



WP(MD)No.7202 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.07.2022**

CORAM:

THE HONOURABLE **MR.JUSTICE M.S.RAMESH**

W.P.(MD)No.7202 of 2021
and W.M.P.(MD)No.5503 of 2021

M.Murugan

... Petitioner

/vs./

1.The Commissioner,
Corporation of Tiruchirappalli,
Tiruchirappalli.

2.The Assistant Commissioner,
Sriengam Division,
Corporation of Tiruchirappalli,
Tiruchirappalli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records pertaining to the impugned notice in Na.Ka.No.C3 (Centre)/8455/2003 dated 17.02.2021 issued by the 1st respondent and quash the same and consequently direct the 1st respondent herein to regularize the petitioner since he has been in the work for the statutory period i.e., 480 days i.e., with effect from 25.10.1999 with all consequential, pensionary benefits.



WP(MD)No.7202 of 2021

WEB COPY

For Petitioner : Mrs.V.Muthumani

For Respondents : Mr.R.Baskaran,
Standing Counsel.

ORDER

The charges, as per the impugned charge memo dated 17.02.2021, against the petitioner, are that he had suppressed the fact that his mother had obtained compassionate appointment, after the death of his father and thereby, obtained appointment on the compassionate ground. Along with the petitioner, several other Sweepers were also proceeded with the charge memos on 17.02.2021. The nature of the charges as against the petitioner, as well as the other Sweepers, are one and the same. When one Sweeper viz., R.Palanichamy had challenged the charge memo dated 17.02.2021, before this Court in W.P.(MD)No.7309 of 2021, the charge memo came to be quashed in the following manner:

“5.The petitioner was appointed as Sweeper in the respondent Corporation on compassionate grounds on 25.10.1999, since his father died on 15.07.1974, 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



WP(MD)No.7202 of 2021

WEB COPY

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



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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 Mp'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



WP(MD)No.7202 of 2021

WEB COPY

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 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 proceedings are hereby quashed."

2. Likewise, in the case of ***Varadhan Vs. The Commissioner, Corporation of Tiruchirappalli*** in ***W.P.(MD)No.6810 of 2021***, a similar order was passed quashing the charge memo dated 17.02.2021. In both the aforesaid matters, the



WP(MD)No.7202 of 2021

WEB COPY

charge was that the employee had suppressed that one of the family members of the deceased employee had obtained appointment on compassionate ground. Since the charge against the petitioner also is one and the same, I am unable to construe as to how the respondents Corporation can proceed against the petitioner alone, when the co-employees cases have been quashed by this Court. Consequently, the petitioner also is entitled for the benefit of orders passed in the cases of co-employees. Accordingly, the impugned order dated 17.02.2021, on the file of the first respondent, is quashed.

3. This Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

21.07.2022

Index : Yes / No

Internet : Yes / No

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WEB COPY



WP(MD)No.7202 of 2021

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WEB COPY



WP(MD)No.7202 of 2021

M.S.RAMESH, J.

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Order made in
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