



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 07.04.2022

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WEB COPY

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN
AND
THE HONOURABLE MS. JUSTICE N. MALA

W.P. No. 30702 of 2019

1.P. Ramasamy (deceased)

2.Tmt. Mahalakshmi

(P2 substituted as LR of deceased sole petitioner

Vide order dated 17.03.2022 made in WMP. No.

4060/2021 in WP. No. 30702/2019 by SVNJ &

MSQJ)

..Petitioner

Vs.

1. Union of India rep. by the
Deputy Secretary to Govt. of India,
M/o Communications and IT,
(Department of Telecommunications),
Sanchar Bhavan,
New Delhi 110 001.
2. The Chairman and Managing Director,
Bharat Sanchar Nigam Limited (BSNL),
Corporate Office,
Eastern Court Complex,
New Delhi - 110 001.
3. The Deputy Manager (Pension),
Pension Section,
Bharat Sanchar Nigam Limited (BSNL),
Corporate Office, 5th Floor,
Sanchar Bhawan, New Delhi - 110 001.
4. The Chief General Manager,
BSNL, Chennai Telephones,
No.78, Purnaswalkam High Road,
5th Floor, Chennai 600 010.
5. The General Manager,
BSNL, Chennai Telephones,
NO.78, Purnaswalkam High Road,
5th Floor, Chennai 600 010.



6. Deputy General Manager (HR/A),
BSNL, Chennai Telephones,
NO.78, Pурсawalkam High Road,
5th Floor, Chennai 600 010.

7. The Central Administrative Tribunal,
Madras Bench,
Rep. by its Registrar,
Chennai - 600 104.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus to call for the records of the 7th respondent pertaining to its order which is made in O.A./310/01829/2016 dated 04.09.2019 and quash the same and consequently to direct respondents 1 to 6 to grant gratuity to the petitioner with GPF interest.

For Petitioner :: Mr.R. Malaichamy
For Respondents:: Mr.S. Udayakumar,
Senior Counsel

O R D E R

S. VAIDYANATHAN, J. AND N. MALA, J.

The present writ petition has been filed challenging the order dated 04.09.2019 passed by the Central Administrative Tribunal, Madras Bench in O.A./310/01829/2016.

2. The original writ petitioner was appointed as Time Scale Clerk in the year 1964 in the respondent Department against ST quota vacancy on the basis of production of community certificate issued by the Deputy Tahsildar, Thuraiyur on 19.04.1964 and subsequent certificate issued by the Tahsildar, Musiri on 29.07.1964. When the writ petitioner's name came up for consideration for 10% BCR promotion in 1993, the Department the community of the wanted to verify his community as required by the Departmental Promotion Committee. The District Vigilance Commissioner, Tiruchirapalli was requested to cause verification of the genuineness of the community certificate of the writ petitioner. After due verification and enquiry, it was found that the writ petitioner only belonged to Backward Community and not ST community. Therefore, the community certificate issued was cancelled by the District Collector, Trichy, vide proceedings dated 21.04.2001. Though a statutory appeal had been provided as against the order dated 21.04.2001, the writ petitioner had approached this Court by filing writ petitions in anticipation of departmental disciplinary action against him and had also obtained interim orders. Prior to the completion of the



court proceedings with regard to the community status of the writ petitioner, ie on 04.10.2004, the writ petitioner had retired from service on 31.08.2003 as Senior Section Supervisor. In one of the writ petitions filed by the petitioner in W.P. No. 28681 of 2003 challenging the proceedings dated 21.04.2001, the petitioner had also moved a W.P.M.P. No. 24148 of 2004, after his retirement, seeking disbursal of terminal benefits. This Court, by order dated 04.10.2004, dismissed the writ petition, observing that, "...until the certificate of the petitioner produced for obtaining employment and continuing employment till retirement is one way or other decided by the competent authority, the petitioner is not entitled to get any of the retirement benefits. If the petitioner wants disposal immediately, he can very well approach the competent authority and have the disposal at the earlier point of time. If the petitioner comes out successfully from the enquiry, he is entitled for the terminal benefits."

3. By order dated 23.09.2006, sanction was accorded by the 2nd respondent to initiate departmental proceedings in accordance with the procedure laid down in Rule 14 and 15 of CCS (CCS) Rules, 1972 and within a period of one month therefrom, BSNL CDA Rules, 2006 came into being with effect from 10.10.2006 intimating that the said Rules shall replace the existing CCS (Conduct Rules 1964 & CCS (CCA) Rules 1965 and that these Rules shall apply to all the employees of BSNL. Pursuant to the said Rules coming into force, sanction was accorded by the Chairman and Managing Director, BSNL under Rule 61 of the said Rules to initiate disciplinary proceedings against the writ petitioner and a charge memo was issued on 25.02.2009 by the Disciplinary Authority. Based on the departmental enquiry conducted, the Disciplinary Authority came to the conclusion that the writ petitioner had produced bogus community certificate which would disentitle him of terminal benefits and by order dated 23.09.2014, punishment of withholding of pension on permanent basis was imposed as the writ petitioner had already retired from service. The petitioner's appeal dated 17.11.2014 as against the said order also came to be dismissed by the Appellate Authority on 02.05.2015. Subsequently, the writ petitioner made representations to the authorities stating that he cannot be deprived of gratuity and hence, he would be entitled to get the same. But, the said representations were rejected and finally, the writ petitioner filed an appeal dated 08.03.2016 to the 6th respondent challenging the non-payment of gratuity and the 6th respondent vide order dated 30.06.2016



rejected the same stating that the service rendered has been forfeited on account of the fact that the petitioner had produced a bogus community certificate and the competent authority has imposed the punishment of withholding of pension on permanent basis and therefore, gratuity, which is also based on qualifying service, is not payable. Aggrieved by the said rejection, the petitioner approached the Central Administrative Tribunal filing O.A. No. 1829 of 2016. By order dated 04.09.2019, the said O.A. was dismissed confirming the orders passed by the Department thereby depriving the petitioner not only of pension but also gratuity. Hence, the present writ petition.

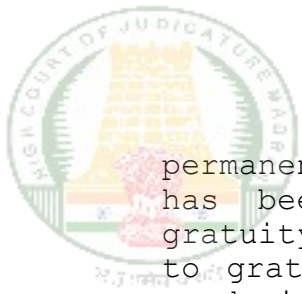
4. During the pendency of the writ petition, the original writ petitioner passed away and his legal heir has been brought on record.

5. The primordial contention of the learned counsel for the writ petitioner is that under Rule 61 (4) (1) of BSNL CDA Rules, 2006, unless there is a specific order depriving gratuity, either in part or in full, gratuity cannot be refused to be paid to the employee by the employer. The relevant portion is extracted hereunder for convenience:

Rule 61. DISCIPLINARY PROVISIONS FOR RETIRING EMPLOYEES

(4) (1) Chairman/Managing Director is the competent authority to issue sanction to institute the departmental proceedings against the absorbed employees after retirement for withholding a pension for combined service of BSNL and DOT period (herein referred as pension) or gratuity or both either full or in part or withdrawing a pension in full or in part, whether permanently or for a specified period and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Company, if any disciplinary or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement.

6. The respondents have filed counter contending that the writ petitioner had produced a bogus certificate, which was duly proved to be not genuine in the domestic enquiry and that based on the bogus certificate, as the petitioner had entered into service, the entire service will have to be forfeited and that no amount, under any head, much less, gratuity needs to be paid. The authorities have made it categorically clear that once bogus certificate has been held to be proved in the duly conducted domestic enquiry and punishment of withholding of pension on



permanent basis has been imposed, the employee's entire service has been forfeited and there is no basis for payment of gratuity. A person with a genuine entry alone would be entitled to gratuity and not a person, who has entered into service by producing a fake community certificate. Hence, the order of the authority concerned as confirmed by the Tribunal is perfectly in order and there is no reason to interfere with the same.

7. Heard both parties.

8. It is not in dispute that the writ petitioner had joined service as a Time Scale Clerk in the year 1964 in the vacancy earmarked for ST community based on the community certificate produced by him and ultimately, the said certificate, on verification, was found to be a bogus one and in the departmental enquiry that ensued under the BSNL CDA Rules, 2006, punishment of withholding of pension on permanent basis was imposed on the writ petitioner. Though the order dated 23.09.2014 at page No.17 of the typed set would make it very clear that there is withholding of pension on permanent basis, it has been clarified by the 6th respondent in the order dated 30.06.2016 while rejecting the appeal dated 08.03.2016 that not only pension, but gratuity is also not payable. Generally, the Courts will be slow in declining the relief to an employee when the order is clear. But, in the present case on hand, as there was an ambiguity in the order dated 23.09.2014, it was clarified by order dated 30.06.2016. Eventhough the order dated 23.09.2014 has got merged with the order dated 30.06.2016 and both the orders have been tested by means of two different O.As before the Tribunal, the relief cannot be granted to an employee, who has produced a bogus certificate and gained entry into service, which would send a wrong signal to those, who are similarly placed like the petitioner. The reliance placed by the learned counsel for the petitioner on the decision of the Hon'ble Apex Court rendered in H.L. Gulati V. Union of India and Others (CDJ 2015 SC 339) will not be applicable to the facts of this case as it was not a case of bogus entry into service. It was a case of gross negligence committed by an employee while in service and the punishment imposed was one under Rule 9 of the CCS (Pension) Rules, 1972 wherein the Hon'ble Apex Court observed that the delinquency established against the appellant therein was of negligence and not of misconduct. Holding so, the Apex Court, in exercise of jurisdiction under Article 142 of the Constitution of India has interfered with the punishment imposed and awarded a lesser punishment and the Apex Court has interfered with the punishment. The Hon'ble Apex Court has held in Union of India V. P. Gunasekaran reported in (2015) 2 SCC 610 that under Article 226 of the Constitution of India, Court shall not go into the proportionality of the punishment unless it



shocks the conscience. In the present case on hand, gaining entry into service by producing a bogus certificate is itself illegal and it is highly dangerous to interfere with the punishment imposed as it would send a wrong signal to others to gain entry into service by production of bogus certificate. Hence, we are of the firm view that the original order dated 23.09.2014 merged with the order dated 30.06.2016 and we find no reason to interfere with the order of the Tribunal in depriving the relief to the employee. The writ petition is accordingly dismissed. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Secretary to Govt. of India,
M/o Communications and IT,
(Department of Telecommunications),
Sanchar Bhavan,
New Delhi 110 001.
2. The Chairman and Managing Director,
Bharat Sanchar Nigam Limited (BSNL),
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+1 cc to Mr.R. Malaichamy, Advocate Sr.NO.23979

+1 cc to Mr. S. Udayakumar, Advocate Sr.NO. 24201

W.P. No. 30702 of 2019

sj(CO)

A.SK(05/07/2022)