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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 23654 of 2010

and

M.P. No. 1 of 2010

Parvathy

...Petitioner

-vs-

The District Collector  
Tiruvannamalai  
Tiruvannamalai District.

...Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the order passed by the respondent in Na.Ka. No. A2/63517/2004 dated 30.09.2010 on the file of the Respondent, quash the same.

For Petitioner : Mr. S.Mani

For Respondent : Ms. E.Ranganayaki

Additional Government Pleader

O R D E R

(through video conference)

Heard Mr. S.Mani, Learned Counsel for the Petitioner and Ms. E.Ranganayaki, Learned Additional Government Pleader for the Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. The husband of the Petitioner, viz., Devaraj, who was employed as Village Administrative Officer, died on 07.03.1987 while in service and the Petitioner made an application seeking appointment of compassionate grounds. In furtherance thereto, she was given appointment for the post of Office Assistant at the Collector Office, Tiruvannamalai District, taking into account the certificate produced by the Petitioner that she has studied upto Standard VIII which is the educational qualification prescribed for that post. The District Elementary Education Officer, Tiruvannamalai by Letter in Na.Ka.No.635/A2/08 dated 25.08.2010 after verification of the certificate produced by the Petitioner that she has passed Standard VIII informed that it was bogus. The Respondent by show cause notice in Na.Ka. No.A2/63517/2004 dated 30.09.2010 called



upon the Petitioner to explain why she could not be removed from service for having secured appointment based on a false certificate for the essential qualification, which is challenged in this Writ Petition.

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3. When the Writ Petition came up for admission on 21.10.2010, this Court passed an order of interim stay of the impugned notice for one week and by another order passed on 11.02.2011, it has been extended until further orders. It further appears that the Petitioner had submitted a representation stating that she has studied upto Standard VIII at Panchayat Union Middle School, Thenmudiyanur, Thandarampattu Taluk, Tiruvannamalai District and the certificate to that effect had been issued to her by the headmaster of that school. She had further stated that she has served for more than 18 years and completed 50 years of age and that if her services were terminated, she could not go for any other job to take care of her family, and she has requested that she may be appointed as masalchi or gardener for which posts ability to read and write is the educational qualification. In view of the aforesaid order of interim stay of the impugned notice granted by this Court, the Petitioner has continued in employment till she attained the age of superannuation on 30.06.2021. The Respondent by Order in Na. Ka. A2/63517/2004 dated 30.06.2021 in exercise of powers under Rule 56(1)(c) of the Fundamental Rules placed her under suspension and ordered that she shall not be permitted to retire though she has attained the age of superannuation but has been retained in service until final orders are passed in the matter.

4. The Petitioner has filed an affidavit of undertaking dated 20.11.2021 stating that she is willing and agreeable to receive the terminal benefits by treating her service as having been rendered in the post of masalchi or gardener. In reply thereto, the Respondent has filed an additional Counter-Affidavit dated 22.12.2021 stating that the monetary benefits received by the Petitioner in excess of the amount payable for the post of the masalchi would have to be recovered from the time she was appointed in service.

5. Before proceeding further, it cannot be lost sight of the fact that what has been impugned in this Writ Petition is only a show-cause notice, which cannot be interdicted till it reaches its logical conclusion, as reiterated by the Hon'ble Supreme Court of India in Union of India -vs- Kunisetty Satyanarayana [(2006) 12 SCC 28] where the legal position has been explained as follows:-

"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide Executive



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Engineer, Bihar State Housing Board -vs- Ramesh Kumar Singh and others [JT 1995 (8) SC 331], Special Director and another -vs- Mohd. Ghulam Ghouse and another [AIR 2004 SC 1467], Ulagappa and others -vs- Divisional Commissioner, Mysore and others [2001(10) SCC 639], State of U.P. vs. Brahm Datt Sharma and another [AIR 1987 SC 943] etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

It is also apparent from the materials on record that the certificate of passing Standard VIII produced by the Petitioner at the time of her initial appointment was bogus as confirmed by the District Elementary Education Officer, Tiruvannamalai by Letter in Na.Ka.No.635/A2/08 dated 25.08.2010. The Petitioner does not raise any serious dispute in that regard and instead pleads that she may be treated as having been appointed to the post of masalchi or gardener for which posts ability to read and write is the educational qualification, which she possesses, so that terminal benefits may be paid to her.



6. Having regard to the peculiar fact situation that has arisen in the instant case where object of granting compassionate appointment was to tide over the sudden crisis in the family of the Petitioner on the death of the bread winner and the dispute that now remains to be resolved has narrowed down in view of the subsequent events stated earlier, the disciplinary proceedings initiated pursuant to the impugned notice shall proceed further in the following manner:-

- (i) It shall be incumbent upon the Respondent to ascertain the actual amount of death cum retirement gratuity, pension and other terminal benefits that would be payable to her treating as if she had worked as masalchi or gardener for the entire period of service and further inform the Petitioner of the differential amount of salary and monetary benefits that would have to be recovered from her for the period from the date of joining employment till the date of attaining the age of superannuation along with a working-sheet showing the calculation for the same.
- (ii) In turn, the Petitioner would have to execute a letter of authorisation to the Respondent to adjust the recoverable amount from her death-cum-retirement gratuity in the same post and if it is not sufficient, to deduct the shortfall from the other amounts that are due to her and if it is necessary, from her monthly pension as well.
- (iii) The parties may also enter into written arrangement for such deduction in installments from the monthly pension payable to the Petitioner so as to obviate any hardship or inconvenience that may be caused to her sustenance by recovery of the entire amount of monthly pension.
- (iv) The Petitioner shall extend her fullest co-operation to the Respondent to complete such exercise without brooking any further delay.
- (v) Thereafter, the Respondent shall pass necessary orders including for payment of the amounts that the Petitioner would be entitled to receive as per law.

Though obvious, it is clarified that nothing said in this order shall be construed as entitling one who has obtained employment by producing bogus certificate to claim, as of right, for change to a lower post for continuation in service when the initial entry is void ab initio and not in accordance with law.

In fine, the Writ Petition stands disposed. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Maya/dm



To

The District Collector  
Thiruvannamalai  
Thiruvannamalai District.

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KKV/01/02/2022