



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P. (MD) No.3222 of 2015

A.Subburaj

... Petitioner

Vs.

1.The Joint Registrar of
Cooperative Societies,
Dindigul Region,
Collectorate Complex,
Dindigul.

2.The Special Officer,
A2962, Sivagnanapuram,
Primary Agricultural Co-operative Sangam,
Sivagnanapuram,
Kulichettipatti Post,
Nilakottai,
Dindigul District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the 2nd respondent termination order dated 31.05.2012 and consequent 1st respondent's confirmation order in Na.Ka.3893/12/Saba, dated 30.01.2015 and quash the same.

For petitioner
For respondents

: Mr.A.Haja Mohideen
: Mr.S.Dhayalan,
Government Advocate

ORDER

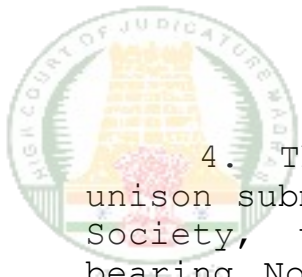
This writ petition has been filed by the petitioner challenging the order dismissing him from service by the 2nd respondent and also confirmation of the same by the first respondent in the revision petition.

2. The learned counsel for the petitioner submitted that the petitioner was appointed as Office Assistant on 20.02.1997 in the 2nd respondent's Office. Subsequently, he was ordered to work as Watchman from 01.12.1998 by the 2nd respondent. While so, on 18.11.2011 the 2nd respondent suspended the petitioner from service stating that at the time of joining, he had produced bogus school Transfer Certificate. Subsequently, the 2nd respondent issued a charge memo dated 23.12.2011 alleging a charge that in the school Transfer Certificate produced by him, his date of birth is mentioned as 06.03.1971 and the date of joining in the school is



mentioned as 07.05.1976 and the date of leaving the school on completion of VIIIth standard is mentioned as 09.10.1978, which could not be possible and thus, he had produced a bogus certificate at the time of joining in the service. The petitioner has submitted his explanation dated 18.02.2012 to the effect that at the time of joining duty, he had produced a School Leaving Certificate issued by Sivaghnapuram Panchayat Union Primary School, in which it has been clearly stated that the date of birth of the petitioner is 18.05.1969 and he joined in the school on 04.06.1974 and left the school on 30.06.1979 on completing Vth standard. He had annexed the said certificate in the application submitted for recruitment and the 2nd respondent, after verifying the original school certificate, has returned the same. While so, the 2nd respondent, without considering the explanation submitted by the petitioner, has dismissed him from service. Aggrieved by the same, the petitioner has filed a revision petition before the first respondent. In the meantime, a criminal case was registered against the petitioner for the very same allegation and though the trial Court convicted him, the appellate Court has acquitted him from the charges. Even though the order of acquittal was brought to the notice of the first respondent, the first respondent, without considering the same and without looking into the explanations given by the petitioner, has confirmed the order passed by the disciplinary authority. Hence, the petitioner has filed this writ petition challenging the said orders.

3.The learned counsel for the petitioner further submitted that the petitioner had studied upto Vth standard in Sivaghnapuram Panchayat Union Primary School and he had produced the said certificate only before the authority at the time of joining and that he had not produced the certificate, which entered in the Service Register. He would further submit that the Criminal Court has acquitted the petitioner in the appeal mainly holding that there is no evidence to show that such certificate was produced by the petitioner before the second respondent; the original bogus certificate has not been recovered; and the complainant himself turned hostile. It is stated by the respondents that on 10.02.2007, the petitioner had produced the original of the bogus certificate before second respondent and got back the same after making an endorsement. But, it is not true and the petitioner has not produced the said bogus certificate and got back the same after making an endorsement. Even assuming that such an endorsement was made by the petitioner, it could have been made only by the instruction of the second respondent relating to some other purpose. The respondents, without considering the above aspects and explanations submitted by the petitioner, has erroneously dismissed the petitioner from service and hence, the same may be set aside and he may be directed to be reinstated in service.

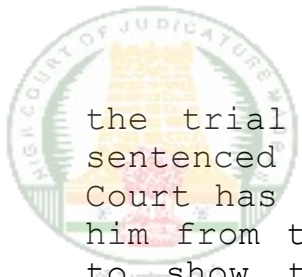


4. The learned counsel appearing for the respondents in unison submitted that at the time of joining in the service of the Society, the petitioner had submitted a Transfer Certificate bearing No.229/94-95 issued by the Headmaster, Government Higher Secondary School, Batlagundu to prove his educational qualification as VIIIth standard pass. At the time of his appointment, the contradiction such as date of entry and date of leaving from the school contained in the certificate were not found out by the erstwhile management of the second respondent Society. Hence, his qualification and date of birth were entered in the service register of the writ petitioner as per the above certificate. The writ petitioner has also submitted the above bogus certificate for regularisation of his service and got back the same after making an endorsement on 10.02.2007. In the said endorsement, he has categorically stated that the above transfer certificate was issued by the Batlagundu Higher Secondary School and its Serial number is 229/94-95. In addition to that, the Headmaster of the Batlagundu Higher Secondary School has given a letter dated 16.11.2011 to the effect that the said certificate has not been issued by them, which would show that the certificate produced by the petitioner is a bogus one. Thus, the charges levelled against the petitioner were proved and the Enquiry Officer submitted his report accordingly on 19.03.2012. After carefully considering the entire materials, the second respondent has dismissed the petitioner from service on 31.05.2012 and the same was subsequently affirmed by the first respondent in the revision. Thus, they prayed to dismiss this writ petition.

5. Heard the learned counsel appearing for both sides and perused the records carefully.

6. According to the petitioner, at the time of joining in the service as Office Assistant, he had produced only Vth standard pass certificate, though the basic qualification for the said post, at that point of time, was only knowing about writing and reading. According to the respondents, at the time of joining in the service, the petitioner has produced School Transfer Certificate issued by the Headmaster of the Government Higher Secondary School, Batlagundu to prove his educational qualification as VIIIth standard pass, in which there is a contradiction about the date of entry and date of leaving the school mentioned in the certificate and on enquiry, it is found that it is a bogus one and even on 10.02.2007, the petitioner has produced the said bogus certificate and got back the same under acknowledgment.

7. Admittedly, a criminal case has been registered for production of bogus certificate against the petitioner and though



the trial Court, after trial, has convicted the petitioner and sentenced him to undergo imprisonment for one year, the appellate Court has dismissed the said conviction and sentence and acquitted him from the charges on the ground that (a) there is no evidence to show that such certificate was produced by the petitioner before the second respondent; (b) the original bogus certificate has not been recovered and (c) the complainant himself turned hostile. As the petitioner has been acquitted from the Criminal case, the Departmental action proceeded against the petitioner on the same set of facts and circumstances cannot be countenanced, as the petitioner was admittedly acquitted not on technicalities but on merits.

8. In this regard, this Court is inclined to refer to the decision of a learned Single Judge of this Court in **Gurusiddappa Vs. Office of the Group Commandant, Central Industrial Security Force, rep. by its Group Commandant, Ministry of Home Affairs, Chennai and others**, reported in 2018 (4) LLN 530 (Mad.), wherein at paragraph Nos.12 and 13 it has been held as follows:

"12. This Court has given its anxious consideration to the submissions made on behalf of the learned counsel for the petitioner as well as the respondents. Firstly, this Court has to see whether the charges are held proved in the Department Enquiry in the teeth of the clear finding given by the Criminal Court stating that the entire prosecution case was a cooked up story. Once the Criminal finding has become final, the Departmental action proceeded against the petitioner on the same set of facts and circumstances cannot be countenanced by law, as the petitioner was admittedly acquitted not on technicalities but on merits. Once the petitioner has been acquitted on merits, the Departmental action in imposing the penalty for the same incident, is completely without any justification. Therefore, this Court is of the considered view that the petitioner has to succeed on this ground alone. Even otherwise, when one side the Criminal Court has given a clear acquittal viz., honourable acquittal to the petitioner, the Department cannot find the petitioner guilty of the same charges which was a subject matter of the Criminal prosecution. Such action on the part of the respondents cannot be justified under any circumstances. Since this Court is of the view that the Departmental action as proceeded against the petitioner is illegal and cannot be countenanced in law, it refrains from going into



the issue of whether the penalty with cumulative effect can be imposed on the petitioner or not under the Service Rules.

13. In view of the above said narrative and discussion, this Court set aside the impugned proceedings No.V-15014/Rev/GS/SS/2010-85, dated 4.2.2011, proceedings No.V-11014/56/2006/L&R(SZ) 6460, dated 17.11.2006 and proceedings No.V-15014/GHC/AD.VI/GS/SSP/2005-1978, dated 14.06.2006. This Court is also of the considered view that the petitioner is entitled to be considered for promotion as Sub Inspector of Police with effect from the date of his juniors were considered for such promotion with all attendant and service benefits as admissible to the petitioner. The respondents are directed to implement the direction passed by this Court within a period of eight weeks from the date of receipt of a copy of this order."

9. The above decision is squarely applicable to the facts and circumstances of the case. It is stated by the respondents that in a departmental proceedings, the conclusion can be arrived by preponderance of probabilities. This Court is of the view that there should be some materials even for such a conclusion. In this case, after about 15 years of service, he was suspended on the ground that he had joined in the service by producing bogus certificate. Though the respondents have proved that the School Transfer Certificate, which has been entered in the service register of the petitioner, is a bogus one, the respondents have not proved that it has been produced only by the petitioner. The original of the said bogus certificate is also not produced. According to the petitioner, in order to take vengeance in the political issue, the second respondent has set up the same. Even assuming that the alleged bogus certificate was produced by the petitioner twice, ie., at the time of joining in the year 1997 and at the time of regularization of service ie., on 10.02.2007, it is the officials of the respondents who had failed in their duty by entering in the service register without even looking into the same. Admittedly, it is not the case of the respondents that the petitioner had put any signature in the photostat copy of the bogus certificate stated to be produced by him, but, the petitioner is stated to be put his signature only in the bottom of the entry in the service register. But, that would not go to show that the said bogus certificate was produced only by the petitioner.

10. So far as the production of the said bogus certificate by the petitioner for regularization of service on 10.02.2007 is concerned, it is seen that there is no mentioning about the same



in the criminal case, charge memo and report of the Enquiry Officer. But, it has been discussed only by the disciplinary authority. The petitioner has not been given sufficient opportunity in this regard. Though it is stated that the petitioner had produced the bogus certificate on 10.02.2007 again and got back the same by making an endorsement, it has not been proved that it is the said bogus certificate which has been produced by the petitioner and there is no reason as to why they failed to verify the said document for these long years. Further, the submission of the petitioner that he could have made such endorsement only as per the instruction and direction of the second respondent without reading the content, has not been ruled out.

11. More over, it is not the case of the respondents that the qualification for the post of Office Assistant or Watchman at that time was VIIIth standard pass and the petitioner by producing such bogus certificate had entered into service illegally. Thus, it is not in dispute that the petitioner was having basic qualification for the post in which he was appointed. The contention of the petitioner is that his Vth standard pass certificate has not been taken into account by the respondents and that if they have any doubt with regard to the genuineness of the same, they could very well verify the same. If the Vth standard pass was the qualification for appointment in the post of Office Assistant / Watchman in the year 1997, it is always open to the respondents to verify the Vth standard certificate produced by the petitioner and to regularise the service of the petitioner. The respondents, without considering the above aspects, have erroneously dismissed the petitioner from service. Hence, this Court is inclined to interfere with the impugned orders.

12. In view of the above, the impugned orders are set aside. The respondents are directed to reinstate the petitioner into service and to regularize the petitioner's service within a period of four weeks from the date of receipt of a copy of this order.

13. This Writ Petition stands disposed of accordingly. No costs.

Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar (CS)



To கனம் உரிமை

1.The Joint Registrar of
Cooperative Societies,
Dindigul Region,
Collectorate Complex,
Dindigul.

2.The Special Officer,
A2962, Sivagnanapuram,
Primary Agricultural Co-operative Sangam,
Sivagnanapuram,
Kullichettipatti Post,
Nilakottai,
Dindigul District.

+1 CC to Mr.A.HAJA MOHIDEEN, Advocate (SR-3288[F] dated
28/01/2020)

+1 CC to SPL.GP (SR-3372[F] dated 28/01/2020)

Order made in
W.P. (MD) No.3222 of 2015
27.01.2020

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