

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 01.11.2018	Order Pronounced on : 04.01.2019
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CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

Writ Petition No.15413 of 2011

The Chief Administrative Officer,
(Construction)
Southern Railway,
Egmore, Chennai - 600 008.

... Petitioner

Vs.

1. E.Harikrishnan

2. Central Government Industrial
Tribunal cum Labour Court,
Chennai.

.... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records relating to the impugned order dated 22.10.2010 passed in I.D.No.70 of 2009 on the file of the Central Government Industrial Tribunal cum Labour Court, Chennai and to quash the same.

For Petitioner :Dr.S.R.Sundaram
For Respondents :Mr.NGR Prasad
for M/s.Row & Reddy

ORDER

Whether the action of the Management of Southern Railway in terminating the services of the first respondent Harikrishnan is justified or not, is the main issue to be decided in this case. The consistent stand of the Management is that the termination is justified. Pursuant to this stand, this writ petition has been filed by the Management, challenging the order of reinstatement with back wages, continuity of service and all other attendant benefits as conferred by the order of the Central Government Industrial Tribunal in I.D.No.70 of 2009 by the award dated 22.10.2010.

2. The first respondent/workman was empanelled as Driver Grade III with effect from 02.09.1996. In the service register of the workman, it was mentioned that he belongs to Scheduled Caste Community. This entry was made based on the entry in the School Certificate.

2.1. A dispute was raised by the Railway Administration with regard to the community status of the workman. The District Collector conducted an enquiry and he gave a finding that the workman does not belong to Scheduled Caste Community and thus, cancelled the Community certificate of the workman.

2.2. In view of the cancellation of Community Certificate, action was taken against the workman/first respondent and ultimately, the order of termination was passed on 17.11.2003.

2.3. The first respondent/workman submitted an appeal dated 24.11.2003 to the Chief Administrative Officer/MTP (Metropolitan Transport Project) (Chennai) on the ground that he did not gain any benefit on account of his Scheduled Caste Community status. The appeal was dismissed.

2.4. Appeal to the Railway Board on 20.03.2005 also got dismissed, by an order dated 01.03.2006.

2.5. The first respondent raised an industrial dispute with regard to his termination in I.D.No.70 of 2009. After enquiry, the Labour Court gave a finding that the Management committed an act of excessiveness in terminating the workman from service and hence, he could have been allowed to continue in service after imposing appropriate punishment short of outright termination from service after a proper enquiry, but, ultimately, ordered reinstatement forthwith with back wages, continuity of service and all other attendant benefits. This order is under challenge by the Management.

3. The learned counsel for the Management vehemently contended that the act of the workman in furnishing a false certificate is a fraud on the Constitution and therefore, the termination is perfectly justified. The decision reported in 2003 (8) SC 204, (Punith Raj vs. Chowdhary) is relied upon. The relevant portion of the said decision is extracted hereunder for convenient reference:

".... a person in fact not belonging to SC, if claims to be a member thereof by procuring a bogus Caste Certificate would be committing fraud on the Constitution. No Court of Law can encourage commission of such fraud. The reason stated viz., being an act of his guardian without any intention is difficult to be believed after the detection of the

fraud."

4. The contention of the learned counsel for the first respondent/workman is that the entry in the Community Certificate regarding his status was made, not on account of information furnished by the workman, but, it was furnished by his father and not at the time when he entered into service, but, at a time when the first respondent entered into the school. In other words, it is contended that the first respondent was not guilty of any willful mistake, but, if at all mistake could be attributed, it could be attributed only to the conduct of the father in furnishing the information regarding the caste in the School Certificate.

5. It is an admitted fact that the first respondent did not belong to SC Community, but, he belongs to Reddiyar community. The childhood is always associated with innocence. It is also not in dispute that the entry in the community certificate is based on school certificate. For the entry made in the school certificate, responsibility cannot be fixed upon the first respondent. It is his specific case that this entry was made by one Gowrisan in whose care and protection his indigent and illiterate parents left him. He caused an entry of SC to be made in the school record. It is alleged that it was so made on account of Gowrisan's affection for him. Has he had been bringing up from childhood, in order to support the theory of togetherness or ownership or heirship, the guardian Gowrisan would have made such entries for which the first respondent cannot be made responsible. It is common knowledge that those who bring up the child either on account of adoption or on account of moral support, always believe that records regarding caste and father's name should be as that of the adoptive father so that it will be a strong documentary evidence. Believing that the entry may help the first respondent's father, Gowrisan seems to have given the entry either believing that it would be help his case of adoption or believing that the first respondent would become entitled to certain benefits.

6. The only question is whether the mistake is a willful mistake/calculated mistake or innocent mistake/genuine mistake. The answer would be, that the facts and circumstances establish only the innocent mistake and not a calculated mistake.

7. It is not the case of the Management that the post was meant for people belonging to SC category. It is not the case of the Management that the first respondent derived any benefits by making false description of himself as belonging to SC

community.

7.1. The contention of the learned counsel for the Management is that it is the duty of the first respondent to have voluntarily come forward to effect correction in the community status on coming to know that the entry is false. It would be relevant to point out that neither from the time of initial entry nor after appointment, any other benefits had been obtained by the first respondent on account of his status being shown as a person belonging to SC community.

8. The more relevant question is whether the appointment itself was secured or procured by producing a false community certificate.

9. What is the conduct which reflects the intention of him in making such statement that he belongs to SC community.

10. After the cancellation of Community Certificate, the Management has terminated the services without conducting enquiry based on the clause in a circular which states that in the event of it being proved that the certificate is false, the pseudo beneficiary could be terminated forthwith.

11. Whether the circular or the clause in the circular would help the Management in terminating the services of the first respondent without following the principles of natural justice and whether there was fairness or reasonableness on the part of the Management in terminating the services of the first respondent only on account of the order of cancellation of the community certificate are the serious contentions raised by the first respondent.

12. The immediate conduct of the Management after knowing that the community certificate is false has to be taken note of. It is not as if the Management terminated the services immediately after the cancellation of the Community Certificate, but, the Management has chosen to terminate the services after six years of the cancellation of the community certificate. What made the Management to wait for six years is the crucial issue.

13. When the Management takes of the decision of terminating the service of the first respondent what should have been the

operating factors upon the mind of the petitioner is yet another issue.

14. The learned counsel for the Management would submit that the first respondent is guilty of suppression of material fact with regard to his community status and it is claimed that he should have taken remedial measures to rectify the mistake as soon as it came to his knowledge.

15. Is it not mens rea required along with actus reus to fasten liability upon the first respondent is the pertinent question raised by the learned counsel representing the workman.

15.1. So far as the mens rea is concerned, it is absolutely lacking. For the entries made by the father in the childhood days, the first respondent cannot be made responsible. The entry into service was not secured in SC quota. His guardian who brought up the first respondent might have honestly believed that the first respondent can be branded as a person belonging to SC status because the father, who brought up the first respondent, might have believed that the first respondent is his own son. It may be either out of his selfish motive or innocence. The only mistake that could be attributed is that the first respondent could have taken remedial measures once he obtained knowledge that his community certificate is not correct. The fact remains that there would have been no opportunity for him to do that or he might have been afraid that if it is brought to the notice of the appointing authority, he may be punished for the innocent mistake. It is equally possible that the first respondent himself believed that having been brought up by the father who belongs to SC community, he also belongs to that community. When there are possibly several circumstances for the alleged mistake in the community certificate, had there been a show cause notice, the first respondent would have been in a position to explain why he did not take steps to effect correction with regard to the community certificate.

16. There was neither a show cause notice nor an enquiry before terminating the services of the first respondent. The action of the Management in terminating the services of the first respondent is not justified and the finding rendered by the Labour Court deserves to be confirmed.

17. In the result, the writ petition by the Management challenging the order of reinstatement is dismissed, confirming the order dated 22.10.2010 passed in I.D.No.70 of 2009 on the file of the Central Government Industrial Tribunal cum Labour Court, Chennai. No costs.

s/d-
Assistant Registrar(CO)

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Sub-Assistant Registrar

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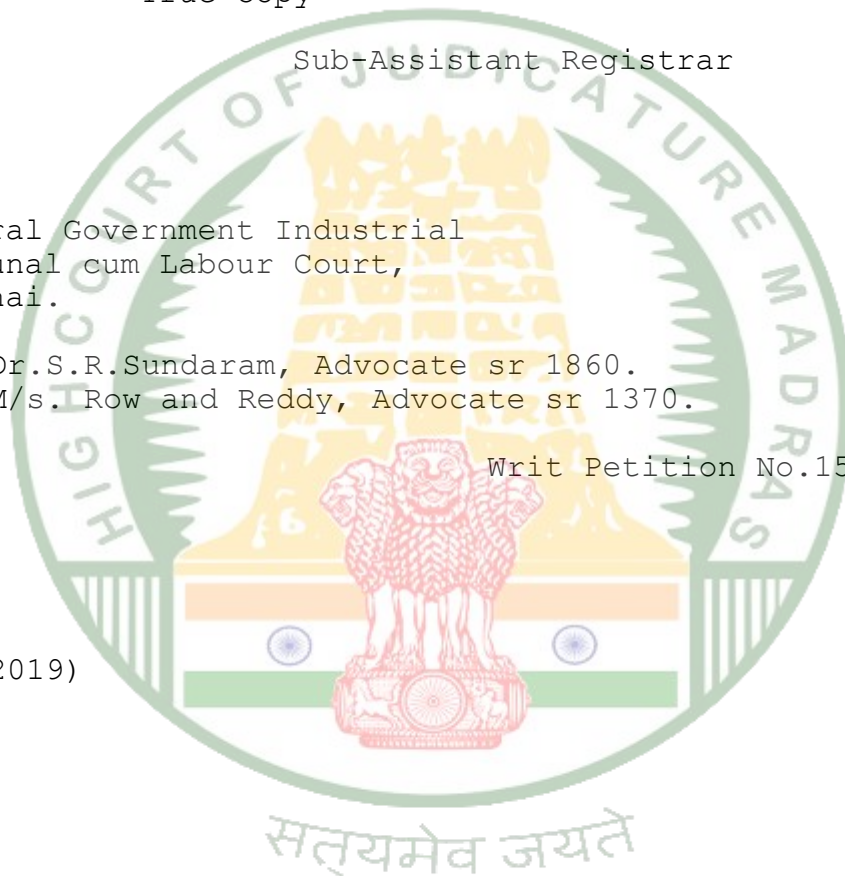
Central Government Industrial
Tribunal cum Labour Court,
Chennai.

+1 CC to Dr.S.R.Sundaram, Advocate sr 1860.

+1 CC to M/s. Row and Reddy, Advocate sr 1370.

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SSV(CO)
SP(28/01/2019)



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