

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2021

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

Writ Petition No.36702 of 2007

R.Annadurai

... Petitioner

-Vs-

1.The Chairman
Chennai Port Trust
Chennai.

2.The Traffic Manager
Chennai Port Trust
Chennai..

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for the records pertaining to the impugned order passed by the second respondent dated 24.11.2007 in his Reference No.P2/734/95/T(P) dismissing the petitioner from service and served on the petitioner on 27.11.2007 and quash the same.

For Petitioners : Mr.P.K.Rajagopal

For Respondents : Mr.M.R.Dharani Chandran
Standing Counsel

O R D E R

The prayer sought for herein is for a Writ of Certiorari calling for the records pertaining to the impugned order passed by the second respondent dated 24.11.2007 in his Reference No.P2/734/95/T(P) dismissing the petitioner from service and served on the petitioner on 27.11.2007 and quash the same.

2. For the appointment to the post of Mazdoor / Shore Labour at the respondent Port Trust, the name of the petitioner was considered pursuant to the application submitted by him in this regard. The minimum educational qualification for the said post of Mazdoor / Shore Labour is a pass in primary school standard ie., 5th standard. When application was filed in this regard, the petitioner had claimed that he passed 5th standard and in fact he had passed 8th standard also and therefore, on that basis, he would be eligible to be considered for appointment. Accordingly his candidature was considered and appointment was given to the petitioner on 27.03.1985. Thereafter, the petitioner seems to have completed probation and his probation also was declared

and he was regularized in his position of Mazdoor / Shore Labour.

3. When he was continuing in the position, the respondent Port Trust had issued a communication on 29.03.1994 to the petitioner directing him to produce his Record Sheet ie., School Certificate in original without fail. In response to the said demand, the petitioner, on 15.09.1994, had produced the Record Sheet, which according to the petitioner, was issued by the School, where he studied upto 8th Standard.

4. On receipt of the Record Sheet from the petitioner, the said Record Sheet was referred to the concerned educational authorities ie., to the District Educational Officer (DEO), Saidapet for verification and report. It seems that, the District Educational Officer, after verifying the Record Sheet produced by the petitioner, by getting a report from the Field Officer of the Education Department, has communicated to the respondent / employer that the School where the petitioner claimed to have been studied, was not at all functioning. Otherwise, there was no such school functioning in that locality.

5. In view of the categorical view expressed by the DEO concerned, the respondent had initiated the disciplinary proceedings, where charge memo was issued against the petitioner on 02.09.1995. Thereafter an enquiry officer was appointed, who conducted an enquiry, after giving all opportunities to the petitioner and after completion of the enquiry, when second show cause notice was issued, the petitioner felt aggrieved by the way in which the disciplinary proceedings was conducted, has approached this Court by filing a writ petition in W.P.No.6336 of 1998, where a learned Judge of this Court passed an order on 09.04.2007, directing the respondents to consider the reply/representation dated 10.03.1998 submitted by the petitioner in accordance with law and pass orders after affording opportunity to the petitioner.

6. Pursuant to the said order passed by this Court, the explanation / representation given to the second show cause notice by the petitioner and after having considered the same, including the Enquiry Officer's report, where according to the Enquiry Officer, the charges against the petitioner were proved, the respondent, as disciplinary authority against the petitioner, has passed final order dated 24.11.2007, whereby it imposed the maximum penalty of removal of service against the petitioner. Challenging the said order dated 24.11.2007, the petitioner has filed this writ petition.

7. Mr.P.K.Rajagopal, learned counsel for the petitioner would submit that, though the qualification prescribed for the said post of Mazdoor was only a pass in 5th standard, the petitioner since had completed 8th standard, he was fully eligible to be considered for the appointment. Accordingly,

his candidature was considered and appointment order was also issued to the petitioner dated 27.03.1985. Thereafter, the petitioner completed the probation and his services were regularized accordingly.

8. When that being so, since at no point of time, the petitioner was directed to produce the Record Sheet from the School, the respondents suddenly, by a communication dated 29.03.1994, had directed the petitioner to produce the record sheet, which the petitioner had duly complied by producing the same on 15.09.1994 and thereafter it is not known as to what has been transpired between the respondents and the Education Department, as no communication to that effect said to have been received from the DEO concerned by the respondents has been produced before him or served on him for giving his defence and based on the alleged communication given by the School, where the petitioner studied, the respondents or the disciplinary authority without giving those documents in the disciplinary proceedings also to establish the fact that there was no such school as claimed by the petitioner, proceeded to complete the disciplinary proceedings. If at all any document has been filed, those documents or at least the report given by the DEO could have been marked through a responsible person from the Education Department in the departmental enquiry, in that case the petitioner would have been in a position to cross examine the official or the person concerned who produced such communication from the Education Department. No such opportunity was given to the petitioner to repudiate the stand taken by the Education Department with regard to the availability of the School, where the petitioner studied and without conducting the enquiry in proper perspective since the disciplinary authority / respondent has decided to inflict the punishment, that too without considering the explanation given to the second show cause notice, only at that juncture the petitioner approached this Court by filing a writ petition, where, by order dated 09.04.2010, this Court had directed the respondent to consider the reply / representation made by the petitioner dated 10.03.1998 on merits and in accordance with law and to pass final orders.

9. Therefore, the learned counsel for the petitioner would submit that, the enquiry, where in respect of the report of the DEO allegedly given in this regard with regard to the availability of the School concerned since was not properly conducted and in this regard, no proper opportunity was given to the petitioner to establish the fact that the School where the petitioner studied was functioning in that locality and the Record Sheet produced by the petitioner had been given only by the school authorities and without such opportunity, since the respondents completed the enquiry according to the manner known to them, and not in the manner known to law, the entire proceedings which ended in the punishment through the impugned order dated 24.11.2007 is vitiated and therefore, the learned counsel for the petitioner would contend that, the

impugned order is liable to be interfered with.

10. Per contra, Mr.M.R.Dharani Chander, learned Standing Counsel appearing for the respondents would submit that, the post wherein the petitioner was selected and appointed is Mazdoor, for which the minimum qualification is 5th standard pass and in this regard, when applications were called for, the petitioner submitted the application, wherein he has filled up stating that, he has passed 8th standard and based on which he was provisionally selected and appointed. However, no certificate to that effect that he has passed 8th standard has been produced before the respondent by the petitioner.

11. Therefore, it was specially demanded by the respondents on 29.03.1994 to produce the school certificate to establish that he has passed 8th standard, which he belatedly responded only on 15.09.1994, where he has produced a record sheet claimed to have been obtained from the school, where he studied.

12. In this context, the learned Standing Counsel would further submit, since the respondent prima facie was of the view that, the record sheet produced by the petitioner might not be a genuine one, it has been referred to the educational authorities ie, DEO, Saidapet, who in turn, after having verified the issue, has sent a report or communication on 29.12.1994, which reads thus,

“ பார்வையிற்காண் தங்கள் கடிதத்துடன் பெறப்பட்ட திரு. அண்ணாதுரை (த/பெ. இராமன்) என்பாரின் பதிவச் சான்றினை (ரெக்கார்ட் டீட்) பரிசீலனை செய்து அறிக்கை அனுப்பும் பொருட்டு மீட்டர் சரக உதவிக் கல்வி அலுவலருக்கு அனுப்பப்பட்டதின் பேரில், மீட்டரில் நகராட்சி உயர் துவக்கப்பள்ளி ஏதும் கிடையாது என்றும், 1965 ம் ஆண்டில் மீட்டர் ஊராட்சி ஒன்றிய நடுநிலைப் பள்ளிதான் செயல்பட்டு வந்தன என்றும் தெரிவிக்கப்பட்டுள்ளது என்று அன்புடன் தெரிவித்துக் கொள்கிறேன்.

மேற்படி கடிதத்துடன் பெறப்பட்ட திரு.அண்ணாதுரை என்பாரின் அசல் பதிவச் சான்றையம் இத்துடன் தங்களுக்கு திருப்பி அனுப்பி வைக்கிறேன்.

சைதை மாவட்டக் கல்வி அலுவலருக்காக”

13. In view of the said categorical communication given by the DEO that there was no school at all as claimed by the petitioner that, he studied there and passed 8th standard as he filled up in the proforma application that he has submitted at the time of making the application, the very record sheet produced by the petitioner, no doubt can be ingenuine or bogus one. Therefore, the disciplinary proceedings were initiated, definite charges were framed, enquiry was conducted, opportunity was given and second show cause notice was issued.

therefore the petitioner approached this Court as he

belatedly gave a representation / reply to the second show cause notice. Nevertheless, since a direction was given in the earlier round of litigation to consider the reply / representation given by the petitioner to the second show cause notice, that was also considered by the respondent and ultimately the impugned order dated 24.11.2007 was passed, inflicting the punishment of removal of service against the petitioner.

14. Therefore, the learned Standing Counsel appearing for the respondent Port Trust would contend that, the petitioner has never studied in any school and therefore the certificate since has been proved to be a bogus one, his very claim that he has passed 8th Standard is a false statement and since the petitioner was not at all having any educational qualification including a pass in 5th standard, which is the minimum and essential educational qualification for consideration and appointment to the post of Mazdoor, the very appointment initially given in respect of the petitioner is an illegal appointment and therefore, the same at any point of time can be cancelled or revoked. At the time of making the application or at the time of making the order of appointment, a solemn undertaking was given by the petitioner that, if ultimately it is found that any false information is given by him, based on the same, the petitioner would be liable to be removed from service. Therefore, for all these reasons, that too, after conducting proper disciplinary proceedings, in the manner known to law, the respondents have come to the conclusion that, the petitioner shall be removed from service and accordingly the impugned order was passed and therefore, the said order does not require any interference, he contended.

15. I have considered the submissions made by the learned counsel for either side and have perused the materials placed on record.

16. The controversy that has arisen is in a very narrow compass, where the minimum qualification prescribed for appointment to the post of Mazdoor at the respondent Port Trust is 5th standard, whereas the qualification according to the petitioner as he claimed that he passed 8th standard and only based on the said claim made by the petitioner, initial appointment was given. Though he was subsequently regularized in the said post, after he has successfully completed the probation, only later on it was found that there was no educational certificate or document to establish the educational qualification and hence the petitioner was directed to produce the educational certificate.

17. Accordingly, the petitioner has produced the record sheet, as if he studied upto 8th standard and he passed 8th standard in a school called Municipal Higher Elementary School, Minjur. On receipt of the record sheet from the petitioner, this was referred to the education department ie.,

DEO, Saidapet, who after having verified the genuinity of the certificate by getting a report from the Assistant Educational Officer, Minjur has sent a report stating that, no such school called Municipal Higher Elementary School, Minjur was functioning at any point of time in that locality.

18. In this regard, the report sent by the DEO on 29.12.1994 which has already been quoted herein, clearly establish that there was no such school as claimed by the petitioner.

19. Once the School authorities has given a categorical statement that, there was no such school, the question of further probing the issue may not arise by requiring the DEO or other officer or staff of the DEO concerned to depose before the Enquiry Officer in the departmental enquiry and thereafter to give an opportunity to cross examine the officer / staff of the education department.

20. If at all the petitioner is assured that, there was a school called Municipal Higher Elementary School, Minjur, where he claimed that he has studied upto 8th standard and passed 8th standard and based on such studies he claimed to have undertaken in the said school, record sheet was produced, in order the establish the same, the petitioner could have produced supporting evidence that, the school in the name of Municipal Higher Elementary School, Minjur was functioning in that locality. No such attempt seems to have been made by the petitioner during the enquiry, though a plea was raised by the learned counsel for the petitioner that evidence has been produced before the Enquiry Officer to establish that there was a school. Therefore, the argument of the counsel for petitioner that if such documents were filed including the report given by the DEO for proving the same before the enquiry officer, the person through whom the document was marked could have been examined if that opportunity had been given to the petitioner, is liable to be rejected.

21. Since the minimum or essential educational qualification to get the appointment to the post of Mazdoor at the respondent Port Trust is 5th standard pass, which the petitioner has claimed that he has passed and he in fact has passed 8th standard, in support of the said claim of educational qualification, he produced only the record sheet said to have been issued by the school, where he claimed to have studied and however, subsequently it came to be known that there was no such school functioning in that locality. Therefore, reasonable conclusion would be that the record sheet produced by the petitioner should be a bogus one.

22. In that view of the matter, it can also be established that the petitioner has not at all passed 5th standard, however wanted an appointment without a minimum educational qualification. Law is well settled that, such appointment is illegal one and therefore the same cannot be

rectified at any later point of time.

23. Whatever be the length of period an employee had served after getting the illegal appointment and ultimately it has been found that such initial appointment itself is an illegal one, unmindful of the length of service rendered by the employee, such appointment can be cancelled and the employee can be terminated. This issue has been considered by this Court as well as the Honourable Supreme Court in number of cases, where the law is well settled that, such illegal appointments are liable to be cancelled.

24. A plea also has been raised by the petitioner's counsel that subsequently the petitioner made an attempt to write 10th standard examination, where, though he has not passed, a certificate has been given as if that he was given permission to write 10th standard examination based on which it can be construed that without having the qualification of writing 8th standard, he would not have been permitted to write 10th standard and based on which his educational qualification can be accepted and on that ground, his candidature can be considered. This Court is not impressed with the said submission made by the learned counsel for the petitioner for the simple reason that, it has been established that he is not qualified even 5th standard. When that being so, the question of permitting him to write 10th standard examination does not arise and if at all the petitioner was permitted to write 10th standard examination directly, where also he has not passed out the 10th standard examination. Therefore, as of now, the petitioner does not have any qualification, either 5th standard or 8th standard or 10th standard. Therefore, the mere attempt of writing an examination would not confer any right on the person to claim that he has the minimum qualification. Therefore, the said plea of the petitioner is also liable to be rejected.

25. In view of the aforesaid discussion, this Court has no hesitation to hold that the impugned order is sustainable as there is no plausible reason available before this court to interfere with the same. Hence, his writ petition fails and it is liable to be dismissed. Accordingly, the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

KST

To

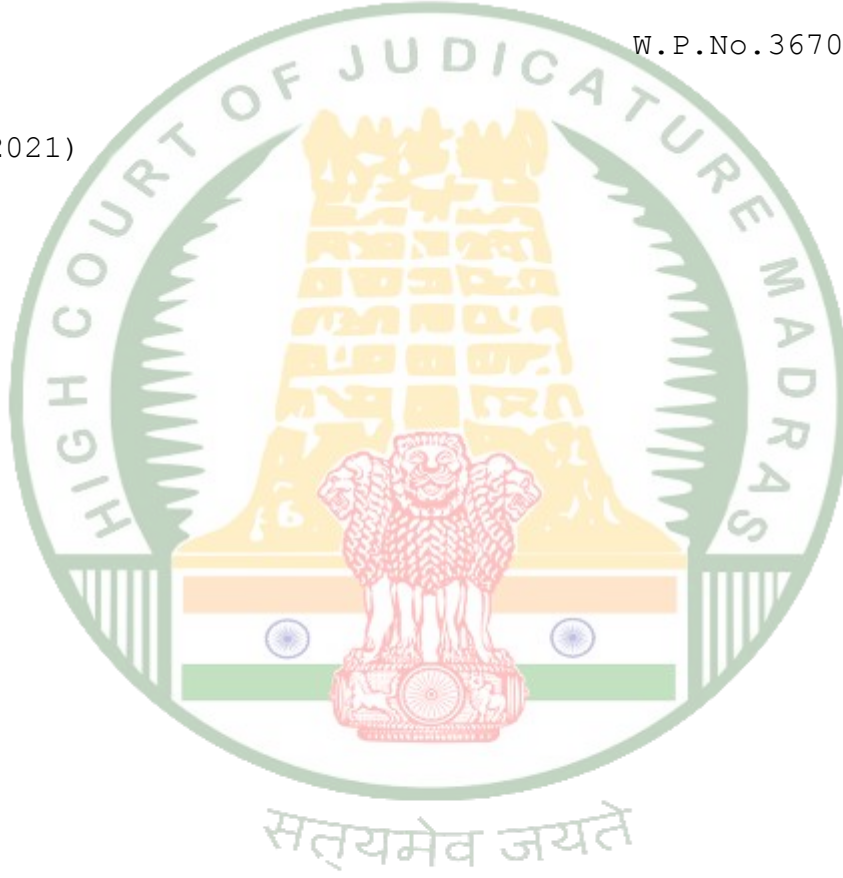
1.The Chairman
Chennai Port Trust
Chennai.

2.The Traffic Manager
Chennai Port Trust
Chennai..

+lcc to Mr.M.R.Dharanichandran, Advocate, S.R.No. 18021

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