

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 18.01.2019

CORAM :

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No. 21572 of 2013
and
M.P.No.1 of 2013

The Secretary,
Coimbatore Market Committee Head Office,
Coimbatore- 614 045. Petitioner

Vs

1. The Presiding Officer,
Labour Court,
Coimbatore.

2.G.Soundararajan Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the entire records relating to the impugned award passed by the first respondent in I.D.No.102/2004 dated 31.10.2012 and quash the same.

For Petitioner : Mr. V.Jayaprakash Narayanan

For Respondents: Mr.G.Varun Gandhi
for M/s.S.Suseeladevi for R2

O R D E R

The instant writ petition has been preferred by the Secretary, Coimbatore Market Committee challenging the award dated 31.10.2012 passed by the Labour Court, Coimbatore in Industrial Dispute No.102/2004.

2. The respondent No.2 is a Srilankan repatriate. He came to India in 1973. He was appointed as a watchman on 28.01.1986 by the petitioner. The respondent was considered for promotion as Office Assistant. The minimum educational qualification for

appointment of Office Assistant is 8th standard and the same is prescribed in Special Rules of Tamil Nadu Basic Rules, 1971. The respondent produced a School certificate to substantiate that he studied has passed 8th standard in a school in Srilanka.

3. It was later found that the certificate was not correct and the respondent had not completed his 8th standard. Enquiry proceedings were initiated against the respondent. During the enquiry it was found that the certificate produced by the respondent who passed 8th standard is a false one. Disciplinary Authority passed an order of dismissal. The order of dismissal has been challenged by the respondent by raising an Industrial Dispute. The Labour Court, Coimbatore, held that the respondent herein has not passed the 8th standard and therefore he cannot be appointed as an Office Assistant. The Labour Court further held that there is no bar for the petitioner to continue as a watchman. The Labour Court therefore set aside the order of dismissal. The Labour Court also directed the writ petitioner to reinstate the respondent as a watchman with continuity of service and other benefits within one month from the date of the award. The Labour Court however held that the petitioner is not entitled to get back wages. The respondent has not challenged the award. The Secretary, Coimbatore Market Committee has challenged the award.

4. Heard the learned counsel for the parties.

5. The learned counsel for the petitioner strenuously contended by stating that once it is held that a false certificate has been given, then the respondent is not entitled to continue as a watchman also and therefore, by the order of reinstatement could not have been passed.

6. It is brought to the notice of this Court that the respondent has attained superannuation and has been permitted to retire. The respondent is a repatriate from Srilanka. He came India way back in 1973. He was appointed as a watchman. The Enquiry Officer in the enquiry proceedings has given a comparative chart which would show the differences between the certificate produced by the petitioner and the details sent by the Embassy, the same read as under:-

“As per certificate submitted by the delinquent As per the details sent by the Embassy

1. Name of Student	Soundirarajan	Soundirarajan Govindan
2. Name of School	Saraswathi Tamil Vidyalaya	B.D/Saraswathi Maha Vidyalaya
3. Date of Admission	7.2.64	5.1.1971
4. Admission No.	424	1720

5. Date of leaving 22.11.1972 5.10.73
6. Class passed last 8th standard Passed 7th standard.
Studying 8th standard (Not completed)
7. Reason for leaving Insufficient means As he is going to India."

7. It is clear that the respondent has not passed 8th standard. At the same time, it cannot be overlooked that the respondent came to India way back in 1973 and it is impossible to ascertain the correct position due to the lapse of time. The Court can also take judicial notice of the disturbed conditions in Srilanka.

8. Be that as it may, the respondent has worked in the organization from the year 1986 onwards. His conduct and performance has been satisfactory. No doubt, he has not been able to prove that he has passed 8th standard and therefore, he has not entitled for appointment as Office Assistant. It is also cannot be disputed that he has certificate which could not be proved even as per the Labour Court. The respondent has also attained the age of superannuation.

9. Looking in to the facts and circumstances of the case, this Court finds it fit to convert the order of dismissal from service one of to compulsory retirement. The respondent shall be compulsorily retired from the date of award, i.e., from 31.10.2012. The respondent is entitled for all the benefits which would be available to him, but no back wages shall be paid. The writ petition is disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

gsp/Pkn

To

The Presiding Officer,
Labour Court, Coimbatore.

+1cc to Mr.V.Jayaprakash Narayanan, Advocate SR.No.3825

+1cc to Mr.S.Suseela Devi, Advocate SR.No.4308

W.P.No. 21572 of 2013

CA(CO)

GMV(19/02/2019)