

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2020

CORAM

THE HON'BLE MR.JUSTICE M. DHANDAPANI

W.P.No. 35227 of 2013

and

M.P.No. 1 of 2013

B. Ganesh

.. Petitioner

Vs.

1. The Secretary to Government,
Energy Department,
Government of Tamilnadu,
Fort St. George,
Chennai - 600 009.

2. The Secretary,
Tamil Nadu Public Service Commission,
Omandurar Government Estate,
Anna Salai,
Chennai - 600 002.

3. The Chief Electrical Inspector to Government,
Thiru-Vi-Ka Industrial Estate,
Guindy, Chennai - 600 032.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the connected records leading to the issue of the impugned order in G.O.Ms.No.107, Energy (D2) Department, dated 12.12.2013 of the first respondent and quash the same as illegal and void.

For Petitioner : Mr.Ravi Paul for
M/S.Paul and Paul

For Respondents : Mr.S. Thangavel, Spl. GP for RR-1 & 3
: Mr.M. Loganathan for R-2

ORDER

This writ petition has been filed by the petitioner to call for the connected records leading to the issue of the impugned order in G.O.Ms.No.107, Energy (D2) Department, dated 12.12.2013 of the first respondent and quash the same as illegal and void.

2.The case of the petitioner is that he is an engineering graduate in electrical engineering, belongs to backward community. He was employed as Electrical Supervisor in Jambai KNM Textiles Pvt. Ltd, Kumarapalayam from 1995 onwards. After graduating in the electrical engineering successfully in 2003, he continued his employment with the same organization till 2008. On the whole he has put in 13 years of service in the relevant field and he is possessed a valid community certificate too. While so, the 2nd respondent herein issued notification/advertisement in 2008 inviting applications from eligible candidates for recruitment to various posts including Assistant Electrical Inspector in Tamil Nadu Electrical Inspectorate Service. The total vacancies notified for the subject post were 10. The petitioner also applied for the same and after scrutiny of applications, he was issued with a hall ticket and he participated in the written examination, which was held on 24.08.2008. Thereafter he was directed to appear for an oral interview which was scheduled to take place on 25.11.2009 by a communication dated 17.11.2009 and he also attended the oral interview along with relevant documents. Thereafter the 2nd respondent commission issued a notification announcing the provisional selection list of candidates to various posts including the post of Assistant Electrical Inspector indicating the Register Number of candidates selected, and in the said list the petitioner's number also appeared and he was appointed along with six others as Assistant Electrical Inspector in the Tamil Nadu Electrical Inspectorate Service by direct recruitment vide G.O.Ms.No.94, dated 28.09.2010. Pursuant to the above Government Order, he was issued a posting order on 02.11.2010, and posted at Coimbatore. In the meanwhile one R.Pazhani Murugan, who was not called for the interview, however not satisfying mandatory practical experience prescribed in the original notification issued by public service commission, approached this Court, questioning the selection process by way of filing writ petition in W.P.No.24106 of 2009, and sought for permission to attend the interview and consequently appoint him to the post of Assistant Electrical Inspector. It appears that this Court had initially granted interim direction to enable him to attend the interview and thereafter when the matter was taken up for hearing and in the course of arguments, a statement appears to have been made on behalf of the Tamil Nadu Public Service Commission that his name was not in the list of eligible candidates originally short-listed, but however, his name was included and shown in the selection list and, action was being taken against the officials for inclusion of his name, though he was not having required qualification of being selected. It was submitted by the Commission in the said writ petition that many non-suitable candidates, including the petitioner's appointment, were to be cancelled on the ground that they had not produced the requisite experience certificate from their previous

employer and recording the said submission, the petition was disposed. However, thereafter, without affording any opportunity the petitioner, his appointment was cancelled by way of issuing G.O. Challenging the same, the present writ petition is filed.

3. Learned senior counsel for the petitioner submitted that the petitioner's appointment was cancelled on the ground that he did not produce the experience certificate from the large scale industries. However, the respondent had filed a typed set of papers in which the certificate relating to the petitioner having had rendered qualified service in M/S.Jambai KNM Textiles Pvt. Ltd., as Electrical Supervisor during the period from 22.03.1975 to 31.05.2008 is found and the said certificate clearly reveals that the petitioner was possessed of more than 3 years of experience in a large concern and he has fully satisfied the qualification and experience criteria. However, without considering the above, the respondents have cancelled the petitioner's appointment, which is wholly unsustainable. Further, without issuing any show cause notice and calling for explanation, cancelling the appointment of the petitioner is wholly unjustified and is in clear violation of the accepted legal precedents. In support of his contention learned senior counsel, though relied upon several judgments, however, direct on the point are the following decisions :-

- 1) Tridip Kumar Dingal v. State of W.B., (2009) 1 SCC 768
- 2) Girjesh Shrivastava v. State of M.P. (2010) 10 SCC 707

4. Learned Standing counsel appearing for the respondents, while reiterating the averments made in the counter affidavit filed on behalf of the second respondent, further contented that the petitioner is one among the candidates, who had applied for the said post and he has produced the practical experience certificate obtained from M/S.Jambai KNM Textiles Pvt. Ltd., to the effect that he was worked as Electrical Supervisor. The Commission has decided to address the Head of Department (i.e., Chief Electrical Inspector) to clarify as to whether the practical experience possessed by the candidate can be considered for the said post, hence the commission sent a letter dated 16.08.2008 to the Chief Electrical Inspector. However, the letter received by the Government, dated 26.9.2008 did not contain the name of the petitioner and it is seen that the experience certificate was not assessed by the Tamil Nadu Chief Electrical Inspector. However, it is not disputed that the petitioner had submitted his his experience certificate obtained from M/S.Jambai KNM Textiles Pvt. Ltd., as Electrical Supervisor during the period from 22.03.1975 to 31.05.2008. However, in terms of the notification issued by the respondents, the concern in which the petitioner had obtained his experience did not fall within the large concern as codified by the Government and,

therefore, the Head of the Department has not accepted the practical experience possessed by the petitioner. Though the petitioner's candidature ought to have been rejected, however, inadvertently the name of the petitioner has been included in the list of eligible candidates for consideration due to which he has been selected for the said post. The said error was found later in point of time and, therefore, his appointment was cancelled. The petitioner not having not satisfied the qualifying requirements, the appointment order issued to him is non est in law and, therefore, cancelling the same without affording an opportunity to the petitioner by issuing show cause notice cannot be found fault with.

5. Learned Special Government Pleader appearing for the first respondent, did not dispute the fact that the petitioner has obtained the experience certificate from M/S. Jambai KNM Textiles Pvt. Ltd.

6. This Court heard the submissions of the learned counsel appearing on either side, and perused the decision on which reliance has been placed by the learned senior counsel appearing for the petitioner.

7. Before advertng to the factual matrix, it is but useful to refer to the decisions on which reliance has been placed by the learned senior counsel for the petitioner.

8. In *Tridip Kumar Dingal v. State of W.B.*, (2009) 1 SCC 768 the Hon'ble Supreme Court has held as under :-

"41. Regarding protection granted to 66 candidates, from the record it is clear that their names were sponsored by the employment exchange and they were selected and appointed in 1998-1999. The candidates who were unable to get themselves selected and who raised a grievance and made a complaint before the Tribunal by filing applications ought to have joined them (selected candidates) as respondents in the original application, which was not done. In any case, some of them ought to have been arrayed as respondents in a "representative capacity". That was also not done. The Tribunal was, therefore, wholly right in holding that in absence of selected and appointed candidates and without affording opportunity of hearing to them, their selection could not be set aside.

.....

51. In *Buddhi Nath Chaudhary v. Abahi Kumar* [(2001) 3 SCC 328 : 2001 SCC (L&S) 589]

appointments were held to be improper. But this Court did not disturb the appointments on the ground that the incumbents had worked for several years and had gained good experience. "We have extended equitable considerations to such selected candidates who have worked on the post for a long period", said the Court (at SCC p. 331, para 6).

52. In *M.S. Mudhol (Dr.) v. S.D. Halegkar* [(1993) 3 SCC 591 : 1993 SCC (L&S) 986 : (1993) 25 ATC 91] the petitioner sought a writ of quo warranto and prayed for removal of a Principal of a school on the ground that he did not possess the requisite qualification and was wrongly selected by the Selection Committee. Keeping in view the fact, however, that the incumbent was occupying the office of Principal since more than ten years, this Court refused to disturb him at that stage.

53. In our considered opinion, the law laid down by this Court in aforesaid and other cases applies to the present situation also. We are of the considered view that it would be inequitable if we set aside appointments of candidates selected, appointed and are working since 1998-1999. We, therefore, hold that the Tribunal and the High Court were right in not setting aside their appointments."

(Emphasis Supplied)

9. Similar view has been reiterated by the Hon'ble Supreme Court in the case of *Girjesh Shrivastava v. State of M.P.*, (2010) 10 SCC 707, wherein it has been held as under :-

"20. The next point urged by the appellants, that they had never been impleaded in the two petitions, even as orders passed by the High Court had a direct effect on their livelihood, also goes to the root of the matter as it violates the principle of audi alteram partem.

21. This Court in *Prabodh Verma v. State of U.P.* [(1984) 4 SCC 251 : 1984 SCC (L&S) 704] held: (SCC p. 273, para 28)

"28. ... A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents...."

22. Similarly, this Court in Ramrao v. All India Backward Class Bank Employees Welfare Assn. [(2004) 2 SCC 76 : 2004 SCC (L&S) 337] :

"27. ... An order issued against a person without impleading him as a party and, thus, without giving him an opportunity of hearing must be held to be bad in law. The appellants herein, keeping in view the fact that by reason of the impugned direction, the orders of promotion effected in their favour had been directed to be withdrawn, indisputably, were necessary parties. In their absence, therefore, the writ petition could not have been effectively adjudicated upon."

23. Also in B. Ramanjini v. State of A.P. [(2002) 5 SCC 533 : 2002 SCC (L&S) 780] , where selection of certain teachers was challenged without impleading them, this Court held:

"19. Selection process had commenced long back as early as in 1998 and it had been completed. The persons selected were appointed pursuant to the selections made and had been performing their duties. However, the selected candidates had not been impleaded as parties to the proceedings either in their individual capacity or in any representative capacity. In that view of the matter, the High Court ought not to have examined any of the questions raised before it in the proceedings initiated before it. The writ petitions filed by the respondents concerned ought to have been dismissed which are more or less in the nature of a public interest litigation."

* * * * *

29. Coming to the issue of selection and appointment of ex-servicemen as a reserved category, from what has been placed before us, we understand that while in Mehagaon 5 ex-servicemen had been appointed out of a total of 9 applicants, in Raun none had been so appointed. As stated above, if at all there was an issue with respect to the reservation policy of the ex-servicemen it ought to have been brought up as a service dispute and not in a PIL. The High Court, with due respect, should have displayed a little more restraint and balance before quashing a selection process in

which the persons selected had already put in 3 years of service.

* * * * *

31. More importantly, in deciding these issues, the High Court should have been mindful of the fact that an order for cancellation of appointment would render most of the appellants unemployed. Most of them were earlier teaching in non-formal education centres, from where they had resigned to apply in response to the advertisement. They had left their previous employment in view of the fact that for their three-year long teaching experiences, the interview process in the present selection was awarding them grace marks of 25%. It had also given them a relaxation of 8 years with respect to their age. Now, if they lose their jobs as a result of the High Court's order, they would be effectively unemployed as they cannot even revert to their earlier jobs in the non-formal education centres, which have been abolished since then. This would severely affect the economic security of many families. Most of them are between the age group of 35-45 years, and the prospects for them of finding another job are rather dim. Some of them were in fact awaiting their salary raise at the time of quashing of their appointment by the High Court."

(Emphasis Supplied)

10. Admittedly the petitioner participated in the selection process and was issued with an order of appointment and had joined the post and posted at Coimbatore. The said facts are not in dispute. It is also not in dispute that the petitioner was subject to document verification relating to his certificates whereupon only, his candidature was selected. It is also not disputed that the petitioner was not a party in the writ which was instituted by one R.Pazhani Murugan, who was also one among the candidates who had applied for the post in which the petitioner had also competed, but was not successful. However, it is the stand of the respondents that the candidature of Pazhani Murugan was rejected on the ground he was not in possession of the requisite experience certificate as per the prescription given in the notification.

11. Be that as it may. It is to be pointed out that the petitioner had been selected through a valid selection process and had been appointed and had joined the post and posted at Coimbatore. However, without impleading the petitioner as a party respondent in the earlier round of litigation filed by one

of the unsuccessful candidates and cancelling the appointment of the petitioner is unknown to service jurisprudence. Even if the petitioner's appointment is bad, the petitioner ought to have been impleaded and heard before any order could be passed, which is against the petitioner. However, without hearing the petitioner, accepting the stand of the Commission in the earlier round of litigation, an order has been passed, which has also resulted in the cancellation of the appointment of the petitioner. The said procedure is legally unsustainable.

12. Further, it is to be pointed out that the petitioner having been appointed and posted, it is incumbent on the part of the respondents to issue a show cause notice and, thereafter, proceed with the matter in accordance with law. However, without issuing any show cause notice and affording an opportunity of hearing, the appointment of the petitioner has been arbitrarily cancelled, which is per se impermissible and wholly unsustainable. There is flagrant violation of principles of natural justice in not only denying opportunity to the petitioner to put forth his grievance before cancelling his appointment, but also highlighting his appointment as a wrongful appointment, without hearing him in the earlier round of litigation, thereby, the whole process initiated by the respondents herein in cancelling the appointment of the petitioner cannot be accepted. Further, the decision of the Hon'ble Apex Court in the decisions cited supra add strength to the case of the petitioner on both counts. Therefore, in such a backdrop, this Court has no other alternative but to set aside the impugned order of cancellation.

13. For the reasons aforesaid, this writ petition stands allowed. The respondents are directed to reinstate the petitioner within a period of 12 weeks from the date of receipt of copy of this order in the said post and this court makes it clear that the petitioner is entitled to continue in the said post with continuity of service from the date of his appointment. However, it is made clear that the petitioner would not be entitled for any monetary benefits during the interregnum period, when he was out of service, but would be entitled for notional fixation of pay from the date of his initial appointment. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Jrs
To

1. The Secretary to Government,
Energy Department,
Government of Tamilnadu,
Fort St. George,
Chennai - 600 009.

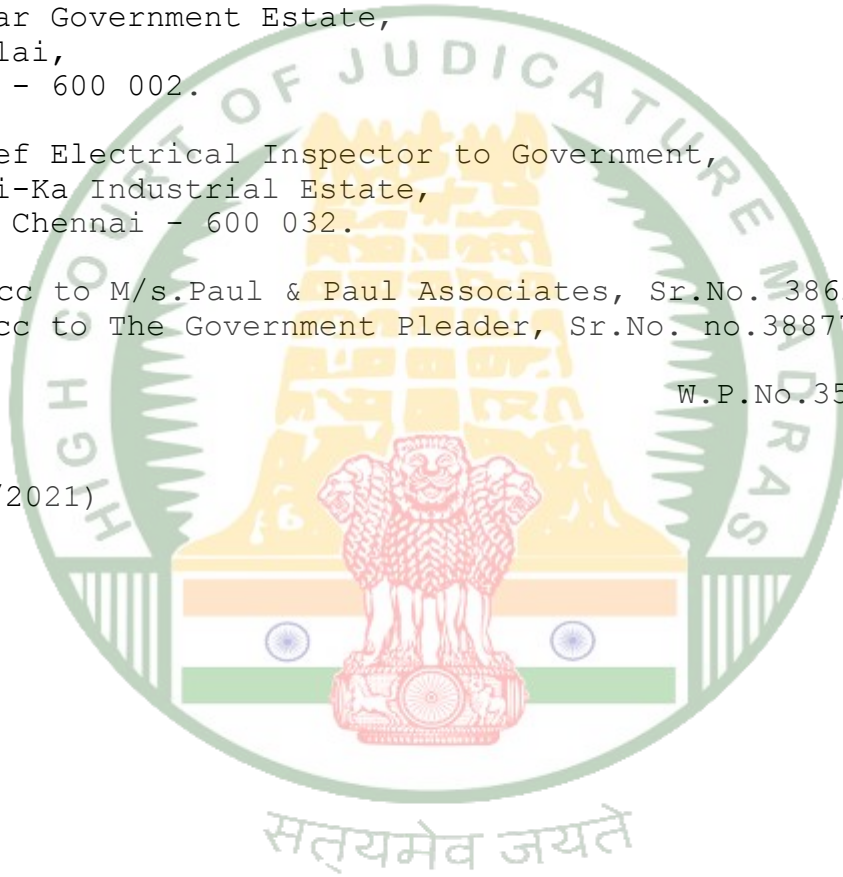
2. The Secretary,
Tamil Nadu Public Service Commission,
Omandurar Government Estate,
Anna Salai,
Chennai - 600 002.

3. The Chief Electrical Inspector to Government,
Thiru-Vi-Ka Industrial Estate,
Guindy, Chennai - 600 032.

+1 cc to M/s.Paul & Paul Associates, Sr.No. 38624
+1 cc to The Government Pleader, Sr.No. no.38877

W.P.No.35227 of 2013

AJS (CO)
RMP (18/02/2021)



WEB COPY