

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. No. 2847 of 2018
and
C.M.P. No. 23691 of 2018

S. Raja

... Appellant/Petitioner

-vs-

Puducherry Power Corporation Limited,
Rep. by its Managing Director,
No. 10, II Cross, Jawahar Nagar,
Boomianpet,
Puducherry - 605 005.

... Respondent/Respondent

PRAYER : Writ Appeal filed under Clause 15 of Letter Patent, praying to set aside the order of this Court dated 04.10.2018 in W.P. No. 23028 of 2013 and consequently allow the Writ Petition No. 23038 of 2013. issue a writ of certiorari calling for the records on the file of the respondents relating to the impugned charge memorandum dated 20.10.2012 bearing Ref.No.1160/PPCL/MD/2013-13

For Appellant : Mr. M. Gnanasekar

For Respondent : Mrs. V. Usha,
Additional Government Pleader
(Puducherry)

J U D G M E N T

(Judgment of the Court was delivered by P.D. AUDIKESAVALU, J.)

The intra-Court Appeal arises out of the order dated 04.10.2018 passed by the Learned Judge in W.P. No. 23028 of 2013.

2. The Appellant was appointed as Lower Division Clerk (hereinafter referred to as 'LDC' for short) vide Order No.

1058/PPCL/MD Estt/'98-'99 dated 15.02.1999 by the Respondent, viz., Puducherry Power Corporation Limited (hereinafter referred to as 'Corporation' for short). He was subsequently directed by the then Managing Director of the Respondent by memorandum No. 1150/PPCL/MD/Estt/99-2000 dated 07.12.1999 to show that he had passed English Typewriting (Lower Grade), which is an essential qualification for holding the said post of LDC and submit a copy of that certificate by 10.12.1999 and in case he had not passed that examination, he was required to pass that examination and submit the required certificate on or before 10.02.2000, i.e., within one year from the date of his appointment as LDC as otherwise it would be decided to take action as deemed fit. The Appellant submitted a letter on 19.10.2000 enclosing a photocopy of the Junior Grade Typewriting (English) Certificate dated 06.05.2000 purported to have been issued by the Department of Technical Education, Government of Tamil Nadu, stating that he had passed Junior Grade Typewriting (English) in second class in the Government Technical Examinations in commerce subjects held in February 2000, in compliance of the aforesaid requirement. He was subsequently promoted to the post of Upper Division Clerk (hereinafter referred to as 'UDC' for short) vide Order No. 1212/PPC/MD/Estt/2004 dated 31.12.2004.

3. While the matter stood as narrated supra, the Appellant was required by the Respondent to submit the original copy of the Junior Grade Typewriting (English) Certificate issued to him for verification, within 7 days from the date of receipt of memorandum No. 1417/PPCL/MD/Estt/2011-12 dated 19.11.2011, followed by the reminder dated 08.12.2011, which he did not produce.

4. In that factual backdrop, a memorandum No. 1160/PPCL/MD/2012-13 dated 20.10.2012 was issued to the Appellant by the Managing Director of the Corporation, proposing to holding an enquiry against him for the charges that the Junior Grade Typewriting (English) Certificate dated 06.05.2000 submitted by him was fake and that he had not appeared and passed the Government Technical Examinations in commerce subjects held in February 2000, and that his appointment as LDC and subsequent promotion as UDC amounted to grave misconduct under Rule 3(1)(i), (ii) and (iii) of Central Civil Services (Conduct) Rules, 1964.

5. At that stage, the Appellant filed W.P. No. 23028 of 2013 before this Court contending that the Central Civil Services (Conduct) Rules, 1964, do not apply to persons like him, who were employed as LDC and UDC in the Corporation, as according to him, they were governed by the Model Standing Orders under the Industrial Employment (Standing Orders) Act, 1946. The Writ Court by order dated 04.10.2018, after referring

to the decisions of the Hon'ble Supreme Court of India in Union of India -vs- Upendra Singh [(1994) 3 SCC 357], Secretary, Ministry of Defence -vs- Prabhash Chandra Mirdha [(2012) 11 SCC 565] and Union of India -vs- Kunishetty Satyanarayana [(2006) 12 SCC 28], held that the Writ Petition challenging the charge-sheet was not maintainable and accordingly, dismissed that Writ Petition. Aggrieved thereby, the Appellant has preferred the instant Appeal.

6. We have heard Mr. M. Gnanasekar, Learned Counsel appearing for the Appellant and Mrs. V. Usha, Learned Additional Government Pleader (Puducherry), appearing on behalf of the Respondent and perused the materials placed on record, apart from pleadings of the parties.

7. Learned Counsel for the Appellant strenuously urged that the impugned memorandum No. 1160/PPCL/MD/2012-13 dated 20.10.2012, issued by the Respondent to the Appellant under the Central Civil Services (Conduct) Rules, 1964, was without jurisdiction as the said rules were not applicable to the Appellant, who is governed by the Model Standing Orders under the Industrial Employment (Standing Orders) Act, 1946, which aspect of the matter was not considered by the Learned Judge in the order under Appeal and has sought interference by this Court.

8. Though it is true that the Writ Court does not appear to have directly addressed the aforesaid contention taken by the Appellant, we are unable to accept the submissions made by the Learned Counsel for the Appellant in this regard. The question of applicability of service rules for disciplinary enquiry would arise only when there is misconduct committed by the concerned employee, meaning thereby that it relates at a stage after joining duty in the post to which he is appointed. The act complained against the Appellant in the instant case goes into the root his very eligibility itself to hold the post of LDC and subsequent promotion as UDC in the Corporation. No exception can be taken to the legal proposition that when a person is appointed to a post, he has to necessarily possess the requisite qualification prescribed for the same. Suffice here to refer to the dictum laid down by the Constitution Bench of the Hon'ble Supreme Court of India in State of Punjab -vs- Jagdip Singh [AIR 1964 SC 521] that where a Government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give, he will not in law be deemed to have been validly appointed to the post or given the particular status. It would necessarily follow as a corollary thereof that if a person has been appointed without necessary qualification prescribed for that post, the appointing

authority not only has the inherent power but also the fiduciary responsibility to expeditiously re-call that appointment found to have been secured by deceit, as it would otherwise amount to infraction of the fundamental rights of the other competing candidates under Articles 14 and 16 of the Constitution, guaranteeing them equality of opportunity in public employment and depriving them of the same in an illegitimate manner. In this incontrovertible fact situation, it is really unnecessary to even go into the question of applicability of the Central Civil Services (Conduct) Rules, 1964, to the Appellant for his employment in the Corporation.

9. In this context, reference may be made to the ruling of the Hon'ble Supreme Court of India in Union of India -vs- M. Bhaskaran [(1995) Supp 4 SCC 100] where under similar circumstances, it has been observed as follows:-

"6. It is not necessary for us to express any opinion on the applicability of Rule 3(1)(i) and (iii) on the facts of the present cases for the simple reason that in our view the concerned railway employees, respondents herein have admittedly snatched employment in Railway service, may be of a casual nature, by relying upon forged or bogus casual labourer cards. The unauthenticity of the service cards on the basis of which they got employment is clearly established on record of the departmental enquiry held against the concerned employees. Consequently, it has to be held that respondents were guilty of misrepresentation and fraud perpetrated on the appellant employer while getting employed in Railway service and had snatched such employment which would not have been made available to them if they were not armed with such bogus and forged labourer cards. Learned counsel for the respondents submitted that for getting service in Railway as casual labourers, it was strictly not necessary for the respondents to rely upon such casual service cards. If that was so there was no occasion for them to produce such bogus certificates service cards for getting employed in Railway service. Therefore, it is too late in the day for the respondents to submit that production of such bogus or forged service cards had not played its role in getting employed in Railway service. It was clearly a case of fraud on the appellant-employer. If once such fraud is detected, the appointment orders themselves which were found to be tainted and vitiated by fraud and acts of cheating on the part of employees, were liable to be recalled and were at least voidable at the option of the employer concerned. This is precisely what has happened in the present case. Once

the fraud of the respondents in getting such employment was detected the respondents were proceeded against in departmental enquiries and were called upon to have their say and thereafter have been removed from service. Such orders of removal would amount to recalling of fraudulently obtained erroneous appointment orders which were avoided by the employer appellant after following the due procedure of law and complying with the principles of natural justice. Therefore, even independently of Rule 3(1)(i) and (iii) of the Rules, such fraudulently obtained appointment orders could be legitimately treated as voidable at the option of the employer and could be recalled by the employer and in such cases merely because the respondent-employees have continued in service for number of years on the basis of such fraudulently obtained employment orders cannot create any equity in their favour or any estoppel against the employer...."

10. It is not in dispute that the Appellant has to hold a certificate of having passed the Junior Grade Typewriting (English) Examination as an essential requirement for him for occupying the post of LDC and subsequent promotion as UDC in the Corporation. The Appellant, who had produced only a photocopy of the certificate of having passed such examination in February 2000, had not produced its original to the employer despite notices issued to him. Irrespective of the question as to whether or not the Central Civil Services (Conduct) Rules, 1964, would apply to the employment of the Appellant in the Corporation, the procedure followed for disciplinary enquiry in the said Rules commencing from the issuance of the impugned memorandum, adequately enables the Appellant to explain his position and satisfy the appointing authority of his entitlement to continue in office, before passing any order entailing adverse civil consequences to him, in consonance with the principles of natural justice and the same does not cause any form of prejudice to him so as to be aggrieved by the same. Instead of facing the enquiry and proving his right to hold the office, the devious ploy adopted by the Appellant to thwart the same by invoking the discretionary jurisdiction of this Court under Article 226 of the Constitution of India, 1950, and indefinitely protract the proceedings, has to be deprecated.

11. In that view of the matter, we do not find any merit in the contentions of the Appellant and we confirm the order of the Learned Judge dismissing the Writ Petition. The Respondent is at liberty to proceed further with the disciplinary proceedings pursuant to the impugned memorandum

No.1160/PPCL/MD/2012-13 dated 20.10.2012 issued by the Respondent in accordance with law.

12. Accordingly, the Writ Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

+1cc to Mr.M.Gnanasekar, Advocate SR.No.10165

+1cc to Government Pleader SR.No.10335

W.A. No. 2847 of 2018

RSV(CO)
GMV(20/02/2019)