

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31 .07.2018

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.Nos.27049 & 27448 of 2009

and

MP.No.1 of 2009 in W.P.No.27448 of 2009

and

MP.No.1 & 2 of 2009 in W.P.No.27049 of 2009

M.Kuppuswamy

...Petitioner in both WPs.

Vs.

1. The Asst. Commissioner,
Revenue Administration,
Disaster Management & Mitigation Dept.,
Ezhilagam, Chepauk, Chennai -5.

respondent in WP.No.27448/09

... First Respondent in

WP.No.27049/09

2. Enquiry Officer / The Superintendent,
Service IV Section Revenue Administration Department,
Disaster Management and Mitigation Department,
Chepauk, Chennai - 5.

2nd ... Respondent in WP.No.27049 of 2009

Prayer in W.P.No.27049 of 2009: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the respondents 1 & 2 in connection with the impugned memo issued by the 1st respondent in Ref.No.AA/Na(1)/29878/09 dated 21.11.2009 and the enquiry officer's report of the 2nd respondent dated 12.11.2009 and quash the same.

Prayer in W.P.No.27448 of 2009: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the respondent in connection with the impugned memo issued by the respondent in Ref.No.AA/Na(1)/29878/06 dated 24.12.2009 and quash the same.

For Petitioner : Mr.Venkataraman
in both WPs. Senior Counsel
for Mr.M.Muthappan,

For Respondents : Mr.Thangavadhana Balakrishnan
in both WPs. Additional Government Pleader

C O M M O N O R D E R

The relief sought for in these Writ Petitions are to quash the impugned memos issued by the 1st respondent in Ref.No.AA/Na (1)/29878/09 dated 21.11.2009 and Ref.No.AA/Na(1)/29878/06 dated 24.12.2009 and the enquiry officer's report of the 2nd respondent dated 12.11.2009.

2. As the issue involved in these writ petitions are one and the same and connected, this Court is inclined to pass common order.

3. The case of the petitioner is that he had passed 8th standard in the year 1972-73 in the Corporation High School situate at Padavattamman Koil Street, Kosapet, Chennai 12. Thereafter the petitioner had registered his name in the employment exchange and the registration number is 15983/74. The petitioner is also holding a driving licence to drive motor vehicles. It was claimed by the petitioner that his name was sponsored by the Employment Exchange for attending the interview on 19.05.1986 for the post of Office Assistant in the office of the Special Commissioner cum Commissioner for Revenue Administration, Chepauk, Chennai -5. It was further contended by the petitioner that he was successful in the interview and was issued with an appointment order as Office Assistant by the Assistant Commissioner of Revenue Administration, Chepauk, Chennai in his proceedings Na.Ka.No.K4/65964/85 dated 21.05.1986. At the time of interview, the petitioner had produced his educational qualification certificate and other certificates for age proof. The educational qualification certificate was sent to the Education Department and after verification, the petitioner's service in the cadre of an Office Assistant was regularized by the proceedings in Na.Ka.No.K4/1135/87 dated 15.02.1989.

4. The petitioner claims that he has made meritorious throughout the service. However, to his shock and surprise, the first respondent by his proceedings dated 13.03.2007 had issued a charge memo levelling the following three charges against the petitioner.

(i) The main charge is that the petitioner has produced bogus school certificate for having passed 8th standard and when

the certificate was sent for verification, the Deputy Inspector of Schools, Purasai Division, Education Department has verified and found in the school records that the petitioner's name does not find a place in the admission register, whereas his name was inserted in Serial No.5504A of the Admission Register for having studied 6th, 7th and 8th standards and on perusal of the mark sheets, the petitioner's name did not find a place for the said period.

(ii) The second charge as against the petitioner is that he produced a certificate for passing 8th standard, which is found to be bogus based on the report of the Educational Officer, Chennai Corporation and the petitioner did not possess minimum educational qualification as per Rule 5(2)(a) of the Tamil Nadu Basic Servants Rules.

(iii) The 3rd charge as against the petitioner is that the petitioner, by irreprehensible conduct, has violated the Government Servant conduct Rules.

5. It was further contended by the learned counsel for the petitioner that having received the charge memo, the petitioner had submitted his reply, on 12.04.2007, denying the charges and through his reply he had requested to conduct oral enquiry.

6. The petitioner further contended that one Thiru.Venugopal, who was appointed as an Enquiry Officer, the second respondent in W.P.No.27049 of 2009, had conducted the oral enquiry against the petitioner. The Enquiry commenced on 24.05.2007 in which the petitioner had appeared in person and submitted his statement denying the charges. Though no witness was examined on that day, later on 09.07.2007, Thiru. M.I.Mohd. Ayub, Headmaster of Chennai Corporation High School, Padavattamman Koil Street, Kosuavapettai, Chennai - 12 appeared before the Enquiry Officer and had given his statement with reference to the record sheet of the petitioner. During the said Enquiry, the Headmaster has also produced Admission Register and Mark Statement before the Enquiry Officer and had explained that the petitioner's name had been inserted in Serial No.5504A and the same was also being inspected by the Deputy Inspector of schools, on 30.06.1988 and has made an endorsement to that effect. As the petitioner's name was inserted, the mark register does not reflect the petitioner's name.

7. The petitioner claimed that enquiry was conducted in the absence of petitioner and no other persons were permitted to be examined by the petitioner despite his request for the same. Thereafter, the petitioner was served with a copy of the enquiry officer's report through a memo dated 21.11.2009, which is the one of the orders impugned herein.

8. The petitioner further contended that on examination of the enquiry report, he came to know that the enquiry officer has relied upon the report of the Educational Officer, Corporation of Chennai, for arriving at the conclusion and in the said report, there is a reference to the examination of the Headmaster Mr.M.I.Mohd. Ayub on 09.07.2007, which was neither informed to the petitioner nor the petitioner was allowed to be present and cross examined the witness. Hence the charge memo, enquiry officer's report, and impugned memos dated 13.03.2007, 12.11.2009, 21.11.2009 and 24.12.2009 respectively have to be quashed and set aside.

9. It would be seen from the records that at the time of admission on 23.12.2009, notice of motion returnable in two weeks was ordered by this Hon'ble Court in W.P.No.27049 of 2009. Meanwhile, the first respondent by order dated 24.12.2009 had directed the petitioner to appear on 31.12.2009 for enquiry. This order also came to be challenged in W.P.No.27448 of 2009.

10. When the said W.P.No.27448 of 2009 was listed for admission on 30.12.2009, this Hon'ble Court ordered Notice of motion returnable by 07.01.2010 and also granted interim direction to the respondent not to pass any orders on the show cause notice/ impugned order dated 24.12.2009 and directed the Registry to post W.P.No.27049 of 2009 and W.P.No.27448 of 2009 together.

11. The first respondent had filed a counter in WP.No.27049 of 2009 denying all the allegations set out in the affidavit filed by the writ petitioner, as far as the first respondent is concerned. He has submitted that the petitioner was sponsored by the Employment Exchange, Chennai and was appointed as Office Assistant on 21.05.1986 and the petitioner had joined duty on 22.05.1986 F.N and the service of the petitioner was regularised with effect from 22.05.1986 F.N and his probation was declared with effect from 21.05.1987 A.N. During the year 2006, when the petitioner was working in the Prohibition and Excise Department, an allegation petition by way of letter was received by the authorities stating that the educational certificate of the petitioner is a bogus one. Hence, the Commissioner of Prohibition and Excise Department was requested to obtain and send the original educational certificate of the petitioner. The Commissioner of Prohibition and Excise, on the request of the first respondent, had sent the original educational certificate of the petitioner to the first respondent on 30.06.2006, which was thereafter referred to the Commissioner, Corporation of Chennai with a request to send a report on the genuineness of the educational certificate of the petitioner herein.

12. It is also stated in the counter that, in response to

the said request, the Educational Officer, Corporation of Chennai by his letter dated 23.10.2006 informed that the Record Sheet of the petitioner has already been verified by the Deputy Inspector, Purasai Division on 30.06.1988 and he has recorded his remarks as "verified and not found in other records". Thereafter, the Educational Officer, Corporation of Chennai has informed the first respondent by his letter dated 28.02.2007, that the admission No.5504-A has been written as insertion in between 5504 and 5505 and that there are no entries in the Mark Register maintained in Corporation High School, Padavettamman Koil Street, Chennai, in respect of the marks obtained by the petitioner in 6th, 7th and 8th standards during the year 1970-1971, 1971-1972 and 1972-1973. Based on the report submitted by the Educational Officer, Corporation of Chennai, three charges were framed against the petitioner under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules vide reference No.O.P.I(1)/29878/06, dated 13.03.2007.

13. The first respondent also contended that the writ petitioner, on receiving the said charge memo, submitted his explanation in his letter dated 12.04.2007. Subsequently, the then Superintendent, Service IV Section Thiru R.Venugopalan was appointed as Inquiry Officer vide proceedings dated 16.04.2007. During the course of the enquiry, the enquiry officer vide his letter dated 01.06.2007 informed that the writ petitioner had insisted on enquiring the then Headmaster and the present Headmaster of the Corporation High School, Padavettamman Koil Street, Chennai- 12 along with the Admission Registers, Record of Transfer Certificates etc. In response to this, Mr. M.I. Mohd. Ayub, Headmaster of the above school appeared before the Enquiry Officer and deposed that there are no corresponding entries with regard to the marks in respect of the admission No.5504A of the petitioner M.Kuppusamy, who is said to have studied 6th, 7th and 8th standard and this fact could only be verified through the then Headmaster namely one Thiru.A.Kannaiyan of the above said school. The Commissioner, Corporation of Chennai in his letter dated 17.03.2009 informed that the whereabouts of the said Kannaiyan, then Headmaster could not be ascertained and furnished the certified copies of the Admission Register and Mark List.

14. It is also contended by the first respondent that the said enquiry officer Mr.R.Venugopalan was relieved for Tahsildar Training and hence Mr.V.Muthuswamy, Superintendent, Service IV Section was appointed as Inquiry Officer vide proceedings O.P.I.(1)/29878/2006, dated 3.4.2009 and he had conducted the enquiry and furnished the final enquiry report dated 12.11.2009 to the department concerned. It was further submitted by the first respondent that during the course of enquiry by the Inquiry officer, the petitioner has clearly deposed that he does not wish to enquire/cross examine any

witnesses and therefore, based on the deposition made by the witnesses and the documents available, the enquiry officer had concluded that all the three charges framed against the writ petitioner were held proved. Copy of the enquiry report was also furnished to the petitioner vide the impugned memo dated 21.11.2009 with a direction to submit his further explanation within 15 days.

15. Heard the learned counsel on both sides and perused the materials available on record.

16. Mr.Venkataramani, learned Senior counsel appearing for the petitioner vehemently contended that the charge memo issued by the first respondent and the enquiry report submitted by the enquiry officer have to be set aside, on the ground that the petitioner was not given an opportunity to cross examine the Headmaster Mr.M.I.Mohd.Ayub, who was examined as a witness on 09.07.2007 and the petitioner was not permitted to be present during the deposition of the said Headmaster. Apart from that department call for report from the education department. The educational officer, Corporation of Chennai has collected the documents behind the back of the petitioner. The petitioner was not permitted to take part in the enquiry proceedings.

17. The learned senior counsel also submitted that if any oral enquiry conducted then it ought to have been intimated to the delinquent officer and any such examination without intimating the delinquent officer vitiates the entire enquiry proceedings, which is totally in violation of the fundamental rights available to the employers. Apart from that, the learned senior counsel also contended that the educational certificate was sent for verification as early as in the year 1988. The petitioner's service was regularized only after thorough verification of the educational certificate and once the petitioner's service was regularized, it is not open to the respondents to issue a charge memo on the very same ground that the petitioner has produced bogus certificate.

18.The learned Additional Government pleader Mr.Thangavadhana Balakrishnan, vehemently contended that the petitioner having produced the bogus certificate for being appointed to the post of Office Assistant, the department has every right at any point of time to issue a charge memo and terminate the service of the petitioner when the department came to know that the certificate was bogus. That apart, the learned Additional Government Pleader also produced a copy of the Register of Admission and pointed out that it is clearly seen from the said Register that the petitioner's name was inserted as 5504A, after 5504 however the mark register of the corresponding period does not contain the petitioner's name. Hence, under these circumstances, it is clear that the petitioner's name was inserted and the petitioner has produced

the bogus certificate to get appointment as Office Assistant and therefore, the charge memo has been sustained.

19. Apart from that, the learned Additional Government Pleader also contended that both the writ petitions have to be dismissed and the impugned orders of the both the writ petitions are only the stage of show cause notices where by the petitioner was directed to appear and give his explanation to the respondents. Hence, the writ petitions filed at the show cause notice stage, ought not to have been entertained and has to be dismissed in limini.

20. However, the learned Additional Government Pleader on 27.07.2018 made a request before this Court for earlier pronouncement of the said orders as the petitioner is due to retire on superannuation on 31.07.2018. On 17.07.2018, arguments heard and the matters were adjourned under the caption 'for orders'.

21. It is not disputed by both the petitioner and the respondents that the petitioner had attended the interview on 19.05.1986 and subsequently he was issued with an appointment order on 21.05.1986 and he joined duty on 22.05.1986. Thereafter, the petitioner's service was regularized on 15.02.1989, with effect from 22.05.1986. It is also not in dispute that the charge memo dated 13.03.2007 was issued under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and three charges were framed against the petitioner.

22. The first charge is that the petitioner produced the bogus school certificate for having passed 8th standard and when the certificate was sent for verification, the petitioner's name does not find place in the mark register, but inserted as 5504A in the admission register in between 5504 - 5505. The second charge is that the petitioner produced a certificate for having passed 8th standard which is found to be bogus based on the report filed by the Educational officer of the Corporation of Chennai. The 3rd charge is that the petitioner has violated the conduct rules of the Government servants.

23. On perusal of the records it could be seen that the petitioner was appointed as Office Assistant as early as on 21.05.1986 and his service was regularized on 15.02.1989 with effect from 22.05.1986 and his probation was declared with effect from 22.05.1987. The present writ petition can be dismissed at the threshold on the ground that the impugned orders challenged in both the writ petitions are only at the stage of show cause notice and the petitioner has to submit his reply and await and if so, he has right to challenge the further proceedings. At the very same time, both the writ petitions can also be allowed and the enquiry report filed by the enquiry

officer based on the enquiry conducted can also be quashed since it is clear based on the records that the petitioner was not offered sufficient opportunity to cross examine the witness, who deposed in the absence of the petitioner. Apart from that, the documents relied on by the department were also not served on the petitioner and if the same were served, the petitioner would have had an opportunity to refute the documents relied on by the respondent during the course of enquiry. Further in the present writ petitions, the callous attitude of the respondent was brought into light, whereby, they permitted the petitioner to complete the entire service after appointment on 21.05.1986 and from the records it is seen that the petitioner will attain the age of superannuation on 31.07.2018. It is also clear from the records that the petitioner was appointed on 21.05.1986 after submitting the original educational certificate that too, the petitioner was sponsored by the employment exchange. The petitioner was also regularized on 15.02.1989 with effect from 22.05.1986, (i.e) only after completing three years, and only after verifying the educational certificate, the respondent has recommended for regularization of the petitioner. There was almost three years duration between 15.02.1989, the date of regularization order and 22.05.1986, the date of appointment.

24. During the said arguments the learned Additional Government pleader stated that in the year 2006 only the respondents' office received an allegation petition stating that the educational certificate issued and produced by the petitioner was bogus one which paved way for the enquiry regarding the petitioner's educational certificate whether it is genuine one or otherwise. It could be seen that after serving for almost 20 years from 22.05.1986, only in the year 2006, the respondent has initiated such verification of educational certificate regarding its genuinity, after the writ petitioner joined the service in the year 1986. It may not be out of place to make the reference about the inspection made by the Educational officer who had attested the Register of Admission for Elementary School during the year 1988 and verified the same. On perusal of the Register of Admission no doubt the petitioner's name is found as insertion in Sl.No.5504A, immediately after 5504, which could be very well inferred that the petitioner did not study 8th standard and his name is being inserted. Subsequently, as the mark list corresponding to the years 1970-1971, 1971-1972 and 1972-1973, were verified and the petitioner's name did not find place. This insertion in the Register of Admission would not be possible, unless the authorities concerned has aided in such insertion. In the very same Register of Admission, it could be seen that there is yet another insertion with regard to one C.S.Rajendran and there is clear manipulation in serial No.5514, wherein as against 5514, 'A' has been mentioned i.e. as 5514A and thereafter, 5514-

C.S.Rajendran has been written, which is not denied by the respondent. Hence when there is an insertion made, the educational authorities who have taken up the verification, ought to have considered the same, which they failed to do.

25. The inordinate delay wherein the respondents failed to enquire about the genuinity of the educational certificate produced by the petitioner properly before the regularization order dated 15.02.1989 issued and his probation declared with effect from 22.05.1987 also goes adverse against the respondents. It is also clear that the department necessarily need to verify the genuinity of the certificates produced by the staff for being appointed to various posts in the State Government Departments before regularizing their service. At this juncture, this court has to accept the argument putforth by the learned senior counsel appearing for the petitioner that only after verification of the educational certificate, the petitioner's service was regularized on 15.02.1989 with effect from 22.05.1986, which means the insertion in the Register of Admission has taken place much earlier than 15.02.1989 and on the other hand if the insertion is not taken place earlier, then the authorities have not verified the genuinity of the petitioner's certificate before regularization on 15.02.1989. As there is a mention about the Educational Officer attesting the Register of admission during the period 1988 itself, the charge memo based on the bogus insertion in the Register of Admission cannot hold good, at every stage the authorities have aided such illegal insertion if the petitioner has not studied 6, 7 & 8th standard, during the period 1970-1971, 1971-1972, 1972-1973.

26. That apart, it could be seen that the petitioner has filed the writ petition WP.No.27448 of 2009 and this Hon'ble Court had granted interim order dated 30.12.2009 directing the respondent not to pass any further orders, pursuant to the impugned memo issued on 24.12.2009. The respondent department officials, after receipt of this order, has not bothered to come before this Court to file a petition to vacate the interim order, but they merely filed the counter in the writ petition and allowed, the petitioner to be in service and to facilitate the petitioner to retire from service after completion of his service on the date of attaining superannuation. It is clear from the present case that the department has to necessarily verify the educational certificates and other certificates regarding age proof, residential proof etc., and the department has to necessarily verify the genuinity of the said certificate before the service of the staff being regularized. The duty is cast upon the appointing authority to verify all the above documents within a specified period and not after the regularization of the said service of the staff. It is the duty of the respondents to take care and diligence before

regularizing the service of the staffs to verify the genuineness of the certificates produced by the staff at the time of appointment. The callous attitude of the respondents in permitting the staff to render his service for years together and thereafter questioning and verifying the genuinity of the said certificate, is a futile exercise and cannot be accepted.

27. The respondents ought not to have permitted the petitioner to join duty with the bogus certificate and the respondent department having permitted the petitioner to continue the duty till he attains the age of superannuation, now cannot expect this court to condone the delay on their part in verifying the alleged bogus educational documents produced by the staff at the time of getting appointment. Nothing prevented the respondent department from verifying the educational certificates before regularizing the petitioner. The charge memo was issued in the year 2006, after the petitioner putting into 23 years of service. Even after having the knowledge of the interim order granted by this Court on 30.12.2009 and keeping quite for a long period of 9 (nine) years from the filing of these writ petitions and not taking any steps for vacating the interim order granted by this Court, as on today, the department cannot expect this court to intervene and dismiss the Writ Petitions. The petitioner has served the department for nearly 32 years and for the service rendered by him, he has been paid the salary. If the respondent has found that the certificates produced by the petitioner are bogus within the probation period, the petitioner would not have continued the service and his act would have been exposed at the earliest point of time. In these circumstances, this court has no other option than to allow the writ petitions on the ground of inordinate delay in verifying the genuineness of the educational certificates produced by the petitioner and the callous attitude of the respondent department in not taking any steps for vacating the interim order. Now the petitioner is due to retire on 31.07.2018. The petitioner was also served the department for nearly 32 years and the family of the petitioner will be depending on the retirement benefits of the petitioner. When the respondent has not acted diligently in time to verify the genuineness of the certificates produced by the petitioner, at this point of time, they cannot come and canvass the said facts before this Court at the fag end of the petitioner's retirement date.

28. Under the above circumstances, the writ petitions are allowed and the impugned orders are quashed. No costs. Consequently connected Miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Assistant Commissioner,
Revenue Administration,
Disaster management & Mitigation Dept.,
Ezhilagam, Chepauk, Chennai -5.
2. Enquiry Officer / The Superintendent,
Service IV Section Revenue Administration Department,
Disaster Management and Mitigation Department,
Chepauk, Chennai - 5.

+1cc to Mr.M.Muthappan, Advocate, S.R.No.52676

W.P.Nos.27049 & 27448 of 2009

GSP(07/09/2018)

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