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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.No.10819 of 2010

&

M.P.No.1 of 2010

V.Paul Athisayaraj

... Petitioner

Vs.

1.The Director of School Education
College Road,
Chennai-6

2.The Joint Director
Government Examinations
College Road, Chennai-6

3.The Correspondent
Advent Christian Schools
Velacherry, Chennai-42

4.The District Elementary Educational Officer
Kanchipuram

5.The Assistant Elementary Educational Officer
Thiruporur Block, Thiruporur
R4 and 5 impleaded as
per order dated 21.06.2010
Respondents

...

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records relating to the proceedings of the third respondent dated 13.05.2010, quash the same and pass further orders.

For Petitioner : Ms.Dakshayani Reddy

For Respondents: Mr.P.Raja, Govt.Advocate for R1
and 2,4 and 5

Ms.P.Mahalakshmi for R3



O R D E R

The petitioner was appointed as B.T. Assistant by the 3rd respondent school on 15.07.2008. The 10th and 12th mark statement were sent for approval to the Education department and it was approved on 20.04.2009 based on certificates furnished by the petitioner. After verification on 30.04.2010, the 2nd respondent by his proceedings in Na.Ka.No.032881/B4(6)/2009 dated 30.04.210 had informed the District Educational Officer that the marks statement produced by the petitioner for the supplementary examination were found to be bogus and to take legal action. The 3rd respondent school, on receipt of the communication, called upon the petitioner to show cause as to why action shall not be initiated against him. He was called for personal hearing on 08.05.2010. The petitioner submitted his explanation on 10.05.2010. On the basis of the letter issued by the 2nd respondent, his appointment was cancelled by the 3rd respondent on 13.05.2010. The said cancellation of order of appointment is under challenge before this Court.

2. Learned counsel appearing for the petitioner vehemently contended that the petitioner failed in three subjects in 10th standard examination and appeared as a private candidate during October 1990. The Board of Secondary Education has sent a certificate by registered post to his residence which shows that he has secured 46 marks in English, 62 marks in Mathematics and 58 marks in Science. Thereafter, he appeared for Higher Secondary course and he failed in Physics subject in the regular examination conducted during March 1993. Thereafter, he appeared as a private candidate during September 1993 for the supplementary examination and passed the examination with 160 marks. The certificate was not delivered to his address and therefore he approached the Director of Government Examinations and that he was directed to apply in the proper format. Thereafter, the certificate was dispatched to his house by registered post. Hence, the petitioner has produced the certificate issued by the Director of Government Examinations and that he has not fabricated any documents. She would also submit that a criminal case was filed against him and after elaborate trial the Criminal Court acquitted the petitioner from the criminal case in C.C.No.910 of 2012 on the file of Special Metro Politan Sessions Court and CBCID metro cases by its judgment dated 06.10.2018. Relying on a judgment of this Court in W.P.No.16851 of 2010 dated 22.08.2011, learned counsel would contend that the petitioner being acquitted after an elaborate trial, the action taken on the same set of charges in the



departmental proceedings should also go.

3. The charge framed in the criminal case as well as the departmental proceeding are one and the same. Once he is found not guilty of producing bogus or fabricated document, he should be reinstated.

4. To buttress the above contention she would rely on the judgment of the Hon'ble Supreme Court in Babu Lal vs. State of Haryana and Ors, AIR 1991 SC 1310, wherein it is held as follows:

This judgement is under challenge in this appeal. The pivotal question that poses itself for consideration before this Court is firstly whether during the period of suspension in view of the criminal proceeding which ultimately ended with the acquittal, an order of termination can be made against the appellant by the respondent No.2 terminating his ad hoc services without reinstating him as he was acquitted from the charge u/s 420 I.P.C. and secondly whether the impugned order of termination from his service can be made straight away without reinstating him in the service after he earned acquittal in the criminal case and thereafter without initiating any proceeding for termination of his service as the impugned order of termination was of penal nature having civil consequences. It has also to be considered in this connection that the respondent No.2 has also not considered the case of the appellant for regularisation of his services even though he had completed two years of service as on 31.12.1979 fulfilling all the requisite terms and conditions mentioned in the said Notification. The order of suspension made by the respondent No.2 is admittedly on the sole ground that criminal proceeding was pending against the appellant. The order of termination had been made illegally during the pendency of the order of suspension and also during the pendency of the criminal proceeding which ultimately ended with the acquittal of the appellant. It is the settled position in law that the appellant who was suspended on the ground of pendency of criminal proceeding against him, on being acquitted of the criminal charge is entitled to be reinstated in service. His acquittal from the criminal charge does not debar the disciplinary authorities to initiate



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disciplinary proceedings and after giving an opportunity of hearing to the appellant pass an order of termination on the basis of the terms and conditions of the order of his appointment. Furthermore as the appellant whose name was sent through Employment Exchange and who was appointed and has completed two years service on 31.12.1979 is entitled to be considered for regularisation in the post Sub-Inspector, Food and Supplies. The High Court had observed that:

"..... In these circumstances, when his case came up for regularisation, the Department found that the plaintiff's work and conduct was not of the required standard so as to justify his regularisation and consequently his services were not regularised."

5. According to the learned counsel for the petitioner before terminating the petitioner no enquiry was conducted and due procedure since not followed the impugned order stands vitiated for violation of principle of natural justice and therefore seek to set aside the impugned order.

6. Per contra, learned counsel appearing for the respondents contended that the letter of the 2nd respondent would clearly show that with the collusion and connivance of an insider bogus certificate were issued. He would also produce the original register pertaining to the statement of tabulated marks register for October 1990 and September 1993 and submit that the particular page sheet pertaining to the petitioner marks was torn off. However, the sheet which was lost from the original register was marked as Ex.P8 before the Criminal court. He would further contend that the original register was produced and attested copy of the document was marked. The Criminal Court did not find any link between the offence committed in fabricating the document by the petitioner and given the benefit of doubt in favour of the petitioner. But there is no finding as to whether the certificate is genuine or bogus. He would also point out that code number 03 pertains to English paper I and 04 is English paper II in part B. In each paper the maximum marks are 50. When both paper I and paper II were put together the total marks would be 100 marks. In the instant case, the petitioner has secured 46 marks in English paper I under code 03 and 62 marks in English paper II under code number 04. According to him the total marks itself is being 50 securing 62 marks or awarding 62 is beyond question. The total marks is shown as 108 in the tabulated mark register. Therefore, the entries were fabricated and the petitioner would not have secured 108 marks out of total



marks of 100. Further the code 05 pertains to Mathematics wherein the petitioner is said to have secured 58 marks but in the certificate produced by the petitioner shows that he has secured 58 marks in science. The code number for science is 06 under that column the register does not show any entry. Therefore, it is very clear that the certificate produced by him is bogus. Therefore, the action taken by the 3rd respondent cannot be found fault with and the writ petitioner does not deserve any order.

7. Heard the submissions.

8. The above issue to be decided is that as to whether the certificates produced by the petitioner are genuine or bogus and also whether cancellation of his appointment is sustainable or not.

9. The appearance of the petitioner in the supplementary examinations and delivery of the mark statements to his address by registered post are admitted. The contention against the petitioner is that the certificate produced by him for securing employment, on verification, were said to have been bogus due to manipulation of records. As per the conditions of appointment, the selection was subject to verification of certificates and if it is found bogus, the order would be cancelled. A criminal case was filed against the petitioner and he was acquitted from the charges giving benefit of doubt. The contention of the petitioner that in the light of acquittal on the same set of charges, the cancellation of his appointment should be set aside and he should be reinstated in service.

10. Hence, it is crucial to decide as to whether the charges framed in the criminal proceedings and the departmental action are one and the same. A perusal of the judgment in C.C.No.910 of 2012 dated 06.10.2018 would show that the petitioner was charged under sections 420, 468, 471 IPC. According to the same, the petitioner was accused of forging the documents for the purpose of cheating, used the forged document and thereby indulged in cheating. The above said charges accuse the petitioner for forgery and cheating for having manipulating the government records. The Criminal court had found that the offences were not proved beyond reasonable doubt based on the lapses of the investigating officer. Hence it can be deduced that the charge in the criminal proceeding is that petitioner had indulged in forgery and cheating. Forging the government records for the purpose of cheating. But the crucial point to be noted is that the criminal court has not found that the certificates produced by the petitioner are genuine and not bogus. The impugned charge



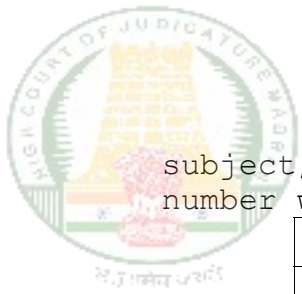
under challenge is that the certificates produced are bogus certificates. The active involvement in the offence of forging the government records for the purpose of cheating is different from the nature of records produced. The proof of the genuineness of the records produced is different from proof of active involvement of a person in forgery and cheating. By the judgment of the Criminal Court the petitioner's involvement in forgery was not proved, but it will not lead to an inference that the certificates produced are genuine. In that case the charges in the criminal case and the departmental action are not one and the same.

11. The judgment of the Hon'ble Supreme Court in Babu Lal's case extracted in previous paragraphs is entirely different. The petitioner therein namely Babu Lal was terminated from service on account of pendency of criminal proceedings. He was honorably acquitted by the Criminal Court and that he had fulfilled the required service for regularisation. Hence his entitlement or reinstatement was found in favour. But in the instant case, the facts are different and the above judgment will not apply to the facts of the present case, for, the records produced before this Court spread out a different nature altogether.

12. Incidentally the documents marked as Exs. P.7 and P.8 before the Criminal Court play a vital role in the present case. Ex.P.7 is the tabulated mark register for the supplementary examinations conducted for X standard in October 1990. Ex.P.8 is the tabulated mark register for supplementary examination conducted for XII standard in September 1993. The Criminal Court did not find anything against the genuineness of the document, but found that there were not scrubbings, corrections or manipulations in the record. As such it can be inferred that they are the true copies of the original register.

13. A perusal of original records produced by the government counsel discloses that the original pages corresponding to Ex.P.7 and P.8 were torn off from the original records. That particular sheet is relevant to the petitioner's mark statement. Even though, the Criminal court acquitted the petitioner of the charges, it leads us to infer that some insiders in order to help the petitioner, have torn off the relevant page after production of the true copies before the Criminal Court. Marking of Exs.P.7 and P.8 and its genuineness is not disputed till today.

14. It is relevant to examine the system of examinations conducted by the second respondent. For each paper in the



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subject, a code number is given. Accordingly the following code number was given to the supplementary examinations also.

Subject	Code	Max Marks
English Paper I	Code No.3	50
English Paper II	Code No.4	50
Maths	Code No.5	100
Science	Code No.6	100

The petitioner had secured 46 marks out of 50 in English paper-I. Surprisingly, he had secured 62 marks out of 50 marks in paper II, resultantly 108 marks out of 100 marks. Likewise, his marks relating to science subject also entered under a wrong code. Code number for the subject of Mathematics is 5. In the tabulated mark statement register, entries in respect of petitioner show that he had served 58 marks. But the mark statement delivered to the petitioner states that he passed Science subject under code Number 6 with 58 marks. I checked the entries with regard to other candidates appeared for the same examinations from the same page as well as other pages. There is no discrepancy in entering the marks under the relevant subject. The learned counsel for petitioner would contend that the alignment of the columns and printing mistakes would be the cause for the error in which the petitioners has no role. Of course it is true there can be misalignments but it should be uniform throughout the page. In respect of all other candidates there is no discrepancy. Even assuming there was an error in alignments, by n stretch of imagination, a candidate could secure 108/100 in English language paper. The mark statement should have been issued with a wrong entry that the petitioner had passed Maths paper. Hence the manipulation of records with the help of some erring officials in favour of the petitioner is not ruled out as contended by the counsel for respondent. His further contention that in order to suppress the fact the material evidence namely the relevant page pertaining to the entry of marks of the petitioner from the original register was torn off also has more force and weightage. Incidentally, Ex.P7 and P.8 the true copies of the register existed to the misfortune of the petitioner. Only because the certificates were delivered at the doorsteps of the petitioner by the Directorate of examinations and the manipulation was not proved will not change the character of the certificate. If bogusness is found at the later stage also will render the certificate bogus. Unless the order of the second respondent is set aside, the consequential order of the third respondent cannot be set aside. To be precise an unqualified person is not entitled to



appointment. When the petitioner is found lacking in foundational qualification, he is not entitled to get reinstatement. The procedure of conducting enquiry will also not apply to this case as no charge was framed against him with regard to his service causing stigma of civil consequences. The provisional selection subject to verification of the certificates automatically stands cancelled for discrepancy in the educational qualifications. Therefore, acquittal by the criminal court will not entitle the petitioner for reinstatement as claimed. Hence, the writ petitioner does not deserve any consideration and accordingly writ petition is dismissed. No costs.

s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

To

1.The Director of School Education
College Road,
Chennai-6

2.The Joint Director
Government Examinations
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3.The Correspondent
Advent Christian Schools
Velacherry, Chennai-42

4.The District Elementary Officer
Kanchipuram

5.The Assistant Elementary Educational Officer
Thiruporur Block, Thiruporur

+1 cc to Mrs.Dakshayani Reddy Advocate sr9562
+1 cc to Ms.P.mahalakshmi Advocate sr8985
+1 cc to the Government Pleader sr10016

W.P.NO.10819 OF 2010

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8/8