

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.11414 of 2001

P.Chinnachamy
S/o. N.Perumal

... Petitioner

Vs.

1. The Chief Engineer (Distribution),
Madurai Region,
Madurai - 7.
2. The Additional Chief Engineer,
Theni Electricity Distribution Circle,
Theni.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the order dated 27.08.2000 passed by the 1st respondent in his proceedings Ku.A.3689/75/D.1/2000-2 confirming the order passed by the 2nd respondent in Ku.B.No.Koo.Th.Pori/Vu.Ni.A/Ne.Pe.111/A3/Ko.Marai/No.151/2000, dated 08.01.2000 removing the petitioner from service and quash the same as illegal.

For Petitioner : Mr.G.Anandakumar,
for M/s.Thamizharasi Law Firm

For Respondents: Mr.P.R.Dhilip Kumar,
Standing Counsel

O R D E R

This petition is filed to quash the orders of the first respondent in his proceedings Ku.A.3689/75/D.1/2000-2, dated 27.08.2000 confirming the order passed by the 2nd respondent in Ku.B.No.Koo.Th.Pori/Vu.Ni.A/Ne.Pe.111/A3/ Ko.Marai/No.151/2000, dated 08.01.2000.

2. Based on the Justice Khalid Commission's Report, the petitioner came to be appointed as a Helper with effect from 18.04.1998. The petitioner's name is P.Chinnachamy, son of N.Perumal. It is the case of the respondents that the petitioner herein had impersonated one S.Chinnachamy son of

Surulimuthu and thereby, got appointment as Helper. Hence, two charges came to be filed against the petitioner, in which, the first was to the effect that the petitioner had given false information that he was S.Chinnachamy and thereby impersonated S.Chinnachamy by changing his father's name and address. The second charge was to the effect that though the petitioner knew that the interview card was not sent to him, he had used the interview card sent to S.Chinnachamy and appeared for personal interview.

3. The Enquiry Officer, through his report dated 11.10.1999, had held that insofar as the first charge is concerned, the accusation that the petitioner had impersonated was held to be not proved and the second charge held to be proved. On 09.12.1999, a showcause notice was issued, pursuant to which, the petitioner was removed from the service on 08.01.2000. The appeal against the punishment before the first respondent also came to be rejected, as against which, the present Writ Petition has been filed.

4. The learned counsel for the petitioner submitted that the orders of the second respondent as well as the first respondent herein are prima facie based on misconception of the findings of the Enquiry Officer's Report as well as the other evidence.

5. According to the learned counsel, the petitioner's name finds place in the list before the Justice Khalid Commission Report and a copy of the said list has been obtained by the petitioner under the Right to Information Act and produced before this Court, which evidences the petitioner's name viz., P.Chinnachamy, son of N.Perumal at Serial No.24 of the list furnished under the Right to Information Act, which also correlates to 102 in the list before the Justice Khalid Commission. Hence, the learned counsel for the petitioner submitted that the findings of the Enquiry Officer, on the face of it, is incorrect.

6. The learned counsel for the petitioner also submitted that the appellate authority had not properly appreciated the grounds raised by the petitioner in the appeal dated 16.02.2000 and since he has not admitted anywhere in his appeal grounds that his name is not found in the Justice Khalid Commission List, the first respondent herein had erroneously observed that the petitioner had in his appeal grounds stated that his name was not in the Justice Khalid Commission Report.

7. The learned Standing Counsel for the respondents, by reiterating the statement made in their counter affidavit dated 16.12.2015, submitted that the name found in the Serial No.102 of the Justice Khalid Commission Report is that of

S.Chinnachamy, son of Surulimuthu and not of the petitioner herein.

8. According to the learned Standing Counsel appearing for the respondents, the description of the petitioner and his address do not correspond with the one found in Serial No.102 of the Justice Khalid Commission Report. He would also submit that the case of the petitioner pertains to impersonation and therefore, the earlier order of this Court passed in batch of Writ Petitions is not applicable to the petitioner herein. As such, the learned Standing Counsel tried to impress upon this Court that there was no infirmity in the Enquiry Report or the order of the appellate authority.

9. I have given careful consideration to the submissions made by the respective counsel and perused the materials available on record.

10. The main ground raised by the learned counsel for the petitioner is that the petitioner's name was always a part of the list before the Justice Khalid Commission and that he had been serving as a Casual Labourer from 1988. It is also seen that pursuant to the Justice Khalid Commission Report, a Committee was appointed with the task of identifying the prospective Casual Labourers for appointment to the post of Helpers.

11. In the instant case, it is not in dispute that the petitioner's name has been referred to as S.Chinnachamy instead of P.Chinnachamy. The Board has proceeded on the footing that the petitioner herein had used the interview card sent to S.Chinnachamy and had obtained the post. When the charges were framed, the Enquiry Officer had held that the charge No.1, insofar as it relates to terming the petitioner as impersonator, is held to be not proved. From the records produced by the petitioner obtained under the Right to Information Act, it is evident that the petitioner's name was found in Serial No.102 of the Justice Khalid Commission Report. As such, the observations of the Enquiry Officer that there was no impersonation on the part of the petitioner can only be termed as correct. While that being so, I am unable to comprehend as to how the respondents, in their counter affidavit, have chosen to state that the name found in the Serial No.102 is S.Chinnachamy son of Surulimuthu and not the petitioner P.Chinnachamy son of N.Perumal. It can only be observed here that the counter statement has been prepared without verification of the actual list before the Justice Khalid Commission.

12. Likewise, the counter affidavit also refers to a statement, to the effect that, the case of the petitioner is one of impersonation. When the Enquiry Officer has clearly held that

there was no impersonation on the part of the petitioner herein, it is not known as to how such a statement has been made in the counter affidavit, without any material or record to support it.

13. Incidentally, when large number of 18,006 workers were identified by the Justice Khalid Commission for absorption as Helpers, various discrepancies were noticed in furnishing the names and their descriptions, which led the Board to issue B.P. (fb) No.27, (Administrative Br.), dated 07.11.2002 holding that the punishment imposed to persons appointed under the Justice Khalid Commission Report, should have been modified to the one of stoppage of increment for a period of three years, instead of punishment of removal from service, who have produced bogus certificates at the time of appointment.

14. In view of the above Board Proceedings, a batch of Writ Petitions came to be filed in W.P.Nos.2454 and 2589 of 2002 with connected Writ Petitions, and this Court, by an order dated 18.12.2002, allowed the Writ Petitions with an observation that the respondents shall follow the modification in B.P. (fb) No.27, dated 07.11.2002. Subsequently, following the said order, a batch of Writ Petitions came to be filed in Writ Appeal in W.A.Nos.3621 of 2002 etc., batch of cases, in which, the petitioner herein had also filed W.P.No.11414 of 2005, which is the present Writ Petition. When the Writ Appeals came to be finally disposed of, the respondent Board chosen to file Miscellaneous Petition seeking for de-linking the petitioner's case from the batch, since it was a case of impersonation.

15. As observed above, the respondents herein have consistently taken a stand that the case of the petitioner is one of impersonation, though the Enquiry Officer had clearly held that the case of the petitioner is not one of impersonation. Furthermore, when the Justice Khalid Commission Report evidences the petitioner's name therein in Serial No.102, I am unable to accept the stand taken by the respondents that all along the petitioner was not part of the said list.

16. In view of the fact that the petitioner's case was not one of impersonation and the orders passed in the earlier batch of Writ Appeals directing the respondents to follow the Board Proceedings in B.P. (fb) No.27, dated 07.11.2002 would be applicable to the present petitioner also, as such, the imposition of punishment of removal of service may not be proper in view of B.P. (fb) No.27, dated 07.11.2002.

17. When the petitioner herein had filed an appeal before the first respondent challenging the punishment of removal of service, the appeal came to be rejected by a cryptic order that

the petitioner had admitted in his ground that his name was not part in the Justice Khalid Commission Report. The copy of the grounds of appeal filed before the first respondent dated 16.12.2000 is also produced before this Court. I have perused the grounds raised by the petitioner herein and there is absolutely no statement therein, wherein, the petitioner had admitted that his name was not in the list before the Justice Khalid Commission. It is very surprising that the first respondent came up with such statement in the counter affidavit, which is not found in the grounds of appeal. As such, the order of the first respondent also cannot be sustained.

18. For all the foregoing reasons, the order passed by the first respondent dated 27.08.2000 in his proceedings Ku.A.3689/75/D.1/2000-2 confirming the order passed by the 2nd respondent in Ku.B.No.Koo.Th.Pori/Vu.Ni.A/ Ne.Pe.111/A3/Ko.Marai/ No.151/2000, dated 08.01.2000 are quashed. Consequently, the respondents are directed to reinstate the petitioner with effect from 08.01.2000 with continuity of service. It is made clear that the petitioner herein is not entitled to any backwages on the principle of "no work no pay". The Writ Petition stands allowed accordingly. No costs.

Sd/-

Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

pvs

To

1.The Chief Engineer (Distribution),
Madurai Region,
Madurai - 7.

2.The Additional Chief Engineer,
Theni Electricity Distribution Circle,
Theni.

+1cc to M/s.Thamizharasi Law Firm, Advocate, S.R.No.22950
+1cc to Mr.P.R.Dhilip Kumar, Advocate, S.R.No.23432

W.P.No.11414 of 2001

SSV (CO)

RRS (15/04/2019)