



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 26.02.2020

PRONOUNCED ON : 26.11.2020

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THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

W.P(MD)No.20216 of 2014

and

M.P(MD)Nos.1 of 2014 and 1 of 2015

The General Manager,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Karaikudi Region,
Managiri, Karaikudi - 630 307.

.. Petitioner

Vs.

1.N.Paulraj

2.The Joint Commissioner of Labour,
Chennai - 600 006.

.. Respondents

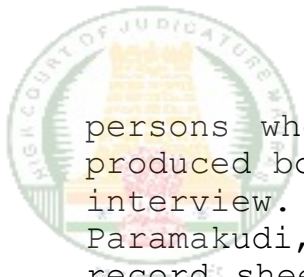
PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records relating to the impugned order passed by the 2nd respondent herein dated 22.08.2013 in A.P.No.196 of 2012 and quash the same.

For Petitioner	: Mr.D.Sivaraman
For Respondent No.1	: Ms.A.Amala
For Respondent No.2	: Mr.S.Dhayalan, Government Advocate.

ORDER

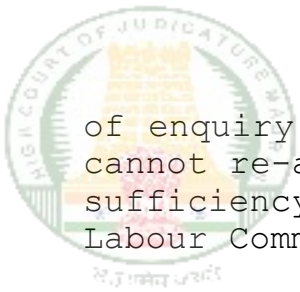
This writ petition has been filed for issuance of a Writ of Certiorari to call for the records relating to the impugned order passed by the 2nd respondent, dated 22.08.2013 in A.P.No.196 of 2012 and quash the same.

2.The case of the petitioner is that the 1st respondent attended the interview for the post of driver and during the interview, he produced a Record Sheet purported to be issued by TELC Middle School, Mudhukulathur. During the year 2005, the petitioner management received information to the effect that some of the



persons who were recruited during the relevant recruitment drive, produced bogus educational qualification certificates at the time of interview. On request, the District Educational Officer, Paramakudi, vide proceedings, dated 02.06.2005, reported that the record sheet produced by the 1st respondent which was claimed to be issued by TELC Middle School, Mudhukulathur, was not a genuine one as no such particulars are available in the school records. In the subsequent letter, dated 09.12.2005, the District Educational Officer, Paramakudi clarified that the name of the 1st respondent was wrongly mentioned as Kalraj instead of Paulraj in his original proceedings dated 02.06.2005 and it was only a typographical error. On the basis of the said reports, the 1st respondent, who was working as a driver in the petitioner corporation, was issued with a charge memo on 20.01.2006 levelling the charges that he obtained recruitment as driver by submitting false information and false educational qualification records at the time of interview and thus cheated the petitioner management. On 17.02.2006, the 1st respondent submitted his explanation. Since the same was not satisfactory, enquiry was conducted and the enquiry officer vide his report, dated 25.04.2006, found that the charges levelled against the 1st respondent, were proved. On 16.05.2006, a notice was issued to the 1st respondent calling his objections and he submitted his reply on 15.06.2006. As the reply was not satisfactory, on 03.10.2006, a second show cause notice was issued and he made a reply, dated 13.11.2006. After considering all the above, the disciplinary authority imposed the punishment of dismissal from service by its order, dated 21.05.2012, and the petitioner submitted an application for approval before the 2nd respondent in A.P.No.196 of 2012 under Section 33(2) of the Industrial Disputes Act, 1947. But, the 2nd respondent without considering the scope of approval petition, has dismissed the same holding that no *prima facie* case was made out by the petitioner management to dismiss the 1st respondent from service, vide order, dated 22.08.2013. Against which, the present writ petition has been filed.

3.The learned counsel appearing for the petitioner submitted that the District Educational Officer, Paramakudi clarified that the 1st respondent produced bogus educational qualification certificates at the time of recruitment. The 2nd respondent has rightly found that the enquiry was conducted in a fair manner. The 1st respondent did not make any request to examine the concerned District Educational Officer during the enquiry. But, the 2nd respondent has erroneously rejected the approval. Thus, he prayed to quash the impugned order passed by the 2nd respondent and would rely on the judgments reported in **AIR 1978 SC 1004, Lalla Ram vs. Management of D.C.M Chemical Works Ltd., and another and the Management, TNSTC, Coimbatore Ltd., vs. M.Chandrasekaran** reported in (2016) 16 SCC 16, stating that the powers available under Section 33(2)(b) of the Industrial Disputes Act is not akin to the powers available to the Labour Court under Section 2A or the appellate authority. The scope



of enquiry under Section 33(2)(b) is very limited and the authority cannot re-appreciate the evidence and cannot go into the question of sufficiency of evidence adduced, but contrary to the same, the Labour Commissioner has refused the approval petition.

4. The learned counsel appearing for the 1st respondent submitted that the request of the 1st respondent to examine the concerned District Educational Officer during domestic enquiry, was rejected. The charge of producing false educational certificate was framed after 14 years of his service as driver and senior driver. The punishment was also imposed with inordinate delay. According to her, the request of the 1st respondent to enquire the District Educational Officer, Paramakudi, in the domestic enquiry was rejected. She would further state that though it is true that the scope of Section 33(2)(b) of the Industrial Disputes Act while rejecting the approval petition is limited as per the judgment of the Division Bench of this Court in the judgment reported in 2017-IV-LLJ-10(Mad), Management vs. Joint Commissioner of Labour (Conciliation), it cannot be disputed that the authority while considering the application under Section 33(2)(b), can certainly refuse approval if according to him, finding of guilt was perverse and only on finding that the guilt is perverse, the learned Judge has refused approval and therefore, the interference of this Court is not necessary. In support of her contentions, she would rely on various judgments.

5. Heard the learned counsel for the petitioner as well as the respondents.

6. Perusal of record shows that the 1st respondent has been appointed as a driver on 17.06.1992 and his services were confirmed with effect from 01.04.1993 and he was promoted as Senior Driver on 01.04.1999. After he had put in 14 years of service, the Management issued a charge memo alleging that he submitted false educational certificates and got recruited and appointed as driver. The Management had conducted a domestic enquiry on 22.03.2006 and 21.04.2006 and the enquiry officer submitted his report on 25.04.2006 holding the charges as proved. The Management issued show cause notice on 16.05.2006 and 03.10.2006 respectively and sought for an explanation of the enquiry report. Though the 1st respondent has submitted detailed reply on 15.06.2006 and 13.11.2006, it is not in dispute that the enquiry report was kept in abeyance for more than 6 years and all of a sudden, on 21.05.2012, dismissal order has been issued. Thereafter, it is seen that the approval petition has been filed by the Management in A.P.No.196 of 2012 which has been pending before the Special Deputy Commissioner under Section 33(2)(b) of the Industrial Disputes Act, 1947 seeking approval of the order of dismissal. Against the order of dismissal, the 1st respondent filed W.P(MD)No.8866 of 2012 and this Court directed the 1st respondent to file appeal before the department and



dismissed the writ petition on 27.12.2012. Since the approval petition filed by the Management in A.P.No.196 of 2012 was dismissed by the Special Deputy Commissioner of Labour, Chennai, on 22.08.2013 based on the principles laid down in **Lalaram vs. DCM Chemical Works reported in (1978) 3 SCC 1**, the 1st respondent has not raised any industrial dispute.

7.Further, at the time of recruitment as driver on 17.06.1992, the 1st respondent produced the educational certificate required by the Management and only after proper scrutiny, he has been appointed as driver and being satisfied with his service, he was promoted as Senior Driver on 01.04.1999. However, the charge of producing false educational certificate was alleged against him after 14 years of service as a driver and the senior driver. The Supreme Court in **Buddhi Nath Chaudhary and others vs. Abahi Kumar and others** reported in **(2001) 3 SCC 328**, has held as follows:-

'6. The effect of our conclusion is that appointments made long back pursuant to a selection need not be disturbed. Such a view can be derived from several decisions of this Court including the decisions in Ram Sarup vs. State of Haryana & Ors., 1979 (1) SCC 168; District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram & Anr. vs. M. Tripura Sundari Devi, 1990 (3) SCC 655; and H.C.Puttaswamy & Ors. vs. The Honble Chief Justice of Karnataka High Court, Bangalore & Ors., 1991 Supp. (2) SCC 421.'

8.Even in the case of **Dr.M.S.Mudhol vs. S.D.Halegkar and others** reported in **(1993) 3 SCC 591**, the Apex Court has categorically held as follows:-

'6.Since we find that it was the default on the part of the 2nd respondent, Director of Education in illegally approving the appointment of the first respondent in 1981 although he did not have the requisite academic qualifications as a result of which the 1st respondent has continued to hold the said post for the last 12 years now, it would be inadvisable to disturb him from the said post at this late stage particularly when he was not at fault when his selection was made. There is nothing on record to show that he had at that time projected his qualifications other than what he possessed. If, therefore, inspite of placing all his cards before the selection committee, the selection committee for some reason or the other had thought it fit to choose him for the post and the 2nd respondent had chosen to acquiesce in the appointment, it would be inequities to make him suffer for the same now. Illegality, if any, was committed by the selection committee and the 2nd respondent. They are alone to be blamed for the same.'



9. It is the specific contention of the learned counsel for the 1st respondent that the complaint letter was not even produced before the enquiry officer even after the repeated request of the 1st respondent which amounts to violation of principles of natural justice and he would rely on the judgment reported in **(2010) 3 MLJ 742 (SC), State of U.P. and others vs. Saroj Kumar**, where, it has been held that non disclosure of documents having a potential to cause prejudice to a government servant in the enquiry proceedings would clearly be denial of a reasonable opportunity to submit a plausible and effective rebuttal to the charges being enquired into against the government servant. According to the petitioner, even the District Educational Officer who clarified that the 1st respondent produced bogus educational certificate was not enquired in the enquiry as requested by him. It is not in dispute that the rules of natural justice require that if any statement or evidence is considered against the delinquent, he must be given the opportunity to cross examine the person who gave the statement of evidence or the evidence and in this regard, the 1st respondent would rely on the judgment in **Kamalendu Prasad Padhi vs. The Sambalpur University and others dated 02nd December 1975** and he would also rely on the judgment in **State of Mysore vs. Shivabasappa reported in (1963) 2 SCR 943** wherein, it is held as follows:-

'The person against whom a charge is made should know the evidence which is given against him, so that he might be in a position to give his explanation. When the evidence is oral, normally the examination of the witness will in its entirety, take place before the party charged, who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of he party is put to him, and admitted in evidence, a copy thereof is given to the party, and he is given an opportunity to cross-examine him.'

10. All the more, perusal of the enquiry report shows that the enquiry officer has submitted his report as early as on 25.04.2006 and the 1st respondent has submitted his reply on 15.06.2006 and 13.11.2006 respectively and the Management issued order of dismissal on 21.05.2012 after a lapse of nearly 6 years and there is no explanation why there was a delay and in my opinion, definitely, protracted proceedings would not allow the 1st respondent to effectively defend his case and the inordinate delay in initiation and conclusion of disciplinary proceedings will certainly cause prejudice to the 1st respondent. The petitioner has not stated any reason for the delay in initiation of departmental proceedings and conclusion. Therefore, the judgments relied on by 1st the respondent support his case and the Special Deputy Commissioner of Labour finding that the dismissal order is perverse, has dismissed the approval petition, where, I do not find any infirmity.



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W.P(MD)No.20216 of 2014

Accordingly, the Writ Petition is dismissed. No costs.
Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

bala/smn

To

The Joint Commissioner of Labour,
Chennai - 600 006.

+1 CC to Mr.D.SIVARAMAN, Advocate (SR-22768[F] dated 26/11/2020)

+1 CC to M/s.A.AMALA, Advocate (SR-22922[F] dated 26/11/2020)

ORDER MADE IN
W.P(MD)No.20216 of 2014
DATED : 26.11.202

VB (02.12.2020) 6P 4C