

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 01.10.2020
CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU
W.P. No. 26435 of 2014
and
M.P. No. 1 of 2014

G.Raghu

... Petitioner

-vs-

1. The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Villupuram.
2. The General Manager,
Tamil Nadu State Transport Corporation Limited,
Cuddalore Zone Limited.
3. The Branch Manager,
Tamil Nadu State Transport Corporation Limited,
Viruthachalam Branch - II,
Viruthachalam.
4. The Superintendent,
Tamil Nadu State Transport Corporation,
Cuddalore Division,
Chidambaram Road,
Cuddalore.
5. The Commissioner,
Directorate of School Education,
DPI Complex,
College Road,
Chennai - 600 096.
6. The District Elementary Education Officer,
Cuddalore,
Cuddalore District.

... Respondents

(R5 & R6 suo motu impleaded by order dated 25.09.2020)

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records pertaining to the order dated 08.09.2014 made in K.K. No. 1532/D3/TNSTC/K.M/2014 on the file of the General Manager, Tamil Nadu State Transport Corporation, Cuddalore Division, Cuddalore, the Second Respondent herein and quash the same.

For Petitioner : Mr. A.V.Arun

For Respondents: Mr. C.S.K.Sathish,
Standing Counsel (for R1 to R4)

Mr. D.Sathyaraj,
Special Government Pleader
(for R5 & R6)

O R D E R
(through video conference)

Heard Mr. A.V.Arun, Learned Counsel for the Petitioner, Mr. C.S.K.Sathish, Learned Standing Counsel appearing for the First to Fourth Respondents and Mr. D.Sathyaraj, Learned Special Government Pleader appearing for the Fifth and Sixth Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The chronological sequence of events leading to the filing of this Writ Petition are as follows:-

- (i) The Petitioner, who was sponsored through the District Employment Exchange, was appointed as driver by the Second Respondent in its establishment on 03.11.1994 on daily wages and subsequently was absorbed into monthly cadre from 01.09.1995.
- (ii) The Service Rules of the establishment of the Second Respondent that were in force with effect from 22.05.1987, which was applicable at the time of recruitment of the Petitioner, provided that a person appointed in the post of driver must have passed Form III or Standard VIII from a School recognized by the Government of Tamil Nadu.
- (iii) Since a complaint was received against the Petitioner by the Second Respondent that the Standard VIII Certificate that had been produced by the Petitioner for the purpose of obtaining employment was bogus by playing fraud, the Second Respondent sent the same to be verified by the jurisdictional educational authorities by Letter No. 56/7040/ Ni2/TNSTC/2002 dated 02.01.2012.
- (iv) The District Elementary Education Officer, Cuddalore, viz., Mr. T.Gunasekaran, by Letter in Na. Ka. No. 132/A8/2012 dated 17.03.2014 sent to the Second Respondent informed that the Assistant Elementary Education Officer, Kammapuram has sent a report dated 29.01.2014 stating that the Headmaster of the concerned School has sent a report after inspection of records that the available records do not correlate with the particulars furnished by the Petitioner and that the

- Admission No. 764 dated 09.06.1965 claimed by the Petitioner cannot be correct as the Admission No. 763 for the student had been made on 10.06.1965, and as such, the claim of the Petitioner of having studied upto Standard VIII is not true.
- (v) In furtherance thereto, the Second Respondent had issued Charge Memo in K.K. No. 1532/D3/TNSTC/K.M./2014 dated 21.05.2014 to the Petitioner to show cause as to why disciplinary proceedings should not be initiated for production of bogus certificate regarding his educational qualification of having studied upto Standard VIII and deceived the Second Respondent for the purpose of seeking employment.
 - (vi) The Petitioner by letter dated 06.06.2014 sent an explanation to the same denying the charges, but the Second Respondent was not convinced of the explanation and conducted domestic enquiry in which the said Mr. T.Gunasekaran, District Elementary Education Officer, who had issued the Letter in Na. Ka. No. 132/A8/2012 dated 17.03.2014 stating that the Standard VIII Certificate was bogus, was cited as witness but he had not been examined during the enquiry.
 - (vii) As the charges were held to be proved in the enquiry report dated 07.07.2014 submitted by the Enquiry Officer, show cause notices dated 08.07.2014 and 14.07.2014 were issued to the Petitioner and after considering his explanations dated 11.07.2014 and 23.07.2014, the Petitioner was removed from service by Order in K.K. No. 1532/D3/TNSTC/K.M./2014 dated 08.09.2014 passed by the Second Respondent.
 - (viii) The Petitioner has challenged the Order in K.K. No. 1532/D3/TNSTC/ K.M./2014 dated 08.09.2014 passed by the Second Respondent removing him from service in this Writ Petition.
 - (ix) Since conciliation proceedings relating to an industrial dispute between the Second Respondent and the Trade Union in which the Petitioner was a member was then pending before the Special Deputy Commissioner of Labour, Chennai, the Second Respondent had made an application under Section 33 (2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act' for short), for approval of termination, but it was rejected by order dated 09.04.2018 in A.P. No. 242 of 2014, which has been challenged by the Second Respondent in W.P. No. 4710 of 2019 before this Court and by separate order dated 01.10.2020, the same has been disposed.

3. Learned Counsel for the Petitioner vehemently contends that the failure to examine the said Mr. T.Gunasekaran, District

Elementary Education Officer, who had informed the Second Respondent that the Petitioner does not possess the educational qualification, in the domestic enquiry vitiates the entire proceedings inasmuch as the Petitioner has been deprived of the opportunity to cross-examine him so as to prove his contention to the contrary.

4. It is, no doubt, true that the Second Respondent has not given any acceptable explanation for non-examination of the said Mr. T.Gunasekaran, who had been cited as witness in the domestic enquiry. However, it cannot be lost sight of the fact that the real controversy involved does not relate to any act or omission done by the Petitioner after his appointment in service so as to constitute 'misconduct' requiring initiation of disciplinary proceedings to enquire into the same. On the other hand, it must be emphasized that the requirement to have passed Standard VIII is an eligibility prescribed to hold the post of driver in the establishment of the Second Respondent and if the Petitioner did not possess that qualification, his appointment was void ab initio and becomes liable to be cancelled. In this context, reference must be made 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. The question as to whether the Service Rules relating to conduct of disciplinary proceedings would be applicable in such a situation, came up for consideration before the Hon'ble Supreme Court of India in Union of India -vs- M.Bhaskaran [(1995) Supp 4 SCC 100], where 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...."

Viewed from that perspective, when there is no necessity to conduct any domestic enquiry in disciplinary proceedings, the failure to examine the said Mr. T.Gunasekaran, who had opined that the Petitioner does not possess the prescribed educational qualification, in the domestic enquiry is inconsequential.

5. At the same time, before acting upon such opinion of the said Mr. T.Gunasekaran, the Petitioner ought to have been afforded an opportunity of personal hearing before the competent authority of the Education Department to explain his position and submit materials in support of his contention of possessing the required educational qualification so that the decision taken thereafter becomes binding on him satisfying the requirement of principles of natural justice. Since that exercise has not taken place in the present case, the impugned Order in K.K. No. 1532/D3/TNSTC/K.M./2014 dated 08.09.2014 passed by the Second Respondent has to be set aside and the matter re-sent to the concerned authority of the Education Department to carry out the verification regarding the claim of the Petitioner that he had studied upto Standard VIII, by following the aforesaid procedural requirement.

6. Be that as it may, it has been brought to notice that during the pendency of this Writ Petition, the Petitioner has attained the age of superannuation on 07.03.2018. This would imply that it would not be possible to reinstate the Petitioner in service at this stage and he would have to await the completion of the enquiry by the concerned authority of the Education Department. If a report is received in favour of the Petitioner that he possesses the required educational qualification, he would be entitled to be treated as having continued in service with all attendant and consequential monetary benefits till attaining the age of superannuation and for terminal benefits including pension and gratuity. In the event of the concerned authority of the Education Department holding that the claim of the Petitioner that he had studied upto Standard VIII is found to be false, his initial appointment itself becomes void and liable to be cancelled from inception without any right to claim any monetary benefits for the illegal appointment. The law in this regard has been lucidly explicated by the Hon'ble Supreme Court of India in R.Vishwanatha Pillai -vs- State of Kerala [(2004) 2 SCC 105], as follows:-

"16. In Ishwar Dayal Sah -vs- State of Bihar [1987 Lab IC 390 : 1987 BBCJ 48 (Pat)] the Division Bench of the Patna High Court examined the point as to whether a person who obtained the appointment on the basis of a false caste certificate was entitled to the protection

of Article 311 of the Constitution. In the said case the employee had obtained appointment by producing a caste certificate that he belonged to a Scheduled Caste community which later on was found to be false. His appointment was cancelled. It was contended by the employee that the cancellation of his appointment amounted to removal from service within the meaning of Article 311 of the Constitution and was therefore void. It was contended that he could not be terminated from service without holding departmental inquiry as provided under the Rules. Dealing with the above contention, the High Court held that if the very appointment to the civil post is vitiated by fraud, forgery or crime or illegality, it would necessarily follow that no constitutional rights under Article 311 of the Constitution can possibly flow. It was held: (Lab IC pp. 394-95, para 12)

If the very appointment to civil post is vitiated by fraud, forgery or crime or illegality, it would necessarily follow that no constitutional rights under Article 311 can possibly flow from such a tainted force. In such a situation, the question is whether the person concerned is at all a civil servant of the Union or the State and if he is not validly so, then the issue remains outside the purview of Article 311. If the very entry or the crossing of the threshold into the arena of the civil service of the State or the Union is put in issue and the door is barred against him, the cloak of protection under Article 311 is not attracted.

17. The point was again examined by a Full Bench of the Patna High Court in Rita Mishra -vs- Director, Primary Education, Bihar (AIR 1988 Pat 26). The question posed before the Full Bench was whether a public servant was entitled to payment of salary to him for the work done despite the fact that his letter of appointment was forged, fraudulent or illegal. The Full Bench held: (AIR p. 32, para 13)

"13. It is manifest from the above that the rights to salary, pension and other service benefits are entirely statutory in nature in public service. Therefore, these rights, including the right to salary, spring from a valid and legal appointment to the post. Once it is found that the very appointment is illegal and is non est in the

eye of the law, no statutory entitlement for salary or consequential rights of pension and other monetary benefits can arise. In particular, if the very appointment is rested on forgery, no statutory right can flow from it."

18. We agree with the view taken by the Patna High Court in the aforesaid cases."

7. The result of the foregoing discussion is that the following order is passed:-

- (i) The impugned Order in K.K. No. 1532/D3/ TNSTC/K.M./2014 dated 08.09.2014 passed by the Second Respondent is set aside.
- (ii) The Fifth Respondent shall conduct enquiry regarding the claim of the Petitioner that he had studied upto Standard VIII in the Panchayat Union Middle School, A.Kokkankuppam, and shall also furnish the Petitioner with copies of all the materials collected in that enquiry, and require him to submit his explanation with other materials that he may rely and after affording full opportunity of personal hearing and dealing with each of the materials placed in those proceedings, a reasoned decision shall be taken as to whether the Petitioner possesses the educational qualification of having studied upto Standard VIII as claimed by him, and the report in that regard shall be sent to the Second Respondent, by 31.01.2021.
- (iii) Though obvious, it is made clear that no view has been expressed by this Court on the factual correctness of the claim of the Petitioner regarding his educational qualification and the Fifth Respondent shall not be inhibited or influenced by the earlier report dated 17.03.2014 and connected proceedings that had been then sent to the Second Respondent in that regard, while deciding the matter afresh on merits and in accordance with law.
- (iv) If such decision taken by the Fifth Respondent is in favour of the Petitioner, he would be entitled to be treated as having continued in service with all attendant and consequential monetary benefits till attaining the age of superannuation and also entitled to receive terminal benefits including pension and gratuity.
- (v) In the event of the Fifth Respondent holding that the claim of the Petitioner that he had studied upto Standard VIII is found to be false, his initial appointment itself becomes void and liable to be cancelled from inception without any right to claim any monetary benefits.

- (vi) Depending upon the outcome of the enquiry required to be conducted by the Fifth Respondent as mentioned earlier, the Second Respondent shall pass appropriate orders in the specified manner within a period of 15 days from the receipt of the report from the Fifth Respondent.

In the upshot, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

vjt

To

1. The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Villupuram.
2. The General Manager,
Tamil Nadu State Transport Corporation (Villupuram) Limited,
Cuddalore Region,
Cuddalore - 607 002.
3. The Branch Manager,
Tamil Nadu State Transport Corporation Limited,
Viruthachalam Branch - II, Viruthachalam.
4. The Superintendent,
Tamil Nadu State Transport Corporation,
Cuddalore Division,
Chidambaram Road, Cuddalore.
5. The Commissioner,
Directorate of School Education,
DPI Complex,
College Road,
Chennai - 600 096.

6. The District Elementary Education Officer,
Cuddalore,
Cuddalore District.

Copy to

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S/o. C.Govindhan,
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Ramachandran Pettai,
Virudhachalam.

+1 cc to Mr.A.V.Arun Advocate sr32528

W.P. No. 26435 of 2014

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