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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2021

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.29499 of 2010

V.Srinivasan

...Petitioner

-vs-

1. The Presiding Officer,
Additional Labour Court,
Vellore.

2. The Management,
Tamil Nadu State Transport Corporation Villupuram (Division-II) Ltd.,
Rangapuram,
Vellore-632 009.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for records from the 1st Respondent, relating to the impugned Award dated 11.03.2010 in I.D.No.273 of 2003 and quash the same and direct the 2nd Respondent to reinstate him in service, with full backwages, continuity of service and all other attendant service benefits.

For Petitioner : Mr.P.Rajaram
For R2 : Mr.C.S.K.Sathish

O R D E R

This writ petition has been filed, challenging the Award dated 11.03.2010 passed in I.D.No.273 of 2003 by the 1st Respondent herein, by which the Industrial Dispute, raised by the Petitioner for reinstatement was dismissed. The Petitioner also sought a direction to the 2nd Respondent to reinstate him in service, with full backwages, continuity of service and all other attendant service benefits.

2. The case of the petitioner is that his name was sponsored by the Employment Exchange in the year January, 1994 for the post of Driver and after interview and verification of his educational certificates, he was initially appointed as Casual Labour (Driver) and thereafter, his service was regularized in the year 2000;



2.1. It is further case of the Petitioner that he was issued with a Charge Memo dated 27.07.2001, alleging production of forged transfer certificate and after receipt of explanation from him, the Enquiry Officer submitted a report on 26.07.2002, stating that the petitioner was guilty of charges. The 2nd Respondent, based on the said report, terminated the petitioner from service, after issuance of a show cause notice dated 22.10.200 in respect of the proposed punishment;

2.2. It is also the case of the Petitioner that in the Industrial Dispute raised by the Petitioner under Section 2(A) of the I.D.Act, 1947, there was no settlement, which led to filing of a failure report by the Conciliation Officer. Though the Labour Court in I.D.No.273 of 2003 initially set aside the domestic enquiry proceedings on the ground of violation of principles of natural justice and afforded an opportunity to the Management to prove the charges before it, subsequently, solely on the basis of the evidence of M.W.2 / Headmistress of the School, the Labour Court came to the conclusion that the certificate produced by the petitioner was a bogus one, thereby justified the termination order of the 2nd Respondent. Aggrieved by the same, the Petitioner is before this Court seeking to quash the said Award.

3. Learned counsel for the Petitioner submitted that in the evidence, M.W.2 only deposed that the serial number of the certificate belongs to some other students, meaning thereby that there may be a wrong entry and it was never deposed that the petitioner did not study in the school at all. Moreover, the purported certificate was not obtained for the purpose of securing the job. Learned counsel assailed the impugned Award on the ground that when the similarly placed persons were given a minor punishment, the termination of the petitioner will amount to discrimination. In support of this submission, he referred to a judgment of the Supreme Court in the case of Life Insurance Corporation of India and Others vs. Triveni Sharan Mishra, reported in (2014) 10 SCC 346, wherein it was held as follows:

'13. From the papers on record before us, it appears that for mentioning less qualification to secure the job, similarly situated another employee (one Daluram Patidar) was let off by the Life Insurance Corporation of India by awarding punishment of stoppage of increments for two years with cumulative effect. We are of the opinion that the High Court has rightly taken note of said fact while allowing the writ petition, and directing the employer to consider the imposition of similar penalty after reinstatement of the writ Petitioner.



14. Therefore in view of the above discussion, we do not find any sufficient reason to interfere with the impugned order passed by the High Court. Accordingly, the appeal is dismissed. No order as to costs."

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4. Per contra, learned counsel for the Management contended that the Labour Court rightly apprised the evidence of M.W.2 and held that the certificate produced by the Petitioner was not a correct one and upheld the order of the 2nd Respondent. If an appointment order is tainted and vitiated by fraud, such order is liable to be recalled. He also contended that a wrong decision cannot give rights to the Petitioner to claim parity.

4.1. Learned counsel for the Management relied on the following judgments of the Supreme Court in order to substantiate his arguments:

i) Union of India (UOI) and others vs. M. Bhaskaran and others, reported in 1995 Supp (4) SCC 100;

"6....It was clearly a case of fraud on the appellant-employer. If once such fraud is detected, the appointment orders themselves which were found to be tainted and vitiated by fraud and acts of cheating on the part of employees, were liable to be recalled and were at least voidable at the option of the employer concerned. This is precisely what has happened in the present case. Once the fraud of the respondents in getting such employment was detected the respondents were proceeded against in departmental enquiries and were called upon to have their say and thereafter have been removed from service. Such orders of removal would amount to recalling of fraudulently obtained erroneous appointment orders which were avoided by the employer-appellant after following the due procedure of law and complying with the principles of natural justice. Therefore, even independently of Rule 3(1)(i) and (iii) of the Rules, such fraudulently obtained appointment orders could be legitimately treated as voidable at the option of the employer and could be recalled by the employer and in such cases merely because the respondent-employees have continued in service for number of years on the basis of such fraudulently obtained employment orders cannot create any equity in their favour or any estoppel against the employer."

ii) State of Haryana and Others vs. Ram Kumar Mann, reported in (1997) 3 SCC 321;

"3. The question, therefore, is : whether the view taken by the High Court is correct in law? It is seen that the respondent had voluntarily resigned from the



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service and the resignation was accepted by the Government on May 18, 1982. On and from that date, the relationship of employer and the employee between the respondent and the State ceased and thereafter he had no right, whatsoever, either to claim the post or a right to withdraw his resignation which had already become effective by acceptance on May 18, 1982. It may be that Government for their own reasons, given permission in similar case, to some of the employees mentioned earlier, to withdraw their resignations and had appointed them.

The doctrine of discrimination is found upon existence of an enforceable right. He was discriminated and denied equality as some similarly situated persons had been given the same relief. Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. The respondent has no right, whatsoever and cannot be given the relief wrongly given to them, i.e., benefit of withdrawal of resignation. The High Court was wholly wrong in reaching the conclusion that there was invidious discrimination. If we cannot allow a wrong to perpetrate, an employee, after committing misappropriation of money, is dismissed from service and subsequently that order is withdrawn and he is reinstated into service. Can a similar circumstanced person claim equality under Section 14 for reinstatement? Answer is obviously 'No'. In a converse case, in the first instances, one may be wrong but the wrong order cannot be the foundation for claiming equality for enforcement of the same order. As stated earlier, his right must be founded upon enforceable right to entitle him to the equality treatment for enforcement thereof. A wrong decision by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make a right.

Under these circumstances, the High Court was clearly wrong in directing reinstatement of the respondent by a mandamus with all consequential benefits.

4. The appeal is accordingly allowed. But in the circumstances without costs."

5. Heard the learned counsel on either side and perused the material documents available on record.

6. The main plea canvassed by the Petitioner is that no educational qualification is prescribed for the post of Casual



Labour (Driver) and that there is a discrimination. He drew the attention of this Court to the additional typeset of papers produced before this Court to show that three other similarly placed employees, who were alleged to have produced bogus certificate were let off with a minor punishment. It is further represented by the petitioner that though the extract of service records pertaining to one Anjali and Moorthy was produced by him, in the Award, it has been shown as Management Exhibits, instead of Workman Exhibits.

7. This Court do not want to analyze under what circumstances other employees have been reinstated. Once there is a bogus certificate produced, it is unfair on the part of an employee to take the plea of discrimination. Moreover, there is a 12(3) settlement in this case and this Court cannot set aside the said settlement. The Petitioner, by quoting the decision of the Supreme Court in Life Insurance Corporation of India and Others vs. Triveni Sharan Mishra (supra), sought for application of the same yardstick extended to other employees, to his case. However, the Supreme Court in yet another case in Union of India (UOI) and others vs. M. Bhaskaran and others (referred to above), held that where an appointment has been obtained by fraud and bogus documents, such employee is not entitled to any relief. Both decisions referred to by the respective parties were rendered by the Bench of Apex Court, consisting of Two Judges and merely because the judgment relied on by the petitioner is of the year 2014 (latest one), it does not mean that it must be automatically applied to the facts of this case, as the ratio laid down in Union of India (UOI) and others vs. M. Bhaskaran and others has not been referred to in the subsequent judgment of the Supreme Court in Life Insurance Corporation of India and Others vs. Triveni Sharan Mishra.

8. It is to be noted that while relying on a judgment, if it is found that the factual situation totally differs, then there is no compulsion for the subordinate courts to blindly rely on the same to arrive at a conclusion, as held by the Hon'ble Supreme Court in the case of Padmasundara Rao (Dead) & others vs. State of Tamil Nadu and others, reported in (2002) 3 SCC 533, as follows:

"Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington vs. British Railways Board (1972) 2 WLR 537. Circumstantial flexibility, one additional



or different fact may make a world of difference between conclusions in two cases."

9. As held by the Supreme Court in *State of Haryana and Others vs. Ram Kumar Mann (supra)*, two wrongs will not set a thing right to enforce one more wrong order and claim parity. In view of the said authoritative pronouncement of the Supreme Court, this Court is of the view that there is no perversity in the Award of the Labour Court, which had gone into the disputed question of facts and rendered a categorical finding by means of evidence both documentary and oral that the certificate produced by the Petitioner was a forged one. By any means, the action of the Management in appointing other similarly situated persons cannot be condoned. The Officials / Appointing Authorities, who had appointed the employees like the petitioner based on the fake certificates, cannot be let go scot-free and action must be initiated against them in the light of the judgment of this Court in the case of *S.Thangappan vs. Government of Tamil Nadu*, reported in 1986 TLNJ 153, relevant portion of which, reads thus:

"If there had been any irregularity committed by the Appointing Authority, it is the Appointing Authority, who should be proceeded against. It is because of the failure of the concerned superior authority in not taking a stern action against irregular appointment made by the Appointing Authorities, it results in innocent persons, who secure employment against considerable stress and odds and later on their service dispensed with as if the Appointing Authority, would at any point of time, arbitrarily terminate their services. The second respondent, having found that the third respondent had appointed the petitioners contrary to the Rules, ought to have taken disciplinary proceedings against the third respondent. For errors and omissions committed by him, persons like that of the petitioners, who have secured the last grade post on permanent basis cannot be dealt with as if they could be dropped like hot cakes. Their future cannot be treated as light-heartedly. It is in this view, this Court, considering that even if the appointments had not been made through the Employment Exchange, or due to any other irregularity taking note of the difficulties to which the petitioners would be placed by throwing out of their employment arbitrarily, there Petitions are allowed; committed authority could have exercised its powers of exempting the rules which they do not satisfy. Such orders of exemption are not a rarity. Therefore, instead of taking action against the person who is responsible for passing orders he had been allowed to arbitrarily and contrary to rules terminate



the services of the petitioners. There is no rule enabling the third respondent to terminate the service of a permanently recruited municipal servant."

10. It is apposite to mention here that appropriate disciplinary proceedings for major misconduct shall be initiated against the Appointing Authorities for not maintaining absolute integrity and devotion to duty, which is unbecoming of a member of the service and such irresponsible Officials should be dismissed from service. Before initiating action and dismissing them from service, they must be transferred to a non-sensitive post and place, and their dereliction should be entered into the Service Register, so that their promotions and other benefits should be deprived. Before depriving the gratuity, an opportunity shall be given to the person concerned, as on technical ground, on the failure to give an opportunity, the persons, who are involved in the act of moral turpitude, etc., should not be allowed to succeed to get their benefits.

For the foregoing discussions, the Writ Petition fails and the same is dismissed. No costs.

s/d-
Assistant Registrar(CS-III)

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Sub-Assistant Registrar

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To

1.The Presiding Officer of the
Additional Labour Court
Vellore

2.The Management
Tamil Nadu State Transport Corporation
Villupuram(Division-II)Ltd
Rangapuram Vellore 632 009.

+1 CC to Mr.C.S.K.Sathish, Advocate sr 30118.

W.P.No.29499 of 2010

CP(CO)
SP(17/09/2021)