



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.01.2020

CORAM

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

W.P (MD)No.17408 of 2015

and

M.P. (MD) .Nos.1 to 3 of 2015

Tmt.A.Kamalam

.. Petitioner

Vs.

1.The Director,

Integrated Child Development Programme Department,
Tharamani, Chennai-113.

2.The District Collector,

Collectorate,
Thanthonimalai,
Karur District,
Karur.

3.The District Project Co-ordinator,

Integrated Child Development Programme,
Karur District,
Karur.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned order passed by the second respondent in Se.Mu.Na.Ka.No.3376/A1/2012 dated 10.04.2015 and quash the same and consequently direct the respondents to reinstate the petitioner in service with all attendant and monetary benefits.

For Petitioner : Mr.M.Saravanakumar

For Respondents : Mr.D.Muruganandham

Additional Government Pleader

ORDER

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus to call for the records in pursuant to the impugned order passed by the second respondent in Se.Mu.Na.Ka.No.3376/A1/2012 dated 10.04.2015, quash the same and consequently direct the respondents to reinstate the petitioner in service with all attendant and monetary benefits.

2.The claim of the petitioner is that she is a Widow and she was appointed as Anganwadi Aaya (Helper) on consolidated salary in the respondents Department on 01.07.1982 and subsequently, she was appointed as Community Nutritious Worker (Anganwadi Worker) on 08.05.1994 and thereafter, she was absorbed in to regular time service and her services were regularized. It is further



stated that the educational qualification for appointment to the post of Anganwadi Aaya/Anganwadi Worker is only to read and write in Tamil. While so, based on an anonymous petition sent by the petitioner's neighbor viz., one Pitchaimuthu, S/o.Palanisamy Gounder of Anadichettipalayam that the petitioner has produced bogus certificate at the time of entering into the service, a show-cause notice dated 27.12.2013 was issued by the fourth respondent directing the petitioner to appear for enquiry, failing which, order will be passed, based on the records. Without issuing any charge memo and without conducting any enquiry, the fourth respondent once again issued a show cause notice dated 31.01.2014 with the pre-determined mind of terminating the petitioner, for which, the petitioner submitted a detailed reply on 10.02.2014 categorically stating that civil cases are pending between her and the complainant and the complaint made by the said Pitchaimuthu was only with an ill intention and therefore, she requested the authority to conduct a detailed enquiry.

3.According to the petitioner, her father was a road worker and he is an illiterate person and the petitioner was given in marriage at the age of 14 and thereafter, she settled down at Coimbatore along with her husband, who died subsequently, without any issue. Thereafter, the petitioner continued to live with her parents and the parents also expired. At the time of entering into the service, the petitioner produced the Transfer Certificate in T.C.No.114/1974, dated 20.02.1974, issued by the Head Master of Ukadai Ayyavu Thevar High School, Ammapet, Thanjavur. The petitioner filed Writ Petition in W.P.(MD).No.2449 of 2014 to quash the show cause notice dated 31.01.2014 and the same was disposed of by order dated 13.02.2014 directing the petitioner to submit her reply within a period of one week. As per the order of this Court, the petitioner had submitted her reply. But, the respondents without issuing any charge memo and without conducting enquiry, terminated the service of the petitioner by impugned order, dated 10.04.2015, against which, the present Writ Petition has been filed.

4.Learned counsel for the petitioner would submit that it is the bounden duty of the respondents to verify the certificates produced by the petitioner, when she was given promotion in 1994, but without doing so, terminating the petitioner from service after 32 years of service, without even issuing any charge memo and without conducting enquiry is arbitrary. Thus, he would pray for setting aside the impugned order.

5.The respondents have filed counter along with vacate stay petition. Learned Additional Government Pleader appearing for the respondents would contend that pursuant to the complaint against the petitioner regarding forged certificate, she was directed to



attend enquiry. Since the petitioner produced the same certificate in the enquiry without any explanation, show cause notice was sent to her why she should not be removed from service for having submitted forged educational qualification certificate. Even as per the direction in W.P.No.2449 of 2014 filed by her, the petitioner did not submit her reply and in order to give one more opportunity again, explanation was called for from her and though she offered her explanation stating that the certificate is genuineness she did not produce the same for verification.

6.He would further submit that pursuant to the direction of the District Collector, Chief Educational Officer, Thanjavur, conducted enquiry and submitted report stating that the Transfer Certificate produced by the petitioner was a bogus one and the same was not issued by A.Appavu Thevar Higher Secondary School, Ammapettai, Thanjavur as claimed by the petitioner. Further, the District Collector also afforded an opportunity of personal hearing on 30.03.2015, where also, the petitioner reiterated her stand that the certificate was genuine and therefore, the termination order was passed. He would also state that the petitioner got promotion by playing fraud through the forged Transfer Certificate thereby cheated the department. Thus, he would pray that the interference of this Court is not necessary.

7.Heard both sides.

8.Perusal of record shows that the second respondent/District Collector has directed the Chief Educational Officer to enquire into the genuineness of the transfer certificate of the petitioner and the Chief Educational Officer has given a reply stating that he had enquired with the Headmaster of Ukkadai A.Appavu Thevar Higher Secondary School, Ammapettai, Thanjavur District, who by communication dated 09.07.2018 stated that the Transfer Certificate relating to Admission No.67/73-TC No.114/74 of the petitioner, was a bogus certificate and the same was not issued by the school. Thereafter, the second respondent by letter dated 11.12.2013 directed the 3rd respondent to take further action and accordingly, the petitioner was called for enquiry and she appeared before the Enquiry Officer and gave a certificate but no opportunity was given to the petitioner to prove the genuineness of her certificate. The letter issued by the Headmaster was also not communicated to the petitioner and subsequently, a show cause notice was issued as to why she should not be removed from service and thereafter, she has been removed from service.

9.In departmental enquiry, it is for the department to prove the charges levelled against the delinquent. The charge against the petitioner is that she produced the bogus Transfer Certificate and got promotion. So far as the educational qualification for



Anganwadi Aaya/Anganwadi worker is only to read and writ in Tamil. It is the bounden duty of the respondents to verify the certificates produced by the petitioner when she was given promotion, but the respondents failed to do so. Further, the certificate is said to have been produced in 1982 and she was promoted in 1994. There is no reason for the respondents to wait for 32 years based on a complaint by the petitioner's neighbour who had got ill-will against the petitioner. The enquiry was conducted without giving any opportunity to the petitioner to prove her certificate.

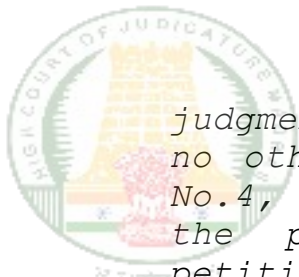
10. Learned counsel for the petitioner would rely upon the order passed in W.P.(MD).No.15932 of 2010, dated 09.06.2014 (Neelavathy vs. The Director, Social Welfare Department, Chennai and three others), wherein this Court considering the similar issue, set aside the order of removal challenged therein and held at paragraphs 8 to 10 as follows:

"8. This Court, in J.Meerabai Vs. The Director of Social Welfare, [W.P.[MD].No.7106 of 2008], considered the similar issue and set aside the order of dismissal from service and held as follows:-

"8. In the present case, the petitioner has the protection of Article 311(2) of the Constitution of India before any punishment of removal is imposed on her. Since the basic principles of natural justice are violated, the impugned order is hereby set aside and it is observed that the Government cannot wake up to the situation after 13 years after the promotion of the petitioner at the end of her service. Therefore, there is no further direction to conduct enquiry."

9. In Ponnuthai Vs. The Director, Social Welfare Department, [W.P.[MD].No.3023 of 2011, dated 01.10.2012], this Court, taking into consideration of the Judgment in J.Meerabai Vs. The Director of Social Welfare, [W.P.[MD].No.7106 of 2008], held as follows:-

"A specific averment has been made in the affidavit filed in support of the petition that the copy of the letter of the respondent No.4 has not been furnished to the petitioner. There is no material to substantiate that the said averment is false, moreso no counter has been filed to contradict the same. Both the enquiry officer and respondent No.1 proceeded as if it is for the petitioner to prove the certificate as true and genuine. In a departmental enquiry, it is for the department to prove the charges against the delinquent. A perusal of the order impugned would show that the entire onus has been fixed on the petitioner. Apart from that, the petitioner was not



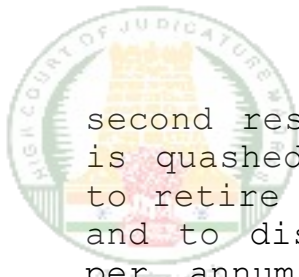
judgment relied on by the petitioner. There is absolutely no other material except the letter from the respondent No.4, which by itself cannot be taken as a proof against the petitioner. It is also seen that except the petitioner, nobody was examined. The petitioner being an employee of the respondent No.1, is entitled to the protection under Article 311 of the Constitution of India.

7. In view of the above said submissions, this Court is of the view that the writ petition will have to be allowed. This Court is also of the view that no useful purpose would be served by remanding the matter at this length of time. The petitioner is a poor lady. She has attained the age of superannuation. The impugned order has been passed nearly after 12 years from the date of promotion. As discussed above, it is not as if the initial entry of the petitioner was wrong. She has been allowed to continue in the promotional post from the year 1995 onwards. It is also not as if she has not done her job properly. Therefore, considering the above said facts, this Court is of the view that the relief sought for will have to be suitably modified while setting aside the order impugned.

8. Accordingly, the order impugned is hereby set aside and the respondent Nos.1 to 3 are directed to compute the retiral benefits due to the petitioner as if she has worked till 29.02.2008, the due date of retirement and pay the same to her within twelve weeks from the date of receipt of a copy of this order. However, this petitioner is not entitled to get salary from the date of dismissal till due date of retirement."

10. Following the said Judgments, the impugned order of removal from service passed by the first respondent, dated 23.12.2011, is set aside and the respondents are directed to settle the terminal benefits payable to the petitioner, within a period of twelve weeks from the date of receipt of a copy of this order.

11. The above judgment is squarely applicable to the present fact and circumstance of the case. Record of proceedings shows that at the time of admissions of the writ petition, this Court had granted an order of interim stay. Since the said interim order was not obeyed by the respondents, the petitioner filed Contempt Petition in Cont.P.No.54 of 2016. After the filing of the contempt petition, the petitioner was permitted to join duty and subsequently, she attained the age of superannuation on 30.06.2018. Since this writ petition is pending, the petitioner was not allowed to retire from service, though she attained the age of superannuation. Therefore, I am inclined to interfere with the impugned order. The impugned termination order passed by the



second respondent in Se.Mu.Na.Ka.No.3376/A1/2012 dated 10.04.2015 is quashed. The respondents are directed to allow the petitioner to retire from the service on reaching the date of superannuation and to disburse all her retirement benefits with interest @ 12% per annum from the date of superannuation till the date of settlement. The said exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

12.With the above direction, this writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar (CS)

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To

1.The Director,
Integrated Child Development Programme Department,
Tharamani, Chennai-113.

2.The District Collector,
Collectorate,
Thanthonimalai,
Karur District,
Karur.

3.The District Project Co-ordinator,
Integrated Child Development Programme,
Karur District,
Karur.

+1 CC to MR.M.SARAVANAKUMAR, Advocate (SR-2516[F] dated 23/01/2020)

+1 CC to (SR-2566[F] dated 23/01/2020)

**ORDER MADE IN
W.P (MD) No.17408 of 2015
22.01.2020**

KM/ (26.02.2020) 6P 6C