

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.7795 of 2008
and
M.P.No.1 of 2008

G.Rajendran

.. Petitioner

Vs.

- 1.The Chairman,
The Tamil Nadu Electricity Board,
800, Anna Salai, Chennai - 600 002.
- 2.The Chief Engineer (Personnel), TNEB,
800, Anna Salai, Chennai - 600 002.
- 3.The Superintending Engineer,
Vellore Electricity Distribution Circle,
Tamil nadu Housing Board,
Thirupatthur, Vellore District.
- 4.The Divisional Engineer,
Tamil Nadu Electricity Board,
Thirupatthur, Vellore District.
- 5.The Assistant Engineer,
(Operation & Maintenance),
Tamil Nadu Electricity Board,
Pudupet East, Thirupatthur Taluk,
Vellore District.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus calling for the records pertaining to the order of the third respondent passed in his proceedings Lr.No.02665-400/Ni.P.2/Ni.U.1/Ko.Masthur/2005-1 dated 10.03.2008 and quash the said order dated 10.03.2008 and consequently directing the respondents herein to implement the order of the third respondent passed in his proceedings Memo No.22679-1088/Ni.Pi.2/U.1/Masthur-II/05-18 dated 15.11.2005 and appoint the petitioner as Masdoor-II in the respondent Board.

For Petitioner : Mr.A.Praveen Kumar for
Mr.S.Periyaswamy
For Respondents : Mr.S.Haroon Al Rasheed for
M/s.T.S.Gopalan and Co.

O R D E R

Writ Petition filed for issuance of a writ of Certiorarified Mandamus, calling for the records pertaining to the order of the third respondent passed in his proceedings Lr.No.02665-400/Ni.P.2/Ni.U.1/Ko.Masthur/2005-1 dated 10.03.2008 and quash the said order dated 10.03.2008 and consequently directing the respondents herein to implement the order of the third respondent passed in his proceedings Memo No.22679-1088/Ni.Pi.2/U.1/Masthur-II/05-18 dated 15.11.2005 and appoint the petitioner as Masthur-II in the respondent Board.

2.The petitioner was working as contract labour in the respondents Board under the control of the Assistant Engineer, the fifth respondent herein as temporary casual labours from the year 1983 onwards. On the legal proceedings initiated by one of the Union, Justice Khalid Commission was appointed by the Hon'ble Apex Court. Justice Khalid Commission identified the contract labourers who were to be absorbed in the respondent's Board. The report of the Justice Khalid Commission was accepted by the Hon'ble Apex Court and a number of contract labourers were absorbed as Masthurs in the respondent's Board. On 08.08.1998, the petitioner was identified as contract labour, the Trade Union produced the school certificate showing as if the petitioner studied up to 8th standard. Due to accelerated pressure, the said certificate was produced by inadvertence by the Union. The petitioner was appointed as Masthur Grade-II on consolidated salary of Rs.2,500/- per month on a condition that he will be granted time scale of pay after two years of satisfactory service. Disciplinary proceedings were initiated against number of contract labours who have produced bogus school certificate and many of them were dismissed/removed from service. Writ Petitions have been filed challenging the order of termination. Two of the Writ Petitions have been dismissed by this Court and Writ Appeals were filed against the same. The Division Bench of this Court suggested the respondent's Board to consider for imposing lesser punishment than removal/dismissal for submitting bogus certificates. The respondent's Board favourably responded to the suggestion made by the Division Bench of this Court and passed Board proceedings Per.B.P.(F.B.) No.27 (Administrative Branch), dated 07.11.2002. The Division Bench of this Court recorded the Board proceedings Per.B.P.(F.B.)No.27 (Administrative Branch), dated 07.11.2002 and disposed of the W.A.Nos.2454 and 2589 of 2002 on 18.12.2002.

2(a).Based on the judgment of this Court, the third respondent called upon the petitioner to produce the fresh school certificate. The petitioner produced school certificate showing that he studied up to 1st standard. The third respondent in view of the contradiction in the school certificate produced earlier and the school certificate produced now, refused to appoint the petitioner as Masthur Grade-II. The petitioner filed W.P.No.2690 of 2008 and this Court by the order dated 04.02.2008, directed the respondents to give reason for refusing to appoint the petitioner. As per the orders of this Court, the third respondent passed the impugned order dated 10.03.2008. The reason given in the impugned order is not valid as the contract labours who were identified for absorption were called upon to produce the school certificate only with regard to age of the contract labour and there is no educational qualification prescribed for appointment as contract labour Masthur Grade-II. If a contract labour has not produced the school certificate, the authority has to call upon the contract labours to produce the documents for proof of his age. If no document is available, a certificate from District Medical Officer or equivalent rank may be produced. Earlier certificate was produced by the Union due to pressure and inadvertence and it cannot be held against the petitioner for refusing to appoint him as Masthur Grade-II.

3.The learned counsel appearing for the petitioner relied on the judgment of this Court reported in 2009 (4) CTC 158, [N.Sekar Vs. Director of Medical Education, Chennai-5 and others], wherein at paragraph no.6, it has been held as follows:

"...6.In the light of the report of the District Elementary Educational Officer, Vellore and having regard to the undisputed fact that the petitioner got the certificate issued by the Headmaster of Panchayat Union Elementary School, Chitteri Village, Arakonam, the petitioner is qualified to be appointed as Barber in terms of Tamil Nadu Basic Service Rules viz., Rule 5(2). Hence, the dismissal order passed against the petitioner, even though he is qualified to be appointed as a Barber cannot be sustained. The petitioner though produced a certificate claiming that he passed 8th standard was found wrong and by producing the same he has not persuaded the authority to ignore the claim of other candidate. Similar issue was considered by a Division Bench of this Court in W.P.No.38962 of 2002. By order dated

07.03.2005, the Division Bench has held as follows:

The question is whether production of such false document had in any way, persuaded the Appointing Authority to give appointment to the first respondent or whether the production of such bogus certificate had excluded the claim of any meritorious candidate. As found by the Tribunal, the qualification for the post in which the first respondent was appointed is that one must know to read and write Tamil. No other educational qualification is prescribed. Therefore, probably, out of anxiety, the first respondent would have produced the said certificate, which is wholly uncalled for. The availability of such a certificate on file, assuming it had not been detected, would not give him any additional rights in the matter of promotion. Therefore, in the above noted circumstances, we do not find any illegality at all in the Tribunal setting aside the order of punishment of dismissal and remitting the case to the original authority to impose a lesser punishment, as he may deem fit. The Writ Petition is accordingly dismissed."

4.The respondents filed counter affidavit. The learned counsel appearing for the respondents contended that as per Justice Khalid Commission, the contract labours were absorbed. They were identified and were called upon to produce the documents required by the respondents. The petitioner was identified as contract labour on 08.08.1998 and it was made clear to the petitioner that if any bogus certificate is produced, the appointment would be terminated. The petitioner has produced two school certificate which are contradictory. As

the petitioner has produced two contradictory school certificates, he is not entitled to be appointed as Masthur Grade-II. The Board proceedings Per.B.P.(F.B.)No.27 (Administrative Branch), dated 07.11.2002 is applicable to only those contract labours who were absorbed in the service and it does not apply to the persons like petitioner. As per the Board proceedings in Per.B.P.(F.B.)No.27 (Administrative Branch) dated 07.11.2002, the contract labours recommended by the Justice Khalid Commission are absorbed in the service of the respondent Board. The Board proceedings Per.B.P.(F.B.)No.37 (Administrative Branch) dated 29.10.2005 is applicable to the case of the petitioner. The said portion at paragraph no.9 in the counter affidavit filed by the respondents, reads as follows:

"The B.P.No.37 dated 20.10.2005 clearly states as follows:

Any discrepancy is noticed in the particulars furnished by the petitioner, the appointment order will be liable for cancellation at the time of appointing him."

As there is contradiction in two school certificates produced by the petitioner, the petitioner is not entitled for absorption and appointment as Masthur Grade-II and prayed for dismissal of the Writ Petition.

5.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents and perused the entire materials on record.

6.The contention of the learned counsel appearing for the respondents that Board proceedings in Per.B.P.(F.B.)No.27 (Administrative Branch), dated 07.11.2002 is not applicable to the petitioner and Board Proceedings in Per.B.P.(F.B.)No.37 (Administrative Branch) dated 29.10.2005 is applicable is without merits. The Division Bench of this Court suggested that the respondents may consider imposing lesser punishment for the persons who have produced bogus school certificate rather than dismissing/removing them from service. The respondents Board accepted the same and passed Board proceedings Per.B.P.(F.B.) No.27 (Administrative Branch), dated 07.11.2002 and instructed the Executive Engineer to impose lesser punishment rather than removal or dismissal. The said Board proceedings was implied to those bogus school certificates produced by the contract labours. The reasons for imposing lesser punishment rather than removing/dismissing the contract labour is that the said school certificate is required only to fix the age of contract labour. If a contract labour fails to produce the school certificate, his age is determined by other documents issued by the District

Medical Officer or equivalent rank. No minimum educational qualification is required for the persons to be appointed as Masthur Grade-II. The petitioner was identified as contract labour on 08.08.1998 and appointed as Masthur Grade-II on consolidated pay and to be brought on time scale of pay after two years of service. The reason given by the second respondent is not valid. The order of this Court reported in 2009 (4) CTC 158, cited supra, is squarely applicable to the facts of the present case. The respondents having identified the petitioner as contract labour and appointed him as Masthur Grade-II on consolidated pay, now cannot deny that Board proceedings Per.B.P.(F.B.)No.27 (Administrative Branch), dated 07.11.2002, is not applicable to the petitioner.

7. For the above reason, the order of the third respondents is set aside the the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

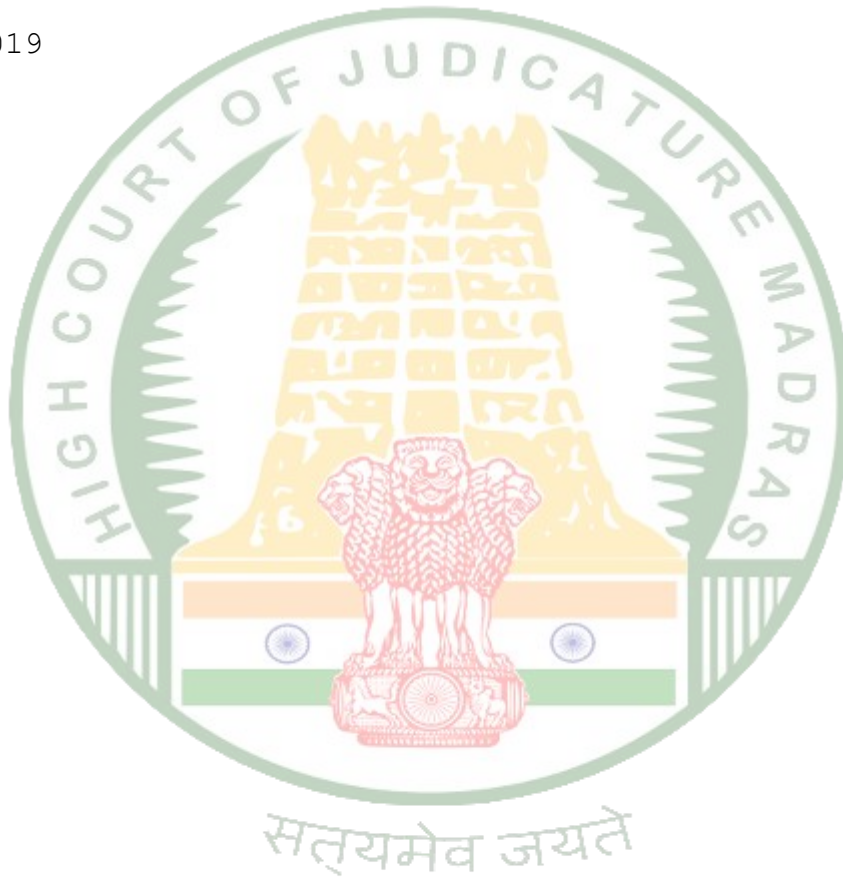
To

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Tamil Nadu Electricity Board,
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Vellore District.

+1 cc to M/s.P.Anbarasan Advocate sr63830
+1 cc to M/s.T.S.Gopalan& CO Advocate sr63721

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