

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order : 27.11.2018	Date of Pronouncing Order : 04.12.2018
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The Hon'ble Mr. Justice M.M. Sundresh
and
The Hon'ble Justice Krishnan Ramasamy

Writ Petition No. 33232 of 2017
and
W.M.P. No. 36643 of 2017

1. Union of India,
rep. by the Chief General Manager,
Telecommunications,
Bharat Sanchar Nigam Limited,
No. 78, Purusawalkam High Road,
Chennai.
2. The Assistant General Manager,
Chennai Telephones,
Bharat Sanchar Nigam Limited,
No. 10, Millers Road,
Chennai.
3. The General Manager,
Telecommunications,
Bharat Sanchar Nigam Limited,
No. 78, Purusawalkam High Road,
Chennai.
4. The Sub Divisional Engineer (Administration)
Chengalpattu S.S.A. Telecommunication
Bharat Sanchar Nigam Limited,
No. 40-E, Thiru Vi. Ka. Industrial Estate,
Guindy, Chennai. ...Petitioners

Vs.

1. G. Kumar
2. M. Venkatesan
3. S. Duraikannu

4. G.Ravi
5. B.Thalakanaiah
6. P.K. Marimuthu
7. T. Rajendran
8. D.Ravindar
9. K.Settu
10. E.Lengeswaran

11. The Registrar,
Central Administrative Tribunal
City Civil Court Building,
Chennai -600 104.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records of the 11 respondent Tribunal made in O.A.No.310/00207/2016, dated 27.10.2017 and to quash the same.

For Petitioners : Mr.G.Rajagopalan,
Additional Solicitor General,
assisted by Mr.S.Udayakumar

For Respondents 1-10 : Mr.G.Jeremiah
For Respondent-11 : Tribunal

O R D E R

(Order of the Court was made by Krishnan Ramasamy, J.,
This Writ Petition has been filed by the petitioners as against the order of the Central Administrative Tribunal (henceforth, referred to as 'Tribunal') in O.A.No.310/00207/2016, dated 27.10.2017, in and by which, the Tribunal has ordered for reinstatement of the respondents 1 to 10 herein and to regularize their service with continuity of service on notional basis without backwages.

2. The petitioners herein is the Bharat Sanchar Nigam Limited, (BSNL), respondents 1 to 10 are employees under the petitioners and the eleventh respondent is the Tribunal. For the sake of brevity, easy reference and understanding, petitioners shall be referred to as BSNL and the eleventh respondent as Tribunal through out this judgment and order. Insofar as respondents 1 to 10 are concerned, they shall be referred to as such.

3. The facts of the case, which led to the filing of this Writ Petition in brief are as follows:-

i) The employees joined in the service of the Department of Telecommunication, (which is now converted into BSNL) as Casual Mazdoor on daily wage basis in the year 1984. In the year 1995, the employees were removed from service on the ground that they have produced bogus certificate with a view to gain illegal entry into the BSNL. The said termination order was challenged by one set of employees before the Tribunal by filing O.A.Nos.1286, 1287 of 1995, etc., (batch) and the Tribunal, vide order, dated 27.02.1996, quashed such order of termination with a direction to the BSNL to reinstate the employees into service with continuity of service without backwages. However, while quashing the order of termination, the Tribunal also observed that it is open to the BSNL to hold an enquiry into the allegation regarding the production of bogus certificate by the employees and pass appropriate orders based on such enquiry and granted liberty to the employees to challenge such order, if they are so aggrieved.

ii) Thereafter, the other set of employees, who were similarly placed as that of the applicants in O.A.Nos.1286, 1287 of 1995, etc., (batch) filed O.A.Nos.838, 983, etc of 1997 (batch) before the Tribunal by citing the order passed by the intra Court, in O.A.Nos.1286, 1287 of 1995, etc., (batch) dated 27.02.1996 and the Tribunal, vide its order, dated 24.11.1997, allowed the Original Applications in the light of the order passed in O.A.Nos.1286, 1287 of 1995, etc., (batch) dated 27.02.1996. Pursuant to the aforesaid orders passed by the Tribunal, fresh enquiry was conducted, whereupon, it was found that the certificates produced by the employees were bogus, and hence, the employees have been issued with notices to show cause as to why, they should not be terminated from service.

iii) Challenging such show cause notice, the employees filed O.A.Nos.415 to 420, etc. of 1999 (batch) and the Tribunal, vide its order, dated 29.09.1999, dismissed the Applications, however, with an observation directing the employees to give reply to the show cause notice and granted liberty to the employees to challenge the final orders, if any, passed, if they are so advised. In the meantime, the employees filed O.A.Nos.816, 868, 872 to 874 of 1999 seeking direction to the BSNL not to take any coercive action against them without putting on proper notice and without conducting proper enquiry. Finding no merit in such Applications, the Tribunal dismissed the same vide its order dated 08.03.2000. Challenging the same, the employees filed W.P.Nos.16291 to 16293 of 2000 and the same were subsequently withdrawn. In the meantime, as ordered by the Tribunal, the BSNL conducted enquiry, wherein, charge levelled against the employees was proved. Consequently, notice/order of termination was passed. Aggrieved by such order of termination, the employees filed O.A.Nos.955, 962, 963 to 979 of 2000 and the

Tribunal, by order dated 31.08.2000, dismissed the Applications, however, with an observation, permitting the employees to make representation to the BSNL as against the impugned order of termination. The said order, dated 31.08.2000 was challenged by the employees by filing W.P.Nos.16251 to 16275 of 2000 (batch) before this Court. Subsequently, the said Writ Petitions were not pressed, and hence, the same were dismissed as such by order, dated 19.03.2001.

iv) Thus, pursuant to the order passed in O.A.Nos.955, 962, 963 to 979 of 2000, dated 31.08.2000, wherein, liberty was granted to the employees to make representation to the BSNL to reconsider their termination, a common representation was made by certain employees, dated 05.03.2001, in which, respondents 1 to 4 are parties and such representation was considered on merit by BSNL and by order, dated 30.06.2001, the representation was rejected by BSNL confirming by the order of removal. Aggrieved by such rejection, one of the employees by name V.Kalimuthu, though not a party in the representation dated 05.03.2001, filed O.A.No.709 of 2001, and the said Application was dismissed on merit by the Tribunal, by order, dated 05.10.2001. Apart from the said V.Kalimuthu, two other employees by name S.Bapu and N.Elumalai, filed O.A.Nos.775 and 776 of 2001, challenging the order of removal passed by BSNL dated 30.06.2001. The Tribunal, taking note of the fact that the application filed by V.Kalimuthu in O.A.No.709 of 2001 in respect of similar issue was dismissed by the intra Court, by order, dated 05.10.2001, dismissed O.A.Nos.775 and 776 of 2001 as well, by order, dated 15.10.2001.

v) Challenging the dismissal of O.A.No.709 of 2001, the abovesaid V.Kalimuthu filed W.P.No.33505 of 2006 and the Hon'ble Division Bench of this Court, by order dated 23.07.2009, dismissed the Writ Petition, and thereby, the order of removal, dated 30.06.2001 becomes final. One B.Paul Wilson and other 42 employees, who were terminated from service w.e.f. 02.07.2002 made a common representation dated 26.08.2009, to the BSNL after a long gap of 14 years (since termination in the year 1995) seeking for reinstatement, (in which some of the respondents herein are parties). The said common representation dated 26.08.2009 was not considered. Thereafter, the said B.Paul Wilson and 42 others approached the Tribunal by filing O.A.No.1120 of 2009, seeking direction to dispose of their common representation, dated 26.08.2009, and the Tribunal, by order, dated 09.11.2009, issued a direction to the BSNL to consider the common representation dated 26.08.2009 pursuant to which, the BSNL passed a speaking order, dated 28.01.2010, rejecting the prayer for reinstatement and that order is in respect of B.Paul Wilson and 42 others. Similarly, BSNL also rejected the representation made by an individual employee for reinstatement.

vi) Challenging the order passed by BSNL, dated 28.01.2010, the said B.Paul Wilson and other aggrieved persons filed O.A.No.231 of 2010, and one other individual employee, whose prayer for reinstatement was rejected, filed O.A.No.520 of 2010 and the Tribunal, by its separate orders dated 10.11.2010 and 28.02.2011, quashed the order of rejection of the representation and directed BSNL to reinstate the applicants therein with continuity of service on notional basis and to regularise their service with a rider that they are not entitled to monetary benefits.

vii) Challenging the order passed in O.A.No.231 of 2010, dated 10.11.2010 and O.A.No.520 of 2010 dated 28.02.2011, the BSNL filed W.P.Nos.376 and 12348 of 2011 and the Division Bench of this Court, dismissed both the Writ Petitions, by order, dated 12.04.2013. Thereafter, BSNL filed Review Applications in R.A.Nos.244 and 245 of 2014, and the said Review Applications were also dismissed by a common order dated 01.04.2015. So also, did the Hon'ble Supreme Court, when the matter went up in Appeal.

viii) In the aforesaid circumstances, the employees, viz., respondents 1 to 10 herein have made representation in August, 2015 to BSNL for reinstatement in the light of the orders made in O.A.No.231 of 2010 and O.A.No.520 of 2010, which were affirmed by the Hon'ble Division Bench of this Court, in W.P.Nos.376 and 12348 of 2011. However, BSNL, vide its order dated 28.12.2015, rejected the representation. Aggrieved by the same, respondents 1 to 10 filed O.A.No.207 of 2016, and the Tribunal, by the order impugned herein, dated 27.10.2017 allowed the Application and ordered for reinstatement of the respondents 1 to 10 herein with continuity of service and to regularize their services on notional basis without backwages.

4.The brief case of the respondents 1 to 10 is that, they were working along with the applicants in O.A.No.231 of 2010 and O.A.No.520 of 2010 and they sought for reinstatement by making representation by virtue of the orders passed by the Tribunal in O.A.No.231 of 2010 and O.A.No.520 of 2010, which order has also attained finality, as the said orders were confirmed by the Hon'ble Division Bench of this Court, in W.P.Nos.376 and 12348 of 2011 and affirmed by the Hon'ble Supreme Court in the Special Leave Petitions preferred by the BSNL. Since their representation for reinstatement were rejected, they filed O.A.No.207 of 2016, seeking to extend the benefits as that was extended to the applicants in O.A.No.231 of 2010 and O.A.No.520 of 2010. The Tribunal also, vide order, dated 27.10.2017, allowed the application as prayed for. Therefore, the present Writ Petition filed challenging the order of the Tribunal is not sustainable.

5. At the outset, the learned Additional Solicitor General appearing for BSNL submits that the issue involved in this Writ Petition requires special consideration, as certain material facts have been concealed by the employees while obtaining orders in their favour in O.A.Nos.231 and 520 of 2010 and W.P.Nos.376 and 12348 of 2011, and placing reliance on the same, the respondents 1 to 10 herein cannot seek for reinstatement.

6. In support of such contentions, the learned Additional Solicitor General referred to the additional documents, viz., i) Document No.8, the order of the Tribunal in O.A.No.816 of 1999 etc batch; ii) Document No.10, the order of this Court in W.P.No.16251 to 16293 of 2000; iii) Document No.11, order of the Tribunal in O.A.No.955 of 2000; iv) Document No.12, disposal of the employees' representation by BSNL by order dated 30.06.2001; v) Document No.14, order of the Tribunal in O.A.Nos.775 and 776 of 2001; and vi) Document No.15, order of this Court in W.P.No.33505 of 2006 and pyramids his arguments by submitting that the allegation levelled against the respondents 1 to 10 is of serious in nature, as they have produced bogus certificate for finding employment in the BSNL Department, and after conducting enquiry, which was done pursuant to the earlier orders passed by the Tribunal in O.A.Nos.1286, 1287 of 1995, etc., O.A.Nos.838, 983, etc of 1997 and after providing sufficient opportunities to the employees, since the said charge was proved, the employees were terminated from service. When the termination order was challenged by i) V.Kalimuthu and ii) Babu and Elumalai, in O.A.No.709 of 2001 and O.A.Nos.775 and 776 of 2001 respectively, the same were dismissed by the Tribunal, by separate orders dated 05.10.2001 and 15.10.2001. Against the order, dismissing the O.A.No.709 of 2001, V.Kalimuthu filed a Writ Petition in W.P.No.33505 of 2006, which was dismissed by the Division Bench, by order, dated 23.07.2009, and thereby, the order of termination attained finality. Suppressing the same, one B.Paul Wilson and 42 others, who were terminated from service w.e.f. 02.07.2001 made a common representation to the BSNL, that too, after a long gap of 14 years, i.e. on 26.08.2009, for reinstatement, as if, they were not aware of the fact that the termination order passed by the BSNL on the ground of production of bogus certificate had attained finality. In the said representation, B.Paul Wilson, in the preamble portion, i.e., in the first line, stated that himself and 41 employees, whose particulars are furnished in the list annexed to the representation were removed from service w.e.f. 02.07.2001, and it is seen that only B.Paul Wilson alone signed in the representation and not others. In the list, V.Kalimuthu, who filed O.A.No.709 of 2001, challenging the order of removal passed by the BSNL, dated 30.06.2001, figured at Serial No.27. However, the said B.Paul Wilson made a false statement in the representation that after removal, they have not approached any

other Court and when the said common representation was not considered, they filed O.A.No.1120 of 2009, seeking a direction for disposal of their representation, and the Tribunal, which is camouflaged of the material fact, viz., the orders passed in O.A.Nos.709 of 2001 and OA.Nos.775 and 776 of 2001, confirmed in W.P.No.33505 of 2006, allowed O.A.No.1120 of 2009 and directed BSNL to consider such representation and pass orders. However, BSNL dismissed such representation on merit by passing a speaking order.

7. The learned Additional Solicitor General points out that even when the order of removal passed by BSNL dated 26.08.2009 was challenged by the aggrieved employees, viz., V.Kalimuthu and one other individual in O.A.No.231 and 520 of 2010, the orders passed in O.A.No.709 and 520 of 2001, was suppressed by the applicants therein before the Tribunal. Similarly, before this Court in Writ Petitions preferred by BSNL in W.P.Nos.376 and 12348 of 2011 nor before the Honble Supreme Court, when the matter went up in Appeal. Thus, the order of reinstatement granted in favour of the applicants in O.A.Nos.231 and 520 of 2001 which was purely due to the suppression of material fact in regard to the earlier round of litigations taken place in O.A.Nos.709 of 2001 and OA.Nos.775 and 776 of 2001, confirmed in W.P.No.33505 of 2006, whereby, the termination order passed against the employees on the ground of production of bogus certificate was confirmed. Therefore, the orders passed in O.A.Nos.231 and 520 of 2010 cannot be relied on by the respondents 1 to 10, viz., the applicants in O.A.No.207 of 2016.

8. Therefore, the learned Additional Advocate General submits as stated above, special consideration is required in this case before passing the orders, as, certain material facts, viz., the Documents Nos.8, 10, 11, 12, 14 and 15, mentioned in the typed-set of papers filed in support of the present Writ Petition have been suppressed by the employees before the Tribunal and this Court while obtaining orders in their favour in O.A.No.231 and 520 of 2010 and W.P.Nos.376 and 12348 of 2011.

9. Per contra, the learned counsel appearing for the respondents 1 to 10 submits that respondents 1 to 10 were also working along with the applicants in O.A.No.231 and 520 of 2010, and applicants thereunder have obtained an order of reinstatement into service. Since the respondents 1 to 10 are also the similarly placed employees, they are also entitled to the same benefit. In this connection, the learned counsel relied upon the dictum laid down by the Hon'ble Supreme Court in the case of Karnataka Vs. Umadevi and others reported in (2006) 4 SCC 1, wherein, it is held that, since the employees have put in service for 10 years before the cut-off fixed by the employer,

i.e. 2006 and therefore, they are entitled for reinstatement.

10. In reply to the aforesaid submission, the learned Additional Solicitor General for the BSNL submits that though initially, all the employees were terminated from service on the ground that they have produced bogus certificate with a view to obtain employment, thereafter, pursuant to the order passed by the Tribunal, enquiry was conducted and after providing sufficient opportunities since the charge was proved, they were terminated from service. Therefore, the question of application of the law laid down by the Hon'ble Supreme Court in Uma Devi's case does not arise. Further, in support of his contention, the learned Additional Solicitor General placed reliance upon the decision of the Hon'ble Supreme Court in the case of Union of India Vs. M.Bhaskaran, wherein, it was held that 'workmen, who obtained employment on the basis of bogus certificate could not be considered for reinstatement'. Therefore, he insists that the impugned order passed in O.A.No.207 of 2016, dated 27.10.2017 is liable to be set aside.

11. Heard both the parties and perused the materials on records, especially, the additional documents Nos.8, 10, 11, 12, 14 and 15, as referred by the learned Additional Solicitor General for BSNL.

12. It is not in dispute that the respondents 1 to 10 and other employees joined in the service of BSNL as Casual Mazdoor by producing bogus certificate in the year 1984. The BSNL, on coming to know of the same took steps to terminate them from service in the year 1995. Aggrieved by the same, the employees filed Original Applications consecutively which on fact ended in confirmation of their termination, as could be seen from the orders of dismissal passed by the Tribunal in O.A.No.709 of 2001 and O.A.No.775 and 776 of 2001, dated 05.10.2001 and 15.10.2001 respectively, which was also confirmed in W.P.No.33505 of 2006. While that be so, one B.Paul Wilson and other 42 employees, who were terminated from service w.e.f. 02.07.2001 made a common representation to the BSNL for reinstatement, that too, after a long gap, i.e., on 26.08.2009 by stating that after removal, they have not approached the High Court. We find that such statement given by B.Paul Wilson is utter false for the reasons that, in the list annexed to the representation, wherein, particulars of 43 employees were furnished, it is seen that V.Kalimuthu, who filed O.A.No.709 of 2001, challenging the order of removal passed by the BSNL, dated 30.06.2001, figured at Serial No.27.

13. Therefore, it is clear that B.Paul Wilson had given a false statement that they had not approached the High Court, as the said V.Kalimuthu had already suffered an order of dismissed by the Tribunal in O.A.709 of 2001, which was also confirmed by this Court in W.P.No.13505 of 2006. Thus, when the Tribunal as also this Court have categorically held that employees, who were terminated from service on the allegation of production of false records cannot be reinstated, then, how come, the said V.Kalimuthu is entitled to seek for reinstatement again, as if, he is a newly aggrieved person. Secondly, in the said common representation, dated 26.08.2009, it is further seen that B.Paul Wilson alone signed and 42 others have not signed. Above all, in the said common representation dated 26.08.2009, some of the respondents herein were also parties. Therefore, it is plausibly clear that by misleading both the Tribunal and High Court, the said B.Paul Wilson and other employees obtained orders for reinstatement in their favour.

14. Thus, as rightly pointed out by the learned Additional Solicitor General for BSNL by suppressing all the material facts related to the confirmation of termination order passed by the BSNL on the ground of production of bogus certificate, the applicants in O.A.No.231 and 520 of 2010, obtained the orders for reinstatement, which was confirmed by this Court in W.P.Nos.376 and 12348 of 2011 and affirmed by the Hon'ble Supreme Court in Special Leave Petitions. Had those materials were brought to the notice of either before Tribunal, High Court, or Hon'ble Supreme Court, either of the forum would have obviously concurred with the findings rendered in O.A.No.709 of 2001 and O.A.No.520 of 2001, which would have ultimately ended in confirmation of the termination order.

15. Therefore, we hold that it was purely owing to the suppression of materials facts, viz., the documents Nos.8, 10, 11, 12, 14 and 15, orders for reinstatement in O.A.No.231 and 520 of 2001 were passed, which though attained finality, the respondents 1 to 10 can no longer place reliance on the same seeking to extend the same benefits as that was extended to the applicants in O.A.Nos.231 and 520 of 2010. Further, as rightly pointed out by the learned Additional Advocate General, the judgment rendered by Hon'ble Supreme Court in Uma Devi's case is of no assistance to the respondents 1 to 10, in view of the law down in M.Bhaskaran's case (cited supra), that the appointment orders obtained by fraudulent act can be recalled by the employer and in such case, the service rendered by the employees is of no consideration.

16. Therefore, for the reasons assigned herein above, we hold that the order passed by the Tribunal in O.A.No.310/00207/2016, dated 27.10.2017 is not sustainable and therefore, the same is set aside and the Writ Petition is allowed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

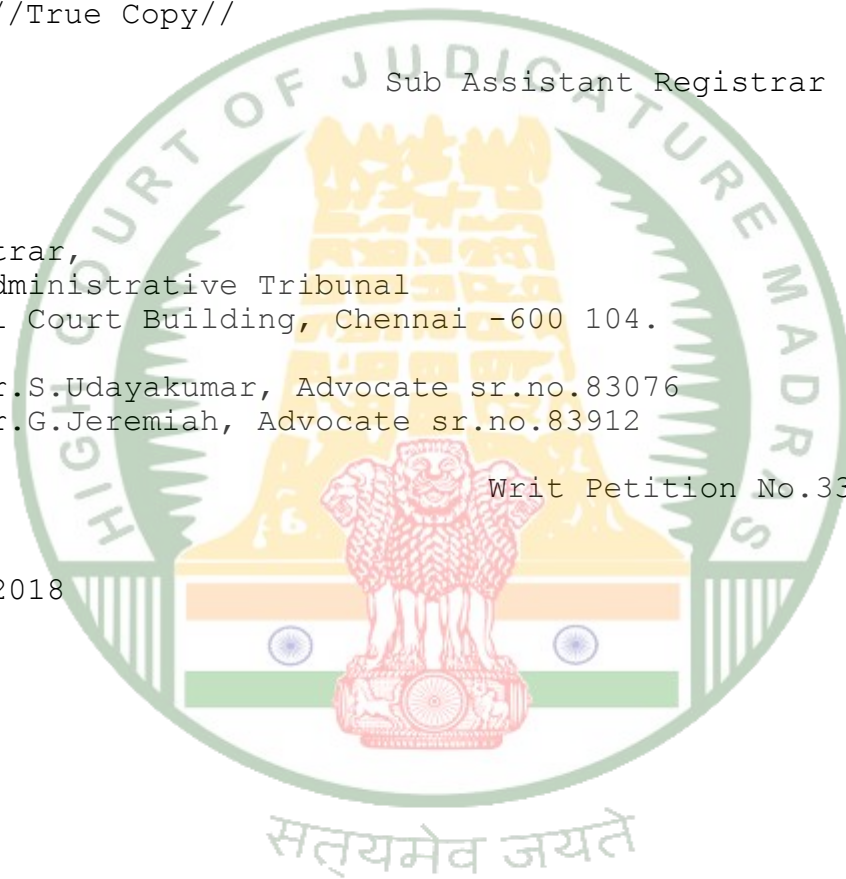
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