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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2021

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THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.18976 of 2021

A.Chinnaraj

.. Petitioner

Vs

1.The State of Tamil Nadu,
rep. by tis Principal Secretary to Government,
Environment and Fores Department,
Fort St.George,
Chennai - 600 009.

2.The Principal Chief Conservator of Forests,
Head of Forest Force,
No.1, Genies Road,
Panagal Maligai,
Saidapet,
Chennai - 15.

3.The Conservator of Forests,
Dharmapuri Region Division,
Dharmapuri - 5,
Dharmapuri District.

4.The District Forest Officer,
Dharmapuri Forest Division,
Dharmapuri - 5,
Dharmapuri District.

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the 4th respondent herein vide Se.Mu.Aa.No.2198/2019/Pa3 dated 28.05.2021 and quash the same, consequently direct the respondents to allow the petitioner to retire from service and pay all service and monetary benefits including pension within stipulated time.

For Petitioner : Mr.R.Jothimanian

For Respondents : Mr.K.Tippusultan
Government Advocate (Forest)



O R D E R

This writ petition has been filed to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the 4th respondent herein vide Se.Mu.Aa.No.2198/2019/Pa3 dated 28.05.2021 and quash the same, consequently direct the respondents to allow the petitioner to retire from service and pay all service and monetary benefits including pension within stipulated time.

2. The petitioner was appointed as Plot Watcher on 01.01.1986 and his name was included in the State wide seniority list of Plot Watchers/ Social Forestry Workers for regularisation. His service was subsequently, came to be regularised as Plot Watcher in supernumery post on 07.08.2009. He was subsequently appointed as Forest Watcher on regular basis on 01.03.2014 with a time scale of pay. The educational qualification for appointment to the post of Plot Watcher was to know 'Read and Write' of the vernacular language in terms of Rule 5(2)(aa) of the Tamil Nadu Basic Services Rules.

3. On 17.03.2020, the petitioner was issued with the charge memorandum by the 4th respondent under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal Rules) for producing bogus certificate in support of his age declaration at the time when he was regularised as Plot Watcher on 07.08.2009. The Charge Memorandum was issued as the petitioner was approaching the age of superannuation on 31.05.2021. The petitioner submitted his explanation to the charge memorandum, but the enquiry was ordered and the same was also completed.

4. On completion of the enquiry, finding the charge of production of bogus certificate was held established, he was dismissed from service vide order dated 28.05.2021. As against the order of dismissal from service, the present Writ Petition has been filed.

5. Mr.Jothimanian, the learned counsel for the petitioner would submit that the qualification that is prescribed under the Rules is only read and write for appointment to the post of Plot watcher. The petitioner being an illiterate, has no iota as to how this certificate came to be produced by him. According to the learned counsel, he has secured appointment not on the basis of the certificate. The petitioner had rendered nearly 34 years of service and the entire years had been wiped out because of the enquiry proceedings initiated against him and the imposition of the penalty.

6. The learned counsel would also submit that under similar circumstances, this Court has interfered with the order of punishment as being disproportionate and directed the authority to impose any minor penalty on the petitioner



therein for the proved misconduct without affecting his pensionary benefits. The learned counsel would submit that this case may also be considered which comes within the frame work of the above decision rendered in W.P.No.653 of 2018 dated 16.03.2020. The petitioner having rendered more than three decades of service, his claim in this writ petition may be considered sympathetically for the very reason that the qualification of 8th standard was not required at all for appointing him as a Plot Watcher or regularise him as Forest Watcher.

7. Mr.K.Tippusultan, the learned Government Advocate appeared for the respondents and opposed any relief to be granted to the petitioner. A counter affidavit has also been filed on behalf of the 4th respondent. In the counter affidavit it has been stated that the petitioner produced fake certificate of educational qualification and because of that his actual date of birth could not be ascertained resulting in loss to Government by making payment of monthly salary to him. In fact, a reference has been made to the Enquiry Officer's report in paragraph 9 of the counter affidavit that the appointment of the petitioner as Supernumerary Plot Watcher was made on the basis of 'read and write' and hence, Charge No.1 was not proved. At the same time, the educational certificate contained the date of birth and studied 9th standards in Government High School was confirmed as fake one and therefore, Charge No.2 came to be proved.

8. From the above, what is clear is that the charge against the petitioner was proved in respect of production of fake educational certificate and yet for appointment as Supernumerary post as Plot Watcher, the same was done on the basis of the qualification of the petitioner namely 'read and write' and the same had no nexus with the fake certificate produced by him.

9. In any event, the principles of equity demand that the petitioner having worked for more than 34 years cannot be left high and dry at the end of his career and at the same time, he should not be left off the hook without being inflicted by some punishment for the proved misconduct against him. As rightly contended by the learned counsel for the petitioner, under similar circumstances, this Court, after going through the relevant rules has appreciated the case of the petitioner therein with an empathy and allowed the writ petition. In the earlier decision, on behalf of the petitioner, it was stated as under in paragraph 6 to 8.

6.The learned counsel would submit that the following decisions of this Court would support his contention that the production of school certificate by the petitioner can be treated as immaterial whether it was bogus or otherwise and petitioners services



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can be held otherwise valid in terms of the rule position. The learned counsel would rely on a decision of the learned Single Judge (as he then was) reported in 2009 (4) CTC 158 in the case of N.Sekar Vs. Director of Medical Education & others, he would refer to paragraph 6 of the decision of the learned Single Judge's which is extracted hereunder;

"6. In the light of the report of the District Elementary Educational Officer, Vellore and having regard to the undisputed fact that the petitioner got the certificate issued by the Headmaster of Panchayat Union Elementary School, Chitteri Village, Arakonam, the petitioner is qualified to be appointed as Barber in terms of Tamil Nadu Basic Service Rules viz., Rule 5(2). Hence, the dismissal order passed against the petitioner, even though he is qualified to be appointed as a Barber cannot be sustained. The petitioner though produced a certificate claiming that he passed 8th standard was found wrong and by producing the same he has not persuaded the authority to ignore the claim of other candidate. Similar issue was considered by a Division Bench of this Court in W.P. No.38962 of 2002. By order dated 07.03.2005, the Division Bench has held as follows:

"The question is whether production of such false document had in any way, persuaded the Appointing Authority to give appointment to the first respondent or whether the production of such bogus certificate had excluded the claim of any meritorious candidate. As found by the Tribunal, the qualification for the post in which the first respondent was appointed is that one must know to read and write Tamil. No other educational qualification is prescribed. Therefore, probably, out of anxiety, the first respondent would have produced the said certificate, which is wholly uncalled for. The availability of such a certificate on file, assuming it had not been detected, would not give him any additional rights in the matter of promotion. Therefore, in the above noted



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circumstances, we do not find any illegality at all in the Tribunal setting aside the order of punishment of dismissal and remitting the case to the original authority to impose a lesser punishment, as he may deem fit. The Writ Petition is accordingly dismissed."

The learned judge in the above decision referred to the Division Bench order in paragraph 8 and conclusion of the learned judge in paragraphs 9 are extracted hereunder;

"8.Again in the decision of P.Sekar Vs. Registrar, Tamil Nadu Administrative Tribunal, Chennai & others, 2008 (5) MLJ 646, a Division Bench of this Court taken the same view. In Tamil Nadu Electricity Board while appointing helpers on the basis of recommendations of Hon'ble Justice Khalid Commission, certain helpers obtained orders of appointment by producing bogus certificates. Disciplinary proceedings was initiated and on the suggestions made by the Division Bench of this Court, the Board resolved to reinstate the helpers who were dismissed and ordered to reduce the pay of three years which will operate for future increments. The said decision was approved by the pay for three years which will operate for future increments. The said decision was approved by the Division Bench of this Court in W.P.No.16521 of 2002, etc., batch by order dated 05.02.2003.

9.Applying the said decisions to the facts of this case, the impugned order is set aside. The second respondent is directed to reinstate the petitioner as Barber with continuity of service without backwages within a period of four weeks from the date of receipt of a copy of this order. It is made clear that it is open to the second respondent to impose any other lesser punishment for the production of false certificate.

7.He would further refer to a decision of this Court in the case of C.Elumalai Vs. The Superintendent of Police & others dated



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23.08.2017 in W.P.No.12604 of 2013, wherein in identical circumstances, this Court after advertent to various decisions of both Division Bench as well as Single Judges has held as under in paragraphs 9 & 10 which are extracted hereunder;

"9.This Court has considered the rival submissions of the learned counsels and also perused the materials and the pleadings placed on record. There is considerable force in the contention of the learned counsel appearing for the petitioner that the qualification for appointment in the basic service is a person must know to read and write Tamil and therefore, the production of school certificate that the petitioner had passed 8th standard assumes no significance at all, in which case, the production of certificate was not the basic factor which was taken into consideration while appointing the petitioner as Sweeper. Moreover, the decision by this Court as extracted supra squarely covers the issue raised in the present writ petition except that in that case, there was no criminal case and therefore the learned Judge was constrained to issue consequential order directing the respondents to impose lesser penalty and also denied the backwages to the petitioner therein. As far as the present case on hand, there was a criminal case launched against the petitioner, which ended in honourable acquittal and that acquittal had become final. Moreover, the petitioner was dismissed from service as early as in the year 2002 i.e. 15 years before and therefore the denial of full backwages for the entire period would be unjust in the facts and circumstances of the case. Therefore, this Court has no hesitation in allowing the writ petition and set aside the order of dismissal from service dated 02.04.2002 and the petitioner is ordered to be reinstated in service forthwith and he is also entitled to 50% of the backwages and all other attendant benefits like continuity of service etc., The order



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of reinstatement shall be passed as above within a period of one month from the date of receipt of a copy of this order.

10. The writ petition stands allowed on the above terms. No costs. Consequently, connected miscellaneous petition is closed."

8. The learned counsel would also rely on a Division Bench decision recently reported in 2019-1-Writ L.R.841 in the case of C.Govindan Vs. The Inspector General (Prison) & others, he would draw reference to paragraph 4 to 7 which are extracted hereunder;

"4. The Learned Counsel for the Appellant strenuously urged that the post of Sanitary Worker is shown as category 8 in Class IV of the Special Rules for Tamil Nadu Basic Service and the educational qualification of candidates for appointment through direct recruitment to any of the categories in Class IV is that he must be able to read and write in Tamil as required under Rule 5(2)(aa) of the Special Rules for Tamil Nadu Basic Service and that the stipulation of pass in VIII standard was only in respect of the posts in Class I, II and III and as such, the Appellant had been wrongfully removed from service by the Disciplinary Authority whose order was erroneously confirmed by the Appellant Authority. In support of the said contention, reliance is placed on the decisions of this Court in P. Mahendran -vs- Chief Engineer (Order dated 20.06.2003 in W.P. No. 6932 of 2002), N. Sekar -vs- Director of Medical Education [(2009) 4 CTC 158] and the Division Bench of this Court in E. Rengammal -vs- Superintendent (Order dated 25.01.2018 in W.A. No. 1085 of 2016) in which one of us (K.K. Sasidharan, J.) is a party.

5. We find that there is substantial force in the aforesaid contention raised on behalf of the Appellant inasmuch as the production of the bogus certificate showing that the



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Appellant had passed VIII standard was inconsequential. The educational qualification prescribed for the instant post was that the candidate must be able to read and write Tamil. It is not the case of the Respondents that the Appellant was not able to read and write Tamil.

6. In that view of the matter, fortified by the aforesaid decisions cited by the Learned Counsel for the Appellant, we hold that the order No. 1993/E.S.2/2009 dated 29.04.2009 passed by the Inspector General of Prison, confirming the order No. 5295/SJ1/95 dated 03.10.1996 passed by the Superintendent of Prisons, Central Prison, Salem, cannot be sustained and accordingly, the same are quashed and the Appellant is liable to be reinstated with continuity of service. It is further made clear that if the Appellant had attained the age of superannuation in the interregnum, he shall be treated as having served continuously in the post till retirement for the purpose of terminal and pensionary benefits. However, having regard to the fact that the Appellant had produced a bogus certificate of having passed VIII standard though the same was not required for being appointed to that post, we are of the considered view that the Appellant shall not be entitled to any monetary benefits till today. The concerned authorities shall issue necessary orders in this regard, which shall be communicated to the Appellant and a report of compliance in that regard shall be filed before the Registrar (Judicial) of this Court by 31.05.2019 without fail.

7. In the result, the Writ Appeal succeeds and the order dated 10.12.2013 in W.P. No. 12228 of 2010 is set aside and the Writ Petition is disposed of on the aforesaid terms. No costs.

10. Considering the legal submissions made on behalf of the petitioner therein, this Court has observed as follows:

14. It is true that the petitioner has committed a serious act of mis-conduct by



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producing a bogus certificate. The fact that school certificate produced by him was immaterial cannot be a ground to condone the act of mis-conduct committed by the petitioner. Therefore, the action of the Department initiated against the petitioner cannot be faulted per se, as the Department cannot in the face of discovery of the bogus certificate produced by the petitioner can remain silent and turn the other way. Therefore, this Court does not find fault with the Department proceeding against the petitioner, by initiating disciplinary proceedings in terms of the service rules.

15.Be that as it may, as regards the contention put forth on behalf of the petitioner is concerned, the decisions relied on by the counsel as aforementioned, are squarely applicable to the present case as well. When admittedly the Tamil Nadu Forest Sub-ordinate Civil Rules prescribed qualification is only to read in Tamil for initial appointment as Plot Watcher and also in regard to the promotion as Forest Guard from the Feeder grade of Plot watcher wherein the same qualification is prescribed, the service rendered by the petitioner both as Plot Watcher and Forest Guard for more than 30 years cannot be legally dubbed as invalid. On that aspect of the contentions of the petitioner and the decisions cited by the learned counsel are apposite and pertinent to the factual matrix of the case on hand.

16.Once the appointment and continuance of the petitioner in the post is admittedly in terms of the Rules, the production of school certificate was immaterial in order to taint the appointment and continuance of the petitioner as illegal or invalid. In that view of the matter, the petitioner services are to be held valid and the impugned order of removal from service in that context appears to run contrary to the view taken by this Court in similar situation.

17.As stated above, the very fact that the production of school certificate was found bogus was certainly a serious act of misconduct, but in view of the admitted rule position, the petitioner cannot be



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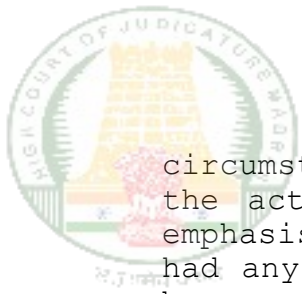
sent out of service, as his appointment and continuance in service as Plot Watcher as well as Forest Guard was well within the framework of the Rules applicable to his category. That being the case, the impugned order removal from service in the opinion of this Court cannot be countenanced in law. There are several decisions of this Court on this aspect and all the decisions cited above have come to the aid of the employees under similar circumstances. Therefore, this Court cannot have a different view, particularly this Court itself has passed orders protecting the interest of the similarly placed petitioners.

18. At the same time, the petitioner need not be allowed to go scot-free when an allegation of production of bogus school certificate was found to be proved in a duly conducted departmental enquiry. No matter whether that bogus certificate was material or not for the type of employment of the petitioner under the respondent/department, he needs to be visited at least with a minor penalty for the proved misconduct. Such a consequence has to necessarily befall the petitioner in order to vindicate the action taken by the employer, as no employer in the situation on hand is expected to show supine indifference.

19. In the above circumstances, the impugned order in Se.Mu.Aa.No.863/17/Pa3 dated 23.10.2017 passed by the fourth respondent is hereby set aside. The fourth respondent is directed to impose any minor penalty on the petitioner for the proved misconduct without affecting his pensionary benefits considering the fact that the petitioner belonged to last grade service.

20. The fourth respondent is also directed to permit the petitioner to retire from service and on his retirement the petitioner is also entitled to all consequent terminal/pensionary benefits subject to the minor penalty to be imposed on by the fourth respondent.

11. This Court is of the view that the above ruling of this Court would squarely apply to the facts of this case also. This order has been passed only on the facts and



circumstances of the present case and it does not mean that the act of the petitioner stood condoned. It is once again emphasised that no matter whether the educational certificate had any nexus to his appointment at all or not, production of bogus or fake educational certificate would certainly invite very strong reaction as being violative of the conduct Rules. However, considering the age of the petitioner as well as the long service rendered by him, a compassionate view has been taken in the matter as well.

12. In the circumstances, the impugned order passed by the 4th respondent in Se.Mu.Aa.No.2198/2019/Pa3 dated 28.05.2021 is hereby set aside. The 4th respondent is directed to impose any minor penalty on the petitioner for the proved charge without affecting the benefits to the petitioner, considering the fact that the petitioner belonging to last grade servant.

13. The 4th respondent is also directed to permit the petitioner to retire from service on the date of the petitioner reaching the age of superannuation and he is entitled to all consequential terminal pensionary benefits subject to the minor penalty to be imposed by the 4th respondent.

14. The 4th respondent is directed to pass appropriate order as indicated above within a period of twelve weeks from the date of receipt of a copy of this order.

15. The Writ Petition is ordered accordingly. No costs.

Sd/-

Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

vsi

To

1.Principal Secretary to Government,
The State of Tamil Nadu,
Environment and Fores Department,
Fort St.George, Chennai - 600 009.

2 The Principal Chief Conservator of Forests,
Head of Forest Force,
No.1, Genies Road,
Panagal Maligai,
Saidapet, Chennai-15.



3.The Conservator of Forests,
Dharmapuri Region Division,
Dharmapuri - 5,
Dharmapuri District.

4.The District Forest Officer,
Dharmapuri Forest Division,
Dharmapuri - 5,
Dharmapuri District.

+lcc to Mr.M.R.Jothimanian, Advocate SR. No.63179

+lcc to Special Government Pleader (Forest) SR. No.63887

W.P.No.18976 of 2021

SS (CO)
PR (16/12/2021)