



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 10.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

W.P (MD) No.6810 of 2021

and

W.M.P (MD) No.5233 of 2021

Varadhan

... Petitioner

Vs

1.The Commissioner,
Corporation of Tiruchirappalli,
Tiruchirappalli.

2.The Assistant Commissioner,
K.Abisegapuram Division,
Corporation of Tiruchirappalli,
Tiruchirappalli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari to call for the records pertaining to the impugned notice Na.Ka.No.C3 (Centre)/5875/2003, dated 17.02.2021 issued by the first respondent and quash the same and consequently direct the first respondent herein to regularise the petitioner since the petitioner has been in the work for the statutory period, ie., for 480 days, i.e., with effect from 25.10.1999 with all consequential, pensionary benefits.

For Petitioner : Mr.R.Senthil Kumar
For Respondents : No appearance

ORDER

The petitioner, who is working in the second respondent Corporation has filed this writ petition challenging the show cause notice issued by the first respondent.

2.The learned Counsel for the petitioner submits that the petitioner was appointed as Sweeper in the respondent Corporation on compassionate ground 22 years ago on 25.10.1999, as his father, who was working in the second respondent Corporation died on 22.02.1999, while he was in service. The petitioner has been working for all these years in the Corporation. While so, nearly after two decades after the appointment, the impugned show cause notice has been



issued alleging that the petitioner at the time of submitting application for compassionate appointment, suppressed the fact of her father's first wife is also working in the respondent Corporation.

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3.The learned Counsel for the petitioner further submits that the petitioner was appointed only after doing field verification by the respondent Corporation. Further, the petitioner is the son of the deceased's second wife and they are residing separately. Further, the first wife has also given no objection for providing appointment to the petitioner and therefore, this fact was known to the second respondent even at the time of appointing the petitioner. The learned Counsel has also relied on the order of this Court in W.P(MD)No.6631 of 2020, dated 29.07.2020, wherein this Court has gone to the extent of quashing the removal order of similarly placed person, working in the respondent Corporation.

4.There is no representation for the respondent Corporation. However, this Court proceeds with the materials available on record and disposes of the writ petition.

5.The petitioner was appointed as Sweeper in the respondent Corporation on compassionate grounds on 25.10.1999, since his father died on 22.02.1999, while he was in service and the petitioner has all along been working in the Corporation. Now, nearly after a very long period of twenty years, the respondent Corporation has issued the impugned show cause notice on the ground that the petitioner at the time of submitting application seeking compassionate appointment, suppressed the fact of her father's first wife's employment in the respondent Corporation.

6.It is to be noted that ten other similarly placed persons were removed from service based on the same set of charges that one way or other they have suppressed certain material facts and therefore, they were removed from service. This Court in W.P(MD) No.6631 of 2020, has quashed the said removal order on the following terms:

"20.Moreover, while considering the application of the petitioner definitely the respondent corporation could have thoroughly investigated the circumstances of the family of the petitioner and accordingly compassionate appointment had been given.

*21. Moreover, the learned counsel for the petitioner has relied upon a decision of a Division Bench of this Court reported in (2011) 3 MLJ 673 in the **matter of Joint Director of School Education and others vs. C.Lesley Jayaseelan**, where the learned counsel*



relied upon paragraph 13, which reads thus:-

" 13. Therefore, we are of the opinion that the termination of service after a lapse of 22 years, would certainly affect the livelihood of his entire family at this length of time. Moreover, as observed by the learned single Judge, the appointment given to the respondent is not against any statutory regulations and moreover, the removal is not based on any misconduct. Therefore, we are of the considered view that the respondent, having been allowed to continue for over 22 years in Government service, will not be removed from service on the ground that he got employment on furnishing false information. Therefore, we do not find any infirmity in the order passed by the learned single Judge and under such circumstances, the writ appeal is liable to be dismissed. Accordingly, the writ appeal fails and is dismissed. No costs. Consequently, connected Map's closed."

22. In that case also, the Division Bench has shown its indulgence that, removal of the employee in that case was not based on any misconduct, since the employee having been allowed to continue for over 22 years in Government service, shall not be removed from service on the ground that he got an employment on furnishing false information. Here also in this case, the petitioner was permitted to continue in service for 23 years and at the fag end, now disciplinary action has been taken and has been removed from service mainly on the ground that at the time of making an application, he had suppressed that his father had already worked and retired from service.

23. I feel that the said logic and the principle enunciated by the Division Bench of this Court in the above cited judgment can very well be applied to the facts and circumstances of this case. More over, the belated decision taken now by the respondent corporation against the petitioner cannot be accepted as merely because, some other similarly placed persons have approached this Court and stalled the proceedings, such a delayed action cannot be justified by the respondents.

24. In this context, the learned Standing Counsel appearing for the respondent has fairly submitted that,



except this petitioner, 9 others have approached this Court. Insofar as the petitioner, no Court proceedings was pending and therefore, there was no impediment for the respondent corporation to complete the disciplinary proceedings as early as possible and for all these years the respondent corporation should not have waited to get the verdict in other cases. If that fair submission of the respondent is taken into account, the long delay in concluding the proceedings on the part of the respondent against the petitioner cannot be attributable because of the reason on the side of the petitioner. Since the petitioner was in no way instrumental for the huge delay on the part of the respondent to complete the proceedings, this Court feels that, at the end of 23 years, if such a major punishment of removal from service is inflicted against the petitioner, as he was working as a sweeper, the whole family will be put again in penurious and indigent circumstances. Therefore, the very purpose of extending the benefit by way of compassionate appointment to the petitioner's family would get defeated.

25. For all these reasons, I am of the considered view that the impugned order cannot be sustained, accordingly, it is liable to be quashed. In the result, the impugned order is quashed and the writ petition is allowed. The petitioner shall be reinstated into service forthwith, with all service benefits. No costs."

7. Here also the petitioner is working for several years and the charge is not on any misconduct, but on false information. The above decision is squarely applicable to the case on hand. This writ petition is allowed in the light of the above ratio laid down by this Court and the impugned charge memo is hereby quashed. No costs. Consequently, connected miscellaneous petitions is closed.

Sd/-

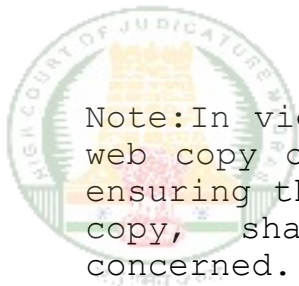
Deputy Registrar (LA&MC)

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/ /2022

Sub Assistant Registrar (CS)

dsk



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.

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To

1. The Commissioner,
Corporation of Tiruchirappalli,
Tiruchirappalli.

2. The Assistant Commissioner,
K. Abisegapuram Division,
Corporation of Tiruchirappalli,
Tiruchirappalli.

+1 CC to M/s. S. SENTHIL KUMAR, Advocate (SR-1200[F] dated 11/01/2022)

W.P(MD)No.6810 of 2021

10.01.2022

KG(CO)

GC(22.03.2022) 5P 4C