

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of pronouncing the Judgment
06.07.2021	15.07.2021

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CORAM :
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. (MD) No.644 of 2020

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

.. Appellant/2nd Respondent

Vs

1.A.Subburaj

.. 1st Respondent/Petitioner

2.The Joint Registrar of Co-operative Societies,
Dindigul Region,
Collectorate Complex,
Dindigul.

.. 2nd Respondent/1st Respondent

PRAYER : Appeal filed under Clause 15 of Letters Patent Act, to set aside the order, dated 27.01.2020 passed in W.P.(MD) No.3222 of 2015.

Prayer in WP(MD) . 3222/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a 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. 383/12/Saba dated 30.01.2015 and quash the same.

For Appellant : Mr.D.Shanmugaraja Sethupathy

For R1 : Mr.A.Hajamohideen

For R2 : Mr.A.K.Manickam,
Standing counsel for Government



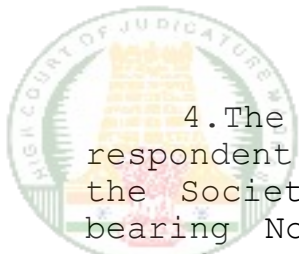
JUDGMENT

S. ANANTHI, J.

This writ appeal is filed against the order passed by the learned Single Judge of this Court in W.P.(MD)No.3222 of 2015, dated 27.01.2020, filed by the first respondent/petitioner.

2.The first respondent/writ petitioner had filed W.P.(MD)No.3222 of 2015 under Article 226 of the Constitution of India, challenging the order dismissing him from service by the second respondent and also confirmation of the same by the first respondent in the revision petition.

3.The case of the first respondent/writ petitioner is that the petitioner was appointed as Office Assistant on 20.02.1997 in the second respondent's Office. Subsequently, he was ordered to work as Watchman from 01.12.1998 by the second respondent. While so, on 18.11.2011 the second respondent suspended the petitioner from service stating that at the time of joining service, he had produced bogus school Transfer Certificate. Subsequently, the second 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 leaving the school on completion of VIII 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 Sivagnanapuram 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 V standard. He had annexed the said certificate in the application submitted for recruitment and the second respondent, after verifying the original school certificate, has returned the same. While so, the second 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. So, the first respondent/petitioner filed writ petition challenging the order of dismissal by the appellant/2nd respondent.



4.The learned counsel appearing for the appellant/first respondent 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 VIII 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 regularization of his service and got back the Transfer Certificate 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. The writ Court without considering the above facts, allowed the writ petition and set aside the dismissal order, dated 31.05.2012.

5.The learned Single Judge allowed the writ petition and set aside the dismissal order on the following two grounds:-

- a)The criminal case against the first respondent/writ petitioner is ended in acquittal. So for the same allegations, disciplinary proceedings cannot be initiated;
- b)There was no evidence to show that the writ petitioner submitted the false certificate to the employer.

6.The writ Court relied on a decision of this Court in the case of **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.

With regard to ground (a), the above reported Judgment cannot be relied for the case in hand.

7.The trial Court convicted the first respondent/writ petitioner in the criminal case for the bogus certificate and sentenced him to undergo imprisonment for one year. The appellate Court in appeal set aside the said conviction and sentence and acquitted him from the charges on the grounds that (i) there is no evidence to show that such certificate was produced before the second respondent; (ii) the original bogus certificate has not been recovered and (iii) the complainant turned hostile.

8.The writ Court held that the disciplinary proceedings cannot be initiated for very same facts. In this regard this Court is inclined to refer to the decision of the Hon'ble Supreme Court of India in the case of **Capt M Paul Anthony Vs. Bharat Gold Mines, Limited** reported in **1999 (3) SCC 679** and the relevant paragraph is extracted hereunder:

"..While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubts.

The little exception may be where the departmental proceedings and criminal case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance".



9.A Judgment of the Hon'ble Supreme Court of India in the case of the **Deputy Inspector General of Police Vs. S.Samuthiram** reported in **2013 (1) SCC 598**, considered the very same issue regarding the effect of acquittal in a criminal case with respect to the punishment imposed in the departmental proceedings. In the above said decision, it is held that even if the delinquent employee is acquitted honourably, he is not entitled to claim reinstatement, unless the service rules provides so. In Paragraph Nos.23, 26 to 28, the Hon'ble Apex Court held thus:

"...23.We are of the view that the mere acquittal of an employee by a criminal court has no impact on the disciplinary proceedings initiated by the Department.....

26.....in the absence of any provision in the service rule for reinstatement, if an employee is honourably acquitted by a Criminal Court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so.

27. We have also come across cases where the service rules provide that on registration of a criminal case, an employee can be kept under suspension and on acquittal by the criminal court, he be reinstated. In such cases, the reinstatement is automatic. There may be cases where the service rules provide in spite of domestic enquiry, if the criminal court acquits an employee honourably, he could be reinstated. In other words, the issue whether an employee has to be reinstated in service or not depends upon the question whether the service rules contain any such provision for reinstatement, and not as a matter of right. Such provisions



are absent in the Tamil Nadu Service Rules.

28. In view of the above mentioned circumstances, we are of the view that the High Court was not justified in setting aside the punishment imposed in the departmental proceedings as against the respondent, in its limited jurisdiction under Article 226 of the Constitution of India..."

10. In departmental proceedings, the standard of proof is one of the preponderance of the probabilities, and in a criminal case, the charges has to be proved beyond reasonable doubt. In the present case, in both proceedings, the facts are different, complainant are also different. In criminal case, the complainant is a private party and he turned hostile. But in the departmental enquiry, the complainant is the employer and the complaint is based on bogus school certificate which was produced by the first respondent/writ petitioner employee at the time of joining duty. In the disciplinary proceeding, the charges against the first respondent/writ petitioner was proved. In appeal also, it was confirmed.

11. The first respondent/writ petitioner joined duty as Office Assistant on 20.02.1997. It is duty of the employee to produce certificates to the employer before joining duty. The first respondent/writ petitioner produced his original certificates to the employer on 10.02.2007. Later the employee got back the original certificates, by substituting them with xerox copies, with an acknowledgment letter. Those xerox copies of certificates were produced before enquiry officer in departmental proceedings. The writ petitioner in the departmental proceedings denied that the certificates were not produced by him. As per his counter, he stated that due to political vengeance, the appellant set up one Alagumalai, who was the complainant in the criminal case. Further, the first respondent/writ petitioner stated that he studied upto V standard in Sivaganapuram Panchayat Union Primary School and he gave that certificates only to the employer.

12. The first respondent/writ petitioner presented an application for regularization of his service to the employer on 10.02.2007. The first respondent/writ petitioner enclosed Bio-data, Community Certificate and Transfer Certificate, in which, his date of birth is mentioned as 06.03.1971 and educational qualification as VIII standard in the year 1977-78. In transfer certificate, the school name is Government Higher Secondary School, Batalagundu. The first respondent/writ petitioner also signed as attestor in all the documents, which was not denied by him.

13. Further, the employer sent the transfer certificate to the Government Higher Secondary School, Batalagundu for verification. The Head Master in his reply letter, dated 16.11.2011 stated that the certificate was not issued by the school and the first respondent/writ petitioner has not studied in that school.



14.As per the counter of first respondent/writ petitioner, he studied upto V standard in Sivaganapuram Panchayat Union Primary School. But that school certificate was not produced by him either before enquiry officer or along with writ petition. The first respondent/writ petitioner admitted that the original certificates were received back from the employer by him on 10.02.2007. If really the first respondent/writ petitioner had studied in the Sivaganapuram Panchayat Union Primary School, it is duty of the first respondent/writ petitioner to prove that fact and he can very well produce those certificates as claimed by him before the enquiry officer. But the employee has not chosen to do so for the reasons best known to him. No doubt there was fault on the side of the employer also. The employer has not verified the certificates properly at the time of appointment. But this fault will not cure the defects of employee.

15.Further, writ Court under Article 226 of the Constitution of India cannot reassess the evidence led in the domestic enquiry. A Judgment of the Hon'ble Supreme Court of India reported in **(2011) 4 SCC 584 [State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya]**, which was submitted by the appellant is more relevant in this case. In Paragraph No.7, the Hon'ble Supreme Court held thus:

"...7.It is now well settled that the Courts will not act as an appellate Court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, Courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. [Vide **B.C.Chaturvedi V. Union of India : (1995) 6 SCC 749, Union of India Vs. G. Ganayutham : (1997) 7 SCC 463, Bank of India Vs. Degala Suryanarayana : (1995) 5 SCC 76 and High Court of Judicature at Bombay Vs. Shashikant S Patil (2000) 1 SCC 416**]."

16.Further, the first respondent/writ petitioner did not say that the disciplinary proceedings are *malafide* and not valid. So, the order passed by the appellant is sustainable.



17.For the above reasons, we inclined to interfere with the findings of the learned Single Judge.

18.Finally, this Writ Appeal is allowed. The order passed by the learned Single Judge of this Court in W.P.(MD) No.3222 of 2015, dated, 27.01.2020, is set aside. The dismissal order passed by the appellant is sustained. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sjj

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Joint Registrar of Co-operative Societies,
Dindigul Region,
Collectorate Complex,
Dindigul.

+1 CC to M/s.D.SHANMUGA RAJA SETHUPATHI, Advocate (SR-22830[F]
dated 16/07/2021)

+1 CC to M/s.SPL GP (SR-23224[F] dated 19/07/2021)

W.A. (MD) No.644 of 2020
15.07.2021

KMV (CO)
RK (26.07.2021) 8P 4C