

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P. No.13668 of 2008

P.Marimuthu (died)

P2.Easwari

P3.Selvi

P4.Ponmanikandan

P5.Komupandy

P6.Vallikannu

... Petitioners

(P2 to P6 are substituted as Lrs of the deceased petitioner vide order dated 29.03.2019 made in W.M.P. No.10174 of 2019 in W.P. No.13668 of 2008 by TRJ)

-vs-

1.The State of Tamil Nadu
rep. by its Secretary,
Highways Department,
Fort St. George,
Chennai 600 009.

2.The Chief Executive Engineer,
Highways Department,
Chepauk, Chennai 600 005.

3.The Divisional Engineer,
Highways Department,
Tuticorin.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus calling for the records relating to the dismissal order passed by the Divisional Engineer in Se.Mu.Ka.No.2336/2001 M4

dated 08.04.2002 and consequently direct the respondents 1 and 2 to re-instate the petitioner in the post of the Salai Paniyalar and that of the G.O. Ms.No.22 Highways (HM-2) Department dated 10.02.2006 and as per the order passed in W.P. Nos.34950 of 2007 and 4380 of 2008 within a date to be fixed by this Court.

(Prayer amended as per Court order dated 22.09.2008 in M.P. No.1 of 2008 in W.P. No.13668 of 2008 by VDPJ)

For Petitioners : Mr.A.R.Nixon

For respondents : Mr.N.Srinivasan,
Additional Government Pleader

ORDER

The writ petition has been filed challenging the dismissal order passed by the Divisional Engineer, the third respondent herein in Se.Mu.Ka.No.2336/2001 M4 dated 08.04.2002 and seeking a direction to respondents 1 and 2 to re-instate the deceased petitioner in the post of Salai Paniyalar as per G.O. Ms. No.22 Highways (HM-2) Department dated 10.02.2006 and as per order passed in W.P. Nos.34950 of 2007 and 4380 of 2008 within a time frame.

2.Learned counsel appearing for the petitioners would submit that the petitioner P.Marimuthu died during the pendency of the writ petition and his legal heirs were brought on record. According to the learned counsel appearing for the petitioners, the deceased petitioner was appointed as Salaipaniyalar on 31.10.1997 as per the Proceedings dated 31.10.1997 issued by the Divisional Engineer, Highways Department, Tuticorin, the third respondent herein and his service has been regularised on and from 04.03.1999. According to the learned counsel appearing for the petitioners, the third respondent has passed an order dismissing the deceased petitioner from service on the ground that the Elementary School Education Officer has proved that the certificate issued by him was forged one. But before passing such an order, no enquiry has been conducted, no opportunity has been given and no explanation has been called for from him. When the deceased petitioner was discharging his duties faithfully, the respondents, in the event of entertaining doubt on the qualifications obtained by him whether he had completed 5th standard or not, ought not to have passed such an order. When the third respondent, after satisfying with the certificate produced by him showing that he passed 5th standard, has issued an order of appointment on 31.10.1997 and thereafter, his service was also regularised by order dated 04.03.1999, cannot pass the impugned order. However, in the counter affidavit filed

by the third respondent, they have wrongly justified that the deceased petitioner's service can be terminated as per procedure laid down in G.O. Ms. No.190 P & AR dated 09.06.1995 and as per Rules 26(a)(ii) and 27(c) of Tamil Nadu State and Subordinate Services.

3.Learned counsel appearing for the petitioners, referring to the above Rules, would submit that the appointing authority may discharge or terminate him/her probation from service after giving him/her a reasonable opportunity of showing cause against the proposed termination of probation, as per Rule 26(a)(ii) and Rule 27(c) also mandates the same condition that if the appointing authority decides that him/her is not suitable for such membership, it shall, unless the period of probation is extended under Rule 28, by order, discharge him/her from the service after giving him/her a reasonable opportunity of showing cause against the action proposed to be taken in regard to him/her. Therefore, when Rules 26(a)(ii) and 27(c) of Tamil Nadu State and Subordinate Services mandate that opportunity of being heard must be given to show cause against the action proposed to be taken in regard to him, the respondents ought not to have passed the impugned order as the deceased petitioner has been regularised by order dated 04.03.1999.

4.Learned counsel appearing for the petitioners, producing a copy of the School Certificate issued by the Headmaster of R.C. Primary School, Maniyachi, showing that he has completed 5th standard on 31.05.1958, would submit that the respondents, without verifying any document or without giving any opportunity of being heard, have simply passed the impugned order. Referring to an order dated 19.03.2008 in W.P. No.4380 of 2008 passed by this Court, learned counsel appearing for the petitioners submitted that this Court dealing with the similar issue holding that the delay in verification of educational qualification of the petitioner is on the part of the respondents, for which the petitioner cannot be penalised, directed the respondents to reinstate the petitioner in service. Therefore, the learned counsel prays for quashing the impugned order.

5.Detailed counter affidavit and additional counter affidavit have been filed by the third respondent. Learned Additional Government Pleader appearing for the respondents would submit that by furnishing false and fabricated school record sheet and forging the signature of the Headmaster, who retired from service vide letter dated 04.03.2002, as having passed V Standard in Panchayat Union Primary School, Nanalkadu, Vallanadu, the deceased petitioner joined the service of the respondents as a Trainee Gang Mazdoor vide Proceedings dated 31.10.1997. Despite sufficient time was given to him to offer his explanation for such negligence and fraud, he failed to

submit his explanation till the orders of termination issued by the third respondent vide Proceedings dated 08.04.2002. Therefore, the impugned order of dismissal has been rightly passed on the basis of G.O. Ms. No.190 P&AR dated 09.06.1995 and following 26(a)(ii) and 27(c) of the Tamil Nadu State and Subordinate Service Rules.

6. In this context, it is useful to extract 26(a)(ii) and 27(c) of the Tamil Nadu State and Subordinate Service Rules as under:

'26.(a)(ii) at its discretion, by order, either extend the period of probation of the probationer in case the probation has been extended under General Rule 28, or terminate his probation and discharge him from service after giving him a reasonable opportunity of showing cause against the proposed termination of probation:

Provided that where a probationer has been given a reasonable opportunity of showing cause against the imposition on him of any of the penalties specified in clause (iv), (vi), (vii) and (viii) of Rule 8 of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules and at the conclusion of the disciplinary proceedings, a tentative conclusion is arrived as to terminate his probation, a further opportunity of showing cause specifically against termination of his probation need not be given to him.

27(c) If the appointing authority decides that the probationer is not suitable for such membership, it shall, unless the period of probation is extended under Rule 28, by order, discharge him from the service after giving him a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:

Provided that where a probationer has been given a reasonable opportunity of showing cause against the imposition on him of any of the penalties specified in clause (iv), (vi), (vii) and (viii) of Rule 8 of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules and at the conclusion of the disciplinary proceedings, a tentative conclusion is arrived as to discharge him from the service, a further opportunity of showing cause specifically against such charge need not be given to him.'

7. It is not disputed that the deceased petitioner was appointed by the third respondent as a Trainee Gang Mazdoor by Proceedings dated 31.10.1997 and after completion of one year training period, his service was brought into regular Gang Mazdoor. When it is an admitted case of both parties that the deceased petitioner was appointed by the third respondent on

31.10.1997 and his service was regularised by order dated 04.03.1999, the third respondent, having entertained doubt on the educational qualification of the deceased petitioner that he had produced fabricated school record sheet as having passed V standard, should have given a reasonable opportunity of being heard as per the above mentioned 26(a)(ii) and 27(c) of the Tamil Nadu State and Subordinate Service Rules.

8.A perusal of the order dated 19.03.2008 in W.P. No.4380 of 2008 passed by this Court would show that this Court in a similar circumstance, taking note of the facts that the petitioner therein has worked for a substantial period as Salai Paniyalar from 31.10.1997 to 07.09.2002 and thereafter, he was removed from service and he was entitled to the benefits of G.O. Ms. No.22 (Highways) dated 10.02.2006 whereby about 9278 Salai Paniyalar were reinstated in service and the delay in verification of educational qualification of the petitioner is on the part of the respondents, for which the petitioner cannot be penalised, directed the respondents to reinstate the petitioner in service. In this regard, it is pertinent to extract para 5 as under:

'5.Admittedly, the petitioner has not challenged the order of termination passed by the third respondent, however, in view of the fact that the petitioner has worked for a substantial period as Salai Paniyalar from 31.10.1997 to 07.09.2002 and thereafter he was removed from service, this Court is of the view that the petitioner is entitled to the benefits of the G.O. Ms. No.22 (Highways) dated 10.02.2006 whereby about 9278 Salai Paniyalar were reinstated in service. As rightly pointed out by the learned counsel for the petitioner, the delay in verification of educational qualification of the petitioner is on the part of the respondents, for which the petitioner cannot be penalised. Hence, the respondents are directed to reinstate the petitioner in service within a period of four weeks from the date of receipt of a copy of this order. If the authorities intend to enquire into the question of the correctness of the certificate, it would be open to them to do so, by giving an opportunity of hearing to the petitioner after reinstatement.'

9.In the present case, as I mentioned above, when the petitioner was appointed as a Trainee Gang Mazdoor by Proceedings dated 31.10.1997 and his service was regularised by order dated 04.03.1999, before passing any order, he should have been given an opportunity of being heard by the respondents by issuing show cause notice or charge memo, but neither show cause

notice nor charge memo has been issued to him. Hence, the impugned order has violated the principles of natural justice and the same cannot stand to any reason.

10.For the aforesaid reasons, the writ petition stands allowed and the impugned order is quashed. The respondents are directed to work out the retiral benefits of the deceased petitioner and pay the same within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

vga

To

1.The Secretary,
The State of Tamil Nadu
Highways Department,
Fort St. George,
Chennai 600 009.

2.The Chief Executive Engineer,
Highways Department,
Chepauk, Chennai 600 005.

3.The Divisional Engineer,
Highways Department,
Tuticorin.

+1 cc to M/s.A.R.Nixon, Advocate, S.R.No.32907

+1 cc to the Government Pleader, S.R.No.33471

W.P. No.13668 of 2008

SS(CO)
SSM(22/05/2019).

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