



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.03.2020

PRONOUNCED ON : 02.06.2020

CORAM

THE HON'BLE MR. JUSTICE V.PARTHIBAN

W.P.NO.653 OF 2018

K.Duraisamy

...Petitioner

Vs.

1. Government of Tamil Nadu,
Represented by its Principal Secretary to Government,
Environment and Forest Department,
Fort St.George,
Chennai - 600 009.

2. The Principal Chief Conservator of Forests,
Head of Forest Force,
No.1, Genies Road,
Panagal Maligai,
Saidapet, Chennai - 15.

3. The Conservator of Forests,
Vellore Region Division,
Vellore - 9.

4. The District Forest Officer,
Vellore Forest Region,
Vellore - 9.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the fourth respondent herein vides Se.Mu.Aa.No.863/17/Pa3 dated 23.10.2017 and quash the same, consequently direct respondents to allow the petitioner to retire from service and pay all service and monitory benefits including pension.

For Petitioner .. Mr.M.R.Jothimanian

For Respondents .. Mr.S.Prabhu [R1 to R4]
Government Advocate



ORDER

The petitioner was appointed as plot watcher in the Department of Forest and Environment, Government of Tamil Nadu. He was appointed in 1979 in Ammidhi Zoo Incharge Post and he was posted to various places in Vellore Division. After 15 years of service as Plot Watcher/Zoo Watcher, the petitioner was appointed as Forest Watcher on 27.02.2003 in the regular post with the time scale of pay based on the State wise seniority list of Watcher/Social Forestry work. Thereafter, he was promoted as Forest Guard on 24.09.2010 in the fourth respondent/Division.

2.The qualification prescribed for appointment as Zoo Watcher was a person must know "Read and Write" and no particular education qualification prescribed. The petitioner therefore was regularized in the regular time scale of pay on 27.02.2003 and he has totally put in 37 years of service.

3.While so, the petitioner was placed under suspension by the fourth respondent on 28.04.2017 for producing bogus school certificate. The suspension order was issued on the eve of his retirement on 30.04.2017. The petitioner has approached this Court challenging the suspension order in W.P.No.12998 of 2017 and the said writ petition was pending. Simultaneously, a charge memo was issued on 12.05.2017 under Rule 17(b) of Tamil Nadu Civil Services (Disciplinary and Appeal Rules), 1955, after the superannuation date. The said charge memo dated 12.05.2017 was also put to challenge by the petitioner in W.P.No.16598 of 2017. However, this Court by common order dated 04.07.2017 directed the petitioner to subject himself to Departmental Enquiry by submitting his explanation.

4.Subsequently, on completion of Departmental Enquiry, the fourth respondent passed an order on 23.10.2017 removing the petitioner from service. As against the order passed by the fourth respondent removing the petitioner from service, the petitioner is before this Court assailing the said order on the ground that the action of the fourth respondent is contrary to the settled legal principles, as laid down by this Court in various decisions.

5.Mr.M.R.Jothiraman, learned counsel appearing for the petitioner would submit that according to Rule 5(2)(aa) of Tamil Nadu Basic Service Rules, educational qualification for class IV category as prescribed was only 'Read and Write' and the petitioner was appointed as Plot Watcher in 1979 in terms of the



Rules and as far as the promotion as the Forest Guard is concerned in 2010, the same qualification was prescribed in respect of promotees from the post of Plot Watcher. Therefore, the production of School Certificate indicating that the petitioner has studied upto 8th standard is immaterial and the said certificate, no way helped the petitioner to gain any undue advantage in his career progression. The learned counsel would further submit that eventually the petitioner has served the department for 37 years but for this false school certificate he would have had the benefit of long years of service and he would have been entitled to all pensionary benefits for his lifetime.

6.The learned counsel would submit that the following decisions of this Court would support his contention that the production of school certificate by the petitioner can be treated as immaterial whether it was bogus or otherwise and petitioners services can be held otherwise valid in terms of the rule position. The learned counsel would rely on a decision of the learned Single Judge (as he then was) reported in 2009 (4) CTC 158 in the case of N.Sekar Vs. Director of Medical Education & others, he would refer to paragraph 6 of the decision of the learned Single Judge's which is extracted hereunder;

"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



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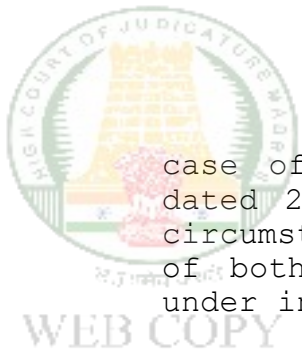
know to read and write Tamil. No other educational qualification is prescribed. Therefore, probably, out of anxiety, the first respondent would have produced the said certificate, which is wholly uncalled for. The availability of such a certificate on file, assuming it had not been detected, would not 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."

The learned judge in the above decision referred to the Division Bench order in paragraph 8 and conclusion of the learned judge in paragraphs 9 are extracted hereunder;

"8.Again in the decision of P.Sekar Vs. Registrar, Tamil Nadu Administrative Tribunal, Chennai & others, 2008 (5) MLJ 646, a Division Bench of this Court taken the same view. In Tamil Nadu Electricity Board while appointing helpers on the basis of recommendations of Hon'ble Justice Khalid Commission, certain helpers obtained orders of appointment by producing bogus certificates. Disciplinary proceedings was initiated and on the suggestions made by the Division Bench of this Court, the Board resolved to reinstate the helpers who were dismissed and ordered to reduce the pay of three years which will operate for future increments. The said decision was approved by the pay for three years which will operate for future increments. The said decision was approved by the Division Bench of this Court in W.P.No.16521 of 2002, etc., batch by order dated 05.02.2003.

9.Applying the said decisions to the facts of this case, the impugned order is set aside. The second respondent is directed to reinstate the petitioner as Barber with continuity of service without backwages within a period of four weeks from the date of receipt of a copy of this order. It is made clear that it is open to the second respondent to impose any other lesser punishment for the production of false certificate.

7.He would further refer to a decision of this Court in the



case of C.Elumalai Vs. The Superintendent of Police & others dated 23.08.2017 in W.P.No.12604 of 2013, wherein in identical circumstances, this Court after adverting to various decisions of both Division Bench as well as Single Judges has held as under in paragraphs 9 & 10 which are extracted hereunder;

"9.This Court has considered the rival submissions of the learned counsels and also perused the materials and the pleadings placed on record. There is considerable force in the contention of the learned counsel appearing for the petitioner that the qualification for appointment in the basic service is a person must know to read and write Tamil and therefore, the production of school certificate that the petitioner had passed 8th standard assumes no significance at all, in which case, the production of certificate was not the basic factor which was taken into consideration while appointing the petitioner as Sweeper. Moreover, the decision by this Court as extracted supra squarely covers the issue raised in the present writ petition except that in that case, there was no criminal case and therefore the learned Judge was constrained to issue consequential order directing the respondents to impose lesser penalty and also denied the backwages to the petitioner therein. As far as the present case on hand, there was a criminal case launched against the petitioner, which ended in honourable acquittal and that acquittal had become final. Moreover, the petitioner was dismissed from service as early as in the year 2002 i.e. 15 years before and therefore the denial of full backwages for the entire period would be unjust in the facts and circumstances of the case. Therefore, this Court has no hesitation in allowing the writ petition and set aside the order of dismissal from service dated 02.04.2002 and the petitioner is ordered to be reinstated in service forthwith and he is also entitled to 50% of the backwages and all other attendant benefits like continuity of service etc., The order of reinstatement shall be passed as above within a period of one month from the date of receipt of a copy of this order.

10.The writ petition stands allowed on the above terms. No costs. Consequently, connected miscellaneous petition is closed."

8.The learned counsel would also rely on a Division Bench decision recently reported in 2019-1-Writ L.R.841 in the case of C.Govindan Vs. The Inspector General (Prison) & others, he would draw reference to paragraph 4 to 7 which are extracted hereunder;



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"4. The Learned Counsel for the Appellant strenuously urged that the post of Sanitary Worker is shown as category 8 in Class IV of the Special Rules for Tamil Nadu Basic Service and the educational qualification of candidates for appointment through direct recruitment to any of the categories in Class IV is that he must be able to read and write in Tamil as required under Rule 5(2)(aa) of the Special Rules for Tamil Nadu Basic Service and that the stipulation of pass in VIII standard was only in respect of the posts in Class I, II and III and as such, the Appellant had been wrongfully removed from service by the Disciplinary Authority whose order was erroneously confirmed by the Appellant Authority. In support of the said contention, reliance is placed on the decisions of this Court in P. Mahendran -vs- Chief Engineer (Order dated 20.06.2003 in W.P. No. 6932 of 2002), N. Sekar -vs- Director of Medical Education [(2009) 4 CTC 158] and the Division Bench of this Court in E. Rengammal -vs- Superintendent (Order dated 25.01.2018 in W.A. No. 1085 of 2016) in which one of us (K.K. Sasidharan, J.) is a party.

5. We find that there is substantial force in the aforesaid contention raised on behalf of the Appellant inasmuch as the production of the bogus certificate showing that the Appellant had passed VIII standard was inconsequential. The educational qualification prescribed for the instant post was that the candidate must be able to read and write Tamil. It is not the case of the Respondents that the Appellant was not able to read and write Tamil.

6. In that view of the matter, fortified by the aforesaid decisions cited by the Learned Counsel for the Appellant, we hold that the order No. 1993/E.S.2/2009 dated 29.04.2009 passed by the Inspector General of Prison, confirming the order No. 5295/SJ1/95 dated 03.10.1996 passed by the Superintendent of Prisons, Central Prison, Salem, cannot be sustained and accordingly, the same are quashed and the Appellant is liable to be reinstated with continuity of service. It is further made clear that if the Appellant had attained the age of superannuation in the interregnum, he shall be treated as having served continuously in the post till retirement for the purpose of terminal and pensionary benefits. However, having regard to the fact that the Appellant had produced a bogus certificate of having passed VIII standard though the same was not required for being appointed to that post, we are of the



7. In the result, the Writ Appeal succeeds and the order dated 10.12.2013 in W.P. No. 12228 of 2010 is set aside and the Writ Petition is disposed of on the aforesaid terms. No costs.

10. On notice Mr. S. Prabhu, learned Government Advocate entered appearance and a counter affidavit has been filed on behalf of the fourth respondent. The learned counsel would submit that the production of bogus school certificate is a very serious act of mis-conduct. Infact, at the time of his initial appointment, a certificate was produced and the same was referred to the competent authority for verification and it was finally found that the certificate was not issued by the school and it was a bogus one.

12. The learned counsel for the respondents would submit that it may be true that 8th standard qualification is not required for appointment of Plot Watcher or promotion as Forest Guard, nevertheless the act of producing bogus certificate which is a serious mis-conduct cannot be lost sight of and therefore the Department had initiated disciplinary action against him and after finding that the petitioner was guilty of the misconduct, the impugned punishment was imposed. Therefore, the action of the fourth respondent is not liable to be interfered with.



13. Considered the submissions of the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials placed on record.

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14. It is true that the petitioner has committed a serious act of mis-conduct by producing a bogus certificate. The fact that school certificate produced by him was immaterial cannot be a ground to condone the act of mis-conduct committed by the petitioner. Therefore, the action of the Department initiated against the petitioner cannot be faulted per se, as the Department cannot in the face of discovery of the bogus certificate produced by the petitioner can remain silent and turn the other way. Therefore, this Court does not find fault with the Department proceeding against the petitioner, by initiating disciplinary proceedings in terms of the service rules.

15. Be that as it may, as regards the contention put forth on behalf of the petitioner is concerned, the decisions relied on by the counsel as aforementioned, are squarely applicable to the present case as well. When admittedly the Tamil Nadu Forest Sub-ordinate Civil Rules prescribed qualification is only to read in Tamil for initial appointment as Plot Watcher and also in regard to the promotion as Forest Guard from the Feeder grade of Plot watcher wherein the same qualification is prescribed, the service rendered by the petitioner both as Plot Watcher and Forest Guard for more than 30 years cannot be legally dubbed as invalid. On that aspect of the contentions of the petitioner and the decisions cited by the learned counsel are apposite and pertinent to the factual matrix of the case on hand.

16. Once the appointment and continuance of the petitioner in the post is admittedly in terms of the Rules, the production of school certificate was immaterial in order to taint the appointment and continuance of the petitioner as illegal or invalid. In that view of the matter, the petitioner services are to be held valid and the impugned order of removal from service in that context appears to run contrary to the view taken by this Court in similar situation.

17. As stated above, the very fact that the production of school certificate was found bogus was certainly a serious act of misconduct, but in view of the admitted rule position, the petitioner cannot be sent out of service, as his appointment and continuance in service as Plot Watcher as well as Forest Guard was well within the framework of the Rules applicable to his



category. That being the case, the impugned order removal from service in the opinion of this Court cannot be countenanced in law. There are several decisions of this Court on this aspect and all the decisions cited above have come to the aid of the employees under similar circumstances. Therefore, this Court cannot have a different view, particularly this Court itself has passed orders protecting the interest of the similarly placed petitioners.

18. At the same time, the petitioner need not be allowed to go scot-free when an allegation of production of bogus school certificate was found to be proved in a duly conducted departmental enquiry. No matter whether that bogus certificate was material or not for the type of employment of the petitioner under the respondent/department, he needs to be visited at least with a minor penalty for the proved misconduct. Such a consequence has to necessarily befall the petitioner in order to vindicate the action taken by the employer, as no employer in the situation on hand is expected to show supine indifference.

19. In the above circumstances, the impugned order in Se.Mu.Aa.No.863/17/Pa3 dated 23.10.2017 passed by the fourth respondent is hereby set aside. The fourth respondent is directed to impose any minor penalty on the petitioner for the proved misconduct without affecting his pensionary benefits considering the fact that the petitioner belonged to last grade service.

20. The fourth respondent is also directed to permit the petitioner to retire from service and on his retirement the petitioner is also entitled to all consequent terminal/pensionary benefits subject to the minor penalty to be imposed on by the fourth respondent.

21. The fourth respondent is also directed to pass appropriate orders as indicated above within a period of eight weeks from the date of receipt of copy of this order.

22. With the above observations, the writ petition stands allowed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Mrm/nsd



To

1. The Principal Secretary to Government,
Environment and Forest Department,
Fort St.George,
Chennai - 600 009.

2. The Principal Chief Conservator of Forests,
Head of Forest Force,
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3. The Conservator of Forests,
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W.P.No.653 of 2018

KS (CO)
KKV/14/07/2020