



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 13.02.2020

DELIVERED ON : 09.02.2021

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD)No.10147 of 2009

and

M.P. (MD) .No.1 of 2009

S.Rajaji @ Rajamani

... Petitioner

Vs.

1.The Chief Engineer (Distribution),
Tamil Nadu Electricity Board,
Tirunelveli Electricity Region,
Tirunelveli - 627 011.

2.The Superintending Engineer,
Tamil Nadu Electricity Board,
Tirunelveli Electricity Distribution Circle,
Tirunelveli - 627 011.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records relating to the impugned order in Ku.Aa.No.11034/325/NePe/C2/2009, dated 01.09.2009 issued by the 1st respondent and quash the same.

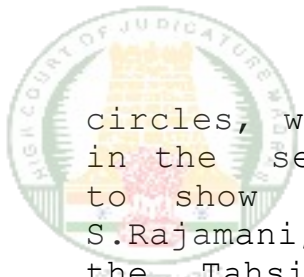
For petitioner : Mr.T.Lajapathi Roy

For respondents : Mr.T.Sakthikumaran

ORDER

This writ petition has been filed by the petitioner challenging the order imposing enhanced punishment by the appellate authority.

2. The learned counsel appearing for the petitioner submitted that in the year 1983, the petitioner was engaged as Contract Labour in various sections under the 2nd respondent. On the basis of the recommendations of the Justice Khalid Commission appointed by the Hon'ble Supreme Court, the respondents decided to regularize the services of the contract labour and as such, in the year 1995, the petitioner received a call letter in his nick name called "S.Rajamani", by which name he was called then in official



circles, whereas the petitioner's name in the school records and in the service certificates mentioned as "S.Rajaji". In order to show that the petitioner is known by names S.Rajai @ S.Rajamani, he produced a certificate dated 24.07.1995 issued by the Tahsildar Office, Sankarankovil. Though the petitioner attended interview, in the background of the confusion prevailed over his dual name, his appointment was delayed and hence, in this regard, he had sent a representation dated 02.12.1995. As there was no response to the same, the petitioner had filed a writ petition in W.P.N.3306 of 1996 seeking a direction to the respondents to consider his representation dated 02.12.1995 within a stipulated time. This Court, by order dated 12.04.2002, directed the respondents to consider the said representation dated 02.12.1995 within a stipulated time. However, in the meanwhile, the first respondent issued guidelines in the year 1998 with regard to non selection of contract labours due to difference in initials, names, date of birth, qualifications, etc. and directed to refer such cases to the Selection Committee again and based on the same, a second call letter dated 31.01.1998 was issued to the petitioner. On satisfying with the documents produced, the second respondent issued an order dated 20.03.1998 appointing the petitioner as Helper and also directed to correct his name as S.Rajaji @ S.Rajamani in his Service Records. Thereafter, the petitioner was promoted as Commercial Assistant on 05.03.2003.

3. The learned counsel appearing for the petitioner would further submit that while so, after about nine years, the second respondent issued a charge memo dated 30.12.2006 levelling two charges. They are:

(1) when the petitioner was studying 11th standard in the year 1984, he was stated to be worked as Contract Labour. Though in the school certificates as well as in the service certificates the name of the petitioner mentioned as S.Rajaji, just before joining in the department ie., before 24.07.1995, he had produced a certificate from the Thasildar to the effect that his name is S.Rajaji @ Rajamani and thereby, the petitioner had impersonated to join the service. Further, the date of birth of the petitioner's father U.Shanmugam, who was working as Checking Inspector in the very same department, is 27.04.1951 and the petitioner's date of birth is 30.05.1965 and thus, there is only 14 years difference between the petitioner and his father; and

(2) the petitioner joined the service by giving false information as if his name is S.Rajaji @ S.Rajamani.



On 22.09.2007, the petitioner has submitted his explanation to the effect that (a) the service certificates issued by the petitioner as to his engagement as Contract Labour were accepted by the Selection Committee; (b) there is no bar for the petitioner's engagement as Contract Labour during holidays in the school and that in page 84 of the Khalid Commission report, it is stated that a labourer can be accepted as Contract Labour even when he is engaged for a single day; and (c) Certificate issued by the Tahsildar with regard to dual name of the petitioner has been accepted by the Selection Committee and therefore, the charges against the petitioner are not acceptable.

4. He would further submit that after enquiry, the Enquiry Officer has held that the charges are proved holding that the petitioner did not submit any other proof to support his claim as his name was "S.Rajaji @ Rajamani" and he had not published about the changes in his name in the Government Bulletin. Without taking into account the submissions made by the petitioner on the findings of the Enquiry Officer, the disciplinary authority, by order dated 15.05.2008, has imposed the punishment of stoppage of increment for one year with cumulative effect. Aggrieved by the same, the petitioner had filed an appeal on 20.06.2008. The first respondent / Appellate Authority strangely ascertained the veracity of the dual name certificate issued by the Tahsildar Office, Sankarankovil to the petitioner and the District Collector informed that the said certificate was issued by the Deputy Tahsildar and he was not empowered to issue such certificate. Based on the said letter issued by the District Collector, the first respondent has called for an explanation from the petitioner. After affording an opportunity to the petitioner, the Appellate Authority has enhanced the punishment imposed on the petitioner to "demotion to the initial post of Field Helper for three years in the lowest scale of pay with cumulative effect from 15.5.2008. Aggrieved by the order of the appellate authority, the petitioner has filed this petition.

5. The learned counsel for the petitioner would further submit that when the whole issue has been resolved by the competent authority in the year 1998 itself, without any complaint arising out of any aggrieved person, the initiation of disciplinary proceedings alleging impersonation, after a lapse of 9 years of appointment, is totally unfair, unsustainable and motivated. Though the petitioner has applied for certificate to the Tahsildar, Sankarankovil, it was signed by the Deputy Tahsildar and it is the fault of the Deputy Tahsildar, for which the petitioner cannot be made liable. In a similar case of dual name certificate issue, the respondents have accepted the certificate issued by a Village Administrative Officer on 28.08.1991 in favour



of one Vellaichamy @ Viswasam and such employee was appointed as Helper and promoted further without any hindrance. Thus, there is manifest bias and motivation on the part of the respondents against the petitioner. As the enhanced punishment has been imposed by the first respondent on the charge which were not framed in the charge memo and that the punishment itself is not available in the Standing Orders governing the service conditions of the petitioner and the punishment is imposed with bias and mala fide intentions, the impugned order may be set aside. Thus, he prayed to allow this writ petition.

6. The learned counsel appearing for the respondents submitted that when the petitioner was studying 11th standard in the year 1984, he was stated to be worked as contract labour. Though in the school certificates as well as in the service certificates the name of the petitioner mentioned as S.Rajaji, just before joining in the department ie., before 24.07.1995, he had produced a certificate from the Deputy Thasildar to the effect that his name is S.Rajaji @ Rajamani and thereby, the petitioner had impersonated to join the service and he had joined the service by giving false information. While appointing the petitioner, the guidelines issued by the Khaild Commission has not been properly followed. The petitioner has not properly identified by any Junior Engineer or Assistant Engineer to prove the fact that he had worked as Contract Labour. The two persons who identified the petitioner as Contract Labour are none other than his father and brother, which was not properly noticed by the Selection Committee. Further, considering the age difference of the petitioner, his brother and his father, his father was compulsory retired from service, after an enquiry. The petitioner's brother had joined in the service as if he had worked as Contract Labour from the age of 10. Except the dual name certificate issued by the Deputy Tahsildar, nothing has been produced by the petitioner to show that he was called as "S.Rajaji @ Rajamani". He has also not brought out about the change in his name in Government Bulletin. Even in the certificates issued by the petitioner's father and brother, the name of the petitioner is mentioned only as S.Rajaji and they have not stated that he was called by nick name as S.Rajamani. More over, in the affidavit filed in support of the writ petition in W.P.No.3306 of 1996, which has been filed for a direction to consider his representation, the petitioner has only stated that the call letter has been issued wrongly as S.Rajamani instead S.Rajaji and it was not stated by him that the name of S.Rajamani is his nick name. As the petitioner joined in the service by impersonation and by producing the invalid certificate, he is liable to be dismissed from service. However, considering the number of years of service of the petitioner, the appellate authority has only demoted the petitioner to the initial post of Field officer for three years with cumulative effect from



15.05.2008. Therefore, the order passed by the appellate authority need not be interfered. Thus, he prayed to dismiss this writ petition.

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

8. The main grounds on which the petitioner sought to set aside the order of the appellate authority is that the first respondent/appellate authority has enhanced the punishment travelling beyond the frame and scope of the charges framed against him and that the punishment is unenforceable.

9. No doubt, the charge of impersonation alleged against the petitioner is a serious one, though it was belatedly taken note of. When a call letter has been issued in the name of Rajamani, the petitioner took a stand that it has been wrongly issued as Rajamani instead Rajaji. In this regard, the petitioner had sent a representation dated 02.12.1995 to the respondents and as there was no response to the same, the petitioner had filed a writ petition in W.P.No.3306 of 1996. Curiously, even in the affidavit filed in support of the Writ Petition, the petitioner did not state that he has dual name ie., S.Rajaji @ Rajamani, but he had only stated that the call letter has been wrongly issued in the name of S.Rajamani, instead S.Rajaji. It is seen that the second call letter dated 31.01.1998 was issued only in the name of S.Rajamani. The persons, who identified the petitioner as Contract Labour before the Selection Committee are none other than his father and brother. Even the petitioner's father and brother had identified him as Contract Labour only as S.Rajaji and not as S.Rajaji @ Rajamani. Though all the documents ie., the school certificates, service certificates, voter ID, etc. were standing only in the name of S.Rajai, the Selection Committee appointed the petitioner only based on the dual name certificate issued by the Zonal Deputy Tahsildar and the identification certificate issued by the two co-workers. The appointment order also has been issued only in the name of S.Rajamani. Thereafter only, it was ordered to be corrected in the service register as S.Rajaji @ S.Rajamani.

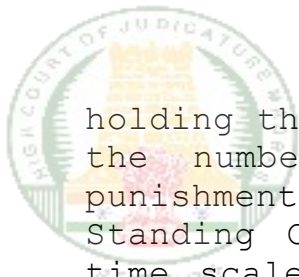
10. A perusal of record shows that the disciplinary authority has found that (i) the petitioner could not have worked as Contract Labour in the year 1984-86, as he was studying 11th standard at that time; (ii) the petitioner has not been identified by any Junior or Assistant Engineers to prove the fact that he had worked as Contract Labour; (iii) the two other persons who had identified the petitioner as Contract Labour are none other than his brother and father, which was not properly noticed by the Selection Committee; and (d) except dual name certificate, nothing has been produced by the petitioner to show that he was called by



dual name. Having found that the charges are proved, the disciplinary authority imposed punishment of stoppage of increment for one year with cumulative effect. Aggrieved by the same, the petitioner has approached the appellate authority. When the appellate authority verified the authenticity of the dual name certificate, the District Collector has informed that the Zonal Deputy Tahsildar has no authority to issue such certificate. As the appointment of the petitioner was made based on the dual name certificate issued by the Zonal Deputy Tahsildar and without following the guidelines issued by Khalid Commission, the appellate authority has issued a show cause notice to the petitioner. After getting explanation from the petitioner, the appellate authority enhanced the punishment, thereby demoted the petitioner to the initial post of Field Officer for three years with cumulative effect from 15.05.2008.

11. Admittedly, the call letters and appointment order have been issued only in the name of S.Rajamani. After receipt of call letter in the name of S.Rajamani, the petitioner had obtained dual name certificate. Even then, the stand of the petitioner before the respondent and this Court was that the call letter has been wrongly issued in the name of S.Rajamani instead S.Rajaji and he had not stated that he has dual name. But, after issuance of second call letter, the petitioner by producing the dual name certificate has stated that he has dual name. Except dual name certificate, no document has been produced by the petitioner to show that he has dual name. Only based on the said dual name certificate, the appointment order has been issued to the petitioner. After verification from the District Collector, the appellate authority has found that the dual name certificate was issued by the incompetent authority. As the dual name certificate has been issued by incompetent authority, it was concluded by the appellate authority that the first charge of impersonation categorically proved. Though the petitioner stated that he has nothing to do with the signature made by the incompetent authority, he should have been vigilant enough to obtain certificate from the competent authority, especially when he relied upon the said certificate solely for his claim of dual name. The finding of the appellate authority is not beyond the scope of the charges and therefore, the first contention of the petitioner cannot be accepted.

12. The appellate authority has enhanced the punishment as "demotion to the initial post of Field Officer for three years in the lowest scale of pay with effect from the date of imposition of punishment by the disciplinary authority". It is submitted by the petitioner that the punishment is unenforceable. But, the learned counsel for the respondent submitted that it is enforceable. It is seen that the appellate authority has enhanced the punishment



holding that though he has to be removed from service, considering the number of years of service rendered by him, the said punishment is imposed. The punishment prescribed for misconduct in Standing Order No.31 (v) and 31(vi) are that "Reduction in the time scale of pay for a specific period" and "Demotion to lower post or lower grade" respectively. It is seen that though the punishment of demotion to lower post is not prescribed to a limited period, the respondent has demoted the petitioner to the lower post for a specific period, considering the number of years of service. This Court is not inclined to interfere with the said finding of the appellate authority at this length of time.

13. This Court does not find any valid reason to interfere with the order of the appellate authority. There is no merit in this petition.

14. In the result, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS-III)

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/ /2021

Sub Assistant Registrar(CS)

Bala

To

1.The Chief Engineer (Distribution),
Tamil Nadu Electricity Board,
Tirunelveli Electricity Region,
Tirunelveli - 627 011.

2.The Superintending Engineer,
Tamil Nadu Electricity Board,
Tirunelveli Electricity Distribution Circle,
Tirunelveli - 627 011.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-4194[F] dated
10/02/2021)

+1 CC to M/s.T.SAKTHI KUMARAN, Advocate (SR-4339[F] dated
10/02/2021)

order made in
W.P(MD)No.10147 of 2009
09.02.2021

NS (CO)

TR(04.03.2021) 7P 5C