

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.A.No.3883 of 2019

- 1.The Personal Assistant (General)
to the District Collector,
District Collector Office,
Singaravelar Maaligai, No.32,
Rajaji Salai, Chennai-1.
- 2.The District Revenue Officer,
Chennai District, Chennai. ... Appellants
- vs-
- R.Manikandan ... Respondent

Appeal filed under Clause 15 of the Letters Patent against the order dated 02.08.2018 passed in W.P.No.15151 of 2018 on the file of this Court.

Prayer in WP.No.15151 of 2018:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to calling for the records of the first respondent in connection with the impugned order passed by him in Proc.No.A4/9934/2014 dated 07.07.2017 and confirmed by the 2nd respondent in Proc.No.A4/9934/2014 dated 12.04.2018 and quash the same and direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefits and grant such further or other orders as this Honourable Court may deem fit.

For Appellants : Mr.R.Udhayakumar
Addl.G.P.

For Respondent : Mr.M.Muthappan

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

Heard learned counsel for the appellants and learned counsel for the respondent, who has put in appearance.

2.The learned Single Judge allowed the writ petition setting aside the termination of the services of the respondent-petitioner on the ground that the action of the appellants was disproportionate and therefore, the same requires a re-assessment on the quantum of punishment. The State presented this appeal and we had passed the following order on 15.11.2019,

"The contention raised by the learned counsel for the State is that the respondent/writ petitioner was not the beneficiary of a certificate, which he states to have been obtained by his father. Nonetheless, the benefit of employment has been gained by the respondent/writ petitioner and consequently, the shield put forth of the document being obtained by his father cannot be a valid defence in as much as the appointment obtained fraudulently cannot be sustained in the eyes of law keeping in view the age old principle "fraud and justice never dwell together".

2. It has been stated by the learned counsel for the State that contempt proceedings (Contempt Petition No.1253 of 2019) have been initiated. We request the learned Judge, hearing the contempt matter to await the disposal of this appeal. A copy of this order may be placed on record in Contempt Petition No.1253 of 2019 in order to enable the respondent/petitioner to be put on notice about this proceedings.

Issue notice to the respondent/writ petitioner returnable on 02.12.2019. Private notice is also permitted. Put up on 02.12.2019."

3.The dispute lies in a very short compass. It is admitted as per the finding recorded by the learned Single Judge himself that the respondent-petitioner had obtained appointment on the basis of a fake document, which is alleged to have been presented by the father for seeking appointment of the respondent-petitioner. This fact stood admitted during enquiry and therefore, while imposing punishment, dismissal was found to be appropriate as the respondent-petitioner had entered the employment by fraudulent means.

4.The learned Single Judge has, however, considered the fact that the respondent-petitioner was otherwise in possession of a genuine Class-VIII certificate, which was the minimum requirement for eligibility to be appointed as an Office Assistant. Thus, it is also the contention of the respondent-petitioner that since the petitioner had a genuine certificate of Class-VIII pass for the post in question, he fulfilled the eligibility condition and it was by oversight that the certificate was tendered by his father, which deserves to be ignored and even if such a mistake had been committed, a lesser punishment should be awarded.

5. Having considered the rival submissions, we find that the learned Single Judge was not justified in proceeding to set aside the order without recording any finding as to whether the punishment was shockingly disproportionate or not. On the facts of the present case, as recorded in our interim order dated 15.11.2019, fraud and justice cannot dwell together. The fact that the respondent-petitioner had obtained employment and was immediately dismissed within a very short period of time on the basis of a fraudulent document does not justify an interference by the learned Single Judge, inasmuch as the discretion to be exercised under Article 226 of the Constitution of India has to be a judicious discretion and not based on sympathy. The respondent-petitioner may have lost his job, but he was responsible for the same. We, therefore, find no valid justification for the remittance of the matter by the learned Single Judge, after setting aside the order of dismissal.

The Writ Appeal is, accordingly, allowed and the impugned judgment is set aside. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

sra

To

1. The Personal Assistant (General)
to the District Collector,
District Collector Office,
Singaravelar Maaligai, No.32,
Rajaji Salai, Chennai-1.

2. The District Revenue Officer,
Chennai District, Chennai.

+1cc to the Government Pleader, S.R.No. 3880

PM(CO)
GN(05/02/2020)

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