



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **29.07.2020**

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)No.6631 of 2020

and

W.M.P (MD)No.5982 of 2020

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...Petitioner

-Vs-

The Commissioner,
Trichirappalli Corporation,
Trichirappalli.

...Respondent

Prayer: Writ Petition - filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the respondent in his proceedings in Na.Ka.No.492/2004/C7(CENTER) dated 25.04.2020 and quash the same and direct the respondents to reinstate the petitioner in service with all the consequential benefits.

For Petitioner : Mr.V.Panneer Selvam
For Respondent : Mr.N.S.Karthikeyan

ORDER

The prayer sought for in this writ petition is for a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the respondent in his proceedings in Na.Ka.No.492/2004/C7(CENTER), dated 25.04.2020 and quash the same and direct the respondents to reinstate the petitioner in service with all the consequential benefits.

2. The very short facts which are required to be noted for the purpose of disposal of this writ petition are as follows:-

The petitioner's mother one Tmt.Subbammal was working as a Sweeper at the respondent Municipality and she died in harness on 15.04.1993. Thereafter, the petitioner on 21.08.1995 had made an application to the respondent Corporation to seek an appointment for him on compassionate ground. Considering the said application, the petitioner was appointed on 10.07.1998 on compassionate ground at the respondent corporation.

3. In this context, it is further to be noted that, sometime in the year 2001, the respondent Corporation found that the petitioner and 9 other persons similarly placed, who were appointed on compassionate ground, had joined service on compassionate ground by suppressing some factors by producing the certificates obtained from



the Tahsildar concerned as if that their families are in indigent circumstances, but factually it is not so. On these grounds, the respondent took action and removed those 10 persons including the petitioner from service in the year 2003.

4. Thereafter, all the 10 persons including the petitioner approached this Court challenging the said removal order and this Court after having considered the removal made against the petitioner and others found that, those removal orders were passed by the respondent Corporation without following the procedure established under law and without any disciplinary proceedings being initiated and enquired. Since the removal are made abruptly against the 10 persons including the petitioner without any enquiry, all those removal orders were set aside and they were permitted to be reinstated in the respondent corporation and further, liberty was given to the respondent to proceed against the petitioner and others in accordance with law. Consequently, the petitioner and others were reinstated and accordingly, they joined in service and have been continuously working.

5. Thereafter, it seems that, the respondent while taking the disciplinary proceedings against the petitioner and 9 others, except the petitioner, others seems to have approached this Court once again against the disciplinary proceedings and those cases, according to the respondent, were pending for several years before this Court and after those cases were disposed of, the disciplinary proceedings were completed in the year 2019 and accordingly, now actions have been taken against all those persons including the petitioner to remove them from service. Accordingly, the present impugned order, dated 25.04.2020, has been passed by the respondent Corporation removing the petitioner from service. Challenging the said order, the present writ petition has been filed.

6. The learned counsel appearing for the petitioner would submit that, the only reason cited in the impugned order for removal of the petitioner's service is that, at the time of making an application on 21.08.1995, the petitioner did not disclose that his father was also working as Sweeper at the respondent corporation and retired from service on 30.06.1995 and since that factor has not been disclosed, that was shown as the main reason based on which, the disciplinary proceedings were initiated and ultimately it ended in an order of removal which is impugned herein.

7. In this context, the learned counsel appearing for the petitioner would also submit that, the petitioner had been continuously working except one intervention in the year 2003. For nearly about 23 years when he was working as sweeper at the respondent corporation, throughout his carrier, there is no other blemish against the petitioner, therefore, after having permitted the petitioner for such a long service, who is the menial servant of the Corporation, if his service is abruptly terminated now, the whole



family of the petitioner will be left in lurch. Therefore, considering these aspects, the order impugned removing the petitioner from service can be interfered with.

8. Per contra, the learned Standing counsel appearing for the respondent has filed a counter affidavit and also filed typed set of papers, where earlier orders passed by this Court to that effect have been filed.

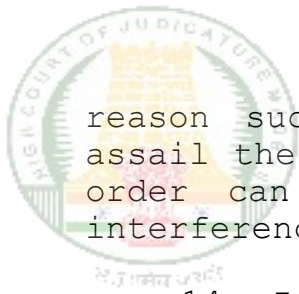
9. By relying upon those documents, the learned Standing Counsel appearing for the respondent would submit that, at the time of making an application, admittedly the petitioner's father was working in the respondent corporation, after completing his service, he retired from service on 30.06.1995. Therefore, that factor should have been brought to the notice of the respondent corporation while making application by the petitioner.

10. Secondly, according to the respondent corporation, the certificate obtained by the petitioner from the Tahsildar concerned would show that, the petitioner's family was in indigent circumstances. Since the documents influenced the respondent corporation to come to a conclusion that the petitioner's family had been in penurious circumstances and also the fact that he is the only earning member of the family i.e., his mother died during the service, he should have been considered for compassionate appointment and accordingly, the petitioner was able to get the compassionate appointment at the respondent corporation. Since both reasons, according to the learned counsel for the respondent, are true and for these reasons, removal has already been made in the year 2003, however, that order was quashed by this Court and accordingly, he was reinstated into service.

11. The learned counsel for the respondent further submitted that, subsequent to the disciplinary proceedings initiated against 10 persons including the petitioner, except the petitioner, all other persons came to this Court and they stalled the disciplinary proceedings, that is the reason why, an inordinate delay had taken place in concluding the disciplinary proceedings.

12. Only in view of the aforesaid facts, there has been a long delay in completing the disciplinary proceedings. Therefore, merely because of the delay occurred in concluding the disciplinary proceedings, it cannot be construed that the delay had occurred only because of the reason attributable to the respondent municipality. But the fact remains that the delay is because of the reasons attributable to similarly placed employees, who have already approached this Court and their writ petitions were pending for several years.

13. Therefore, the learned Standing Counsel appearing for the respondent submit that, except such a delay aspect, no other



reason successfully can be projected by the petitioner side to assail the impugned order of removal. Therefore, the said impugned order can very well be sustained as it does not require any interference from this Court.

14. I have considered the submissions made by both sides and also I have perused the materials placed before this Court.

15. The main allegation made against the petitioner is that, at the time of making an application on 21.08.1995 the fact that his father was already retired from service from the respondent corporation on 30.06.1995 was not disclosed. The other allegations is that, the certificate issued by the Tahsildar concerned to the petitioner to show that the family of the petitioner was in indigent circumstances, was not obtained properly and therefore, the genuinity of the said certificate itself is questioned.

16. Be that as it may, the prime reason that he has not disclosed that his father was working and retired from service from the respondent corporation, may be a mistake on the part of the petitioner, but as far as the petitioner to get compassionate appointment, the death of his mother, who was working and died at the respondent corporation, can alone be a source, through which, the petitioner sought for compassionate appointment.

17. More over, the compassionate appointment are being made to the legal heirs of the deceased employee on the prime reason that, due to the sudden demise of the bread winner of the family, the family is put under penurious circumstances, therefore, in order to bailout the family, such kind of compassionate appointments are being made. It is also to be noted that, this compassionate appointment is an exception to the regular method of recruitment and appointment in many Government departments.

18. Therefore, the *prima-facie* concern must be that, as to whether the family of the job seeker through compassionate appointment was in indigent circumstances at the time of making an application and consideration of the said application. In the case on hand, though the father of the petitioner was working and retired on 30.06.1995, at the time of making application on 21.08.1995, no one was working in his family anywhere. The mother, who was the major supporter in the family died and though father was there and then he also retired, he cannot be expected to have much earning except the meagre pension.

19. Therefore, the situation faced by the family of the petitioner at that time definitely would have been only under indigent circumstances or penurious situation, which might have been considered by the Tahsildar concerned and issued certificate on the prayer of the petitioner to get the job on compassionate



20. Moreover, while considering the application of the petitioner definitely the respondent corporation could have thoroughly investigated the circumstances of the family of the petitioner and accordingly compassionate appointment had been given.

21. Moreover, the learned counsel for the petitioner has relied upon a decision of a Division Bench of this Court reported in **(2011) 3 MLJ 673 in the matter of Joint Director of School Education and others vs. C.Lesley Jayaseelan**, where the learned counsel relied upon paragraph 13, which reads thus:-

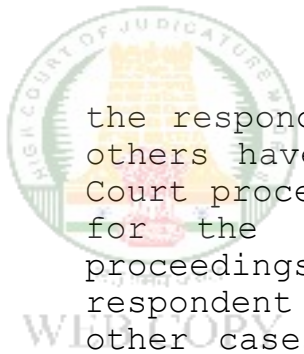
" 13. Therefore, we are of the opinion that the termination of service after a lapse of 22 years, would certainly affect the livelihood of his entire family at this length of time. Moreover, as observed by the learned single Judge, the appointment given to the respondent is not against any statutory regulations and moreover, the removal is not based on any misconduct. Therefore, we are of the considered view that the respondent, having been allowed to continue for over 22 years in Government service, will not be removed from service on the ground that he got employment on furnishing false information. Therefore, we do not find any infirmity in the order passed by the learned single Judge and under such circumstances, the writ appeal is liable to be dismissed.

Accordingly, the writ appeal fails and is dismissed. No costs. Consequently, connected Map's closed."

22. In that case also, the Division Bench has shown its indulgence that, removal of the employee in that case was not based on any misconduct, since the employee having been allowed to continue for over 22 years in Government service, shall not be removed from service on the ground that he got an employment on furnishing false information. Here also in this case, the petitioner was permitted to continue in service for 23 years and at the fag-end, now disciplinary action has been taken and has been removed from service mainly on the ground that at the time of making an application, he had suppressed that his father had already worked and retired from service.

23. I feel that the said logic and the principle enunciated by the Division Bench of this Court in the above cited judgment can very well be applied to the facts and circumstances of this case. More over, the belated decision taken now by the respondent corporation against the petitioner cannot be accepted as merely because, some other similarly placed persons have approached this Court and stalled the proceedings, such a delayed action cannot be justified by the respondents. .

24. In this context, the learned Standing Counsel appearing for



the respondent has fairly submitted that, except this petitioner, 9 others have approached this Court. Insofar as the petitioner, no Court proceedings was pending and therefore, there was no impediment for the respondent corporation to complete the disciplinary proceedings as early as possible and for all these years the respondent corporation should not have waited to get the verdict in other cases. If that fair submission of the respondent is taken into account, the long delay in concluding the proceedings on the part of the respondent against the petitioner cannot be attributable because of the reason on the side of the petitioner. Since the petitioner was in no way instrumental for the huge delay on the part of the respondent to complete the proceedings, this Court feels that, at the end of 23 years, if such a major punishment of removal from service is inflicted against the petitioner, as he was working as a sweeper, the whole family will be put again in penurious and indigent circumstances. Therefore, the very purpose of extending the benefit by way of compassionate appointment to the petitioner's family would get defeated.

25. For all these reasons, I am of the considered view that the impugned order cannot be sustained, accordingly, it is liable to be quashed. In the result, the impugned order is quashed and the writ petition is allowed. The petitioner shall be reinstated into service forthwith, with all service benefits. No costs.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

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Sub Assistant Registrar(CS)

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Note:

(i) In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

Order made in

W.P. (MD)No.6631 of 2020

Dated:

29.07.2020

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