P.A. (General) to the District Collector
Chennai District, Chennai - 600 001.
2. The District Revenue Officer,
Chennai District, Chennai- 600 001. ...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus to call for the records of the first respondent in connection with the impugned order passed by him in Proc.No.A4/9934/2014 dated 07.07.2017 and confirmed by the 2nd respondent in Proc.No.A4/9934/2014 dated 12.04.2018 and quash the same and direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefits.

For Petitioner : Mr.M.Muthappan

For Respondent : Mr.N.Srinivasan

Additional Government Pleader

ORDER

This Writ Petition has been filed challenging order passed by the first respondent in Proc.No.A4/9934/2014 dated 07.07.2017 and confirmed by the 2nd respondent in Proc.No.A4/9934/2014 dated 12.04.2018 on the ground that the same are illegal and arbitrary and as such he seeks to quash the same and direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefits.

2. The case of the petitioner is that the petitioner, after completing the 8th standard registered his name in the Employment Exchange and thereafter the petitioner was called upon to appear

for an interview to the post of Office Assistant in Chennai based on the orders of the Government dated 12.07.2014. However, at the time of interview, the petitioner produced a spurious tenth standard certificate and selected as Office Assistant vide proceedings of the first respondent dated 11.08.2014 and the petitioner joined duty on 13.08.2014. After the appointment of the petitioner, as it came to the knowledge of the respondents that the petitioner has produced a spurious certificate of the Educational qualification, a Charge Memo under Section 17 (b) of TNCS (D & A) Rules vide Ref.No.A4/9974/2014 dated 25.01.2017 was issued by the first respondent, to which the petitioner submitted his explanation. The Special Tahsildhar, Land Acquisition was appointed as Enquiry Officer to conduct enquiry and after enquiry the certificate produced by the petitioner being found to be false and fabricated one, the petitioner was dismissed from service by the order of the first respondent dated 07.07.2017 for such misconduct. The petitioner subsequently challenged the same in an Statutory Appeal before the first respondent unsuccessfully inasmuch as vide order dated 12.04.2018, the appellate authority dismissed his such appeal. The petitioner being aggrieved by the same, has filed this Writ Petition seeking for the relief as stated earlier inter alia on the ground that the aforesaid order has been passed in violation of principles of natural justice inasmuch as the petitioner was not afforded with an appropriate opportunity of hearing to disprove the charge.

3. However, counter affidavit has been filed by the respondents disputing the aforesaid facts. It is stated that the petitioner on his own has admitted in the explanation dated 08.06.2016 that the certificate produced was a spurious one and was obtained by his father and he produced the eighth standard certificate which is the required qualification for appointment to the post of Office Assistant alone and hence it is stated that the petitioner was given opportunity of hearing and therefore the impugned order cannot be questioned on the said ground. Therefore, it is stated that since the petitioner was given reasonable opportunity of hearing, there is no violation of principles of natural justice. Since, the charge was proved, the disciplinary authority passed an order of dismissal from service which appears to be commensurate to the delinquency. The Appellate authority also taking note of the facts and circumstances did not interfere with finding on the misconduct and penalty imposed. Hence, this Writ Petition filed by the petitioner is devoid of merits and the same is liable to be dismissed.

4. During the course of hearing, the learned counsel appearing for the petitioner would submit that he does not want to contest the finding of charge on misconduct to have been proved but submits to direct the disciplinary authority to revisit the

punishment by any other punishment as the petitioner has the necessary qualifications for the post, but his father obtained a spurious certificate of higher qualification and he produced the same. The punishment imposed also being shockingly disproportionate needs to be interfered with. He would also submit that if the petitioner was reinstated, he will not claim wages when he was out of service and also he will not claim any continuity of service in future. A Reliance has been placed by him in a decision of this Court in K.Dhanasekaran Vs. State of Tamil Nadu and others reported in MANU/TN/2008/2010. wherein this Court, in similar circumstances has held that the punishment should be lesser than dismissal from service. The learned counsel for the petitioner also placed reliance on another decision of this Court in N.Sekar Vs., Director of Medical Education and others reported in 2009 (4) CTC 158, wherein this Court in similar circumstances, on consideration of several decisions has set aside the order of dismissal from service.

5.It is not disputed by the counsel for the respondent that in similar facts and situation, this Court held the punishment of dismissal to be disproportionate.

6. As it appears from the contentions raised so also, the materials on record, undisputedly, the petitioner has necessary requisite qualification for being appointed to the post of Office Assistant. However, he produced a spurious certificate of higher qualification and obtained an appointment. The same according to the petitioner was obtained by his father and he has no role to play on the same. The Disciplinary authority on consideration of the same and also the relevant materials on record, held that the misconduct to have been proved. The petitioner also did not contest the same in this writ petition but seeks modification of punishment of removal imposed in such disciplinary proceedings on the ground that the same is disproportionate inasmuch as the mitigating circumstances have not been taken into consideration while imposing punishment. It appears that this Court in the case of K.Dhanasekaran and N.Sekar (Cited supra) in the similar facts and situations, held the punishment of dismissal imposed to be disproportionate and as such, directed the disciplinary authority to revisit the same by any other punishment, by reinstatement into service. The same is also not disputed by the learned counsel appearing for the respondents. Therefore, placing reliance on the aforesaid decisions, this Court remit back the matter to the disciplinary authority to revisit the punishment of dismissal / removal from service by any other suitable punishment as it may deem fit and proper within a period of eight weeks. But, after reinstatement the petitioner, he shall not be entitled to any continuity of service and backwages for the period which he remains out of service during the course of disciplinary proceeding and also

thereafter till the order is passed by the disciplinary authority in compliance to the direction in this writ petition.

7. This Writ Petition is disposed of with the above directions. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS VI)

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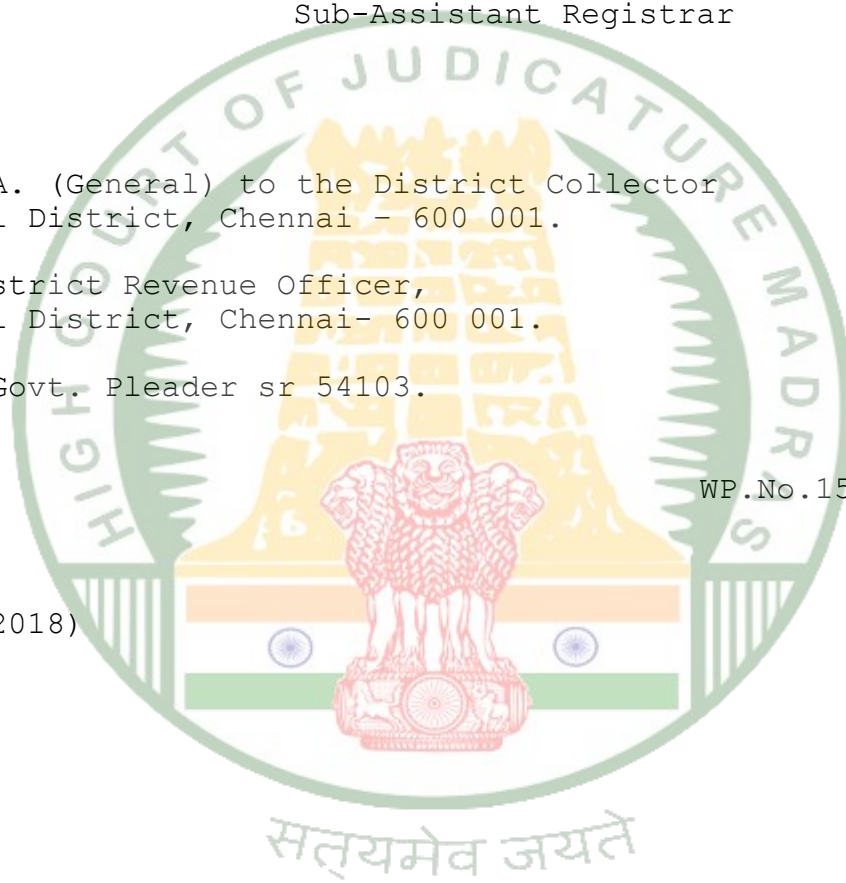
Sub-Assistant Registrar

arr/rka
To

1. The P.A. (General) to the District Collector
Chennai District, Chennai - 600 001.
 2. The District Revenue Officer,
Chennai District, Chennai- 600 001.
- +1 CC to Govt. Pleader sr 54103.

WP.No.15151 of 2018

AK(CO)
SP(26/09/2018)



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