



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 03.02.2022
CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY
W.P. (MD)No.17693 of 2015

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and
W.M.P (MD)Nos.2 of 2015 & 15689 of 2016

1.The Dean,
Agricultural College and Research Institute,
Madurai - 625 104.

2.The Registrar,
Tamil Nadu Agricultural University,
Coimbatore - 641 003.

... Petitioners

vs

1.The Presiding Officer,
Labour Court, Madurai.

2.S.Govindammal (Died)
3.D.Pitchai @ Pankajam
4.S.Purushothaman (Died)
5.P.Amsavalli
6.P.Marthandan
7.Minor P.Jeuyashree
8.Minor P.Chandralekha

(Minor daughters 7 & 8 through their natural guardian and
mother P.Amsavalli - R5)

9.S.Narasinga Valli @ Mallika
10.S.Uthira Murugan
11.S.Krishnaveni

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, by calling for the records of the award passed by the first respondent in I.D.No.58 of 2006 order, dated 17.09.2013 (made ready only on 11.04.2014) and to quash the same.

For Petitioners : Mr.A.Thirumurthy

For Respondents : Mr.A.Rahul
for R3, R5 to R11
R1 - Labour Court
R2 & R4 (Died)



O R D E R

The Dean Agriculture College has preferred this writ petition to quash the award passed by the first respondent in I.D.No.58 of 2006 dated 17.09.2013.

2. The brief facts of the case are that the second respondent, namely, Govindammal is the wife of one Mr.Sethuraman. The said Sethuraman had worked as Mazdoor in the first petitioner college. The delinquent was placed under suspension and an enquiry was conducted. Thereafter, the punishment of removal from service was imposed with effect from 04.07.1980. The said punishment was imposed in pursuance of the disciplinary action initiated for suppressing the material fact of his dismissal from Government service (Revenue Department) on 22.08.1960, for the reason the delinquent was convicted and under went six months rigorous imprisonment, on the proved charges of embezzlement of Government money collected as revenue receipt during his service as Village Karnam in Ramanathapuram District. The embezzlement charge and the punishment of six months as rigorous imprisonment had disqualified the petitioner from future employment in any Government service according to the explanation to Rule-8 of Tamil Nadu Civil Services (Discipline and Appeal) Rules. The said Sethuraman did not prefer any appeal or raise any dispute against his removal from service, during his life time and he died in August 1993.

3. After the lapse of 13 years of removal from service that too after the death of the delinquent, his wife S.Govindammal had preferred a grievance petition dated 21.03.1994 to the Honourable Labour Minister of Tamil Nadu and requested for payment of benefits. Thereafter, the petitioner has preferred a petition before the Deputy Commissioner of Labour, Madurai and the writ petitioner Institute has filed a reply and being satisfied with the reply, the writ petition was closed by the Deputy Commissioner of Labour. The second respondent has made a fresh and different representation on 15.04.2000 to the petitioners claiming reinstatement by cancelling his removal from service, payment of back wages from the date of suspension to the date of retirement and thereafter, sanction of pensionary benefits and compassionate appointment to one of his legal heirs. The petitioner has filed a writ petition in W.P.(MD) No.47082 of 2002 and this Court vide order, dated 03.01.2003 directed the petitioners to dispose the claim of the said S.Govindammal in accordance to law.

4. The second petitioner has passed a detailed order on 24.04.2003 rejecting the claim of the second respondent. Again the petitioner has preferred a writ petition in W.P.(MD)No.2067 of 2004 to quash the order dated 24.04.2003. The second respondent sought



permission to proceed before the Industrial Tribunal and this Court passed an order dated 26.04.2006 directing the first respondent, the Industrial Tribunal to dispose a dispute after giving opportunity and dispose on or before 31.12.2006. The second respondent raised an I.D before the Labour Court (Conciliation), Madurai and a failure report dated 09.08.2006 was passed. Thereafter, I.D.No.58 of 2006 was filed and through the impugned order dated 17.09.2013, an award was passed setting aside the dismissal order dated 04.04.1981 and the writ petitioners were directed to pay the terminal benefits and other benefits to which the deceased Sethuraman was legally entitled to, within three months and the legal heirs were given 1/5th share each. The writ petitioners are further directed that the intervening period for which the deceased Sethuraman remained out of job shall be counted for the purpose of terminal benefits. Aggrieved over the same, the present writ petition is filed.

5. The respondent has filed a counter in Vacate stay in M.P. (MD)No.15689 of 2016. The third respondent who is the son of the deceased Sethuraman has filed a Vacate Stay Petition and has stated that his father was appointed as Casual Mazdoor on 04.12.1967. At the time of appointment, the deceased Sethuraman disclosed about earlier punishment to the selecting authorities. Since the physique was good and fit to do the duty, he was selected to the said post. The deceased Sethuraman completed his probation on 19.06.1968 and his services were provincialized and confirmed the service with effect from 01.04.1973. On 04.07.1980, a charge sheet was issued alleging that the delinquent had suppressed his conviction and imprisonment in a Criminal Case while joining the duty. The delinquent has submitted his reply on 28.07.1980, wherein, he was pleaded that there was no suppression and the selection committee was informed of the same and the delinquent was selected due to his fitness and ability to work as Agricultural Casual Labour. No subsistence allowance was paid though he was suspended from service and no witnesses were examined to prove the charges and no documents were produced. The Selection Committee members were not enquired and appointment order was also not marked in the enquiry.

6. Thereafter, a show cause notice dated 18.08.1980 was issued proposing the punishment of removal from service. The delinquent has submitted an explanation dated 26.08.1980 giving the details and also stated that the Joint Professor who was in the Selection Committee and the Farm Manager, Assistant Professor should be examined. Some crucial documents were requested to prove that there was no suppression and the allegation were false and request was also made seeking several documents and also subsistence allowance. On 27.02.1981, an enquiry was conducted in which, the Selection Committee member deposed that he was aware of the conviction and the selection was made by them as the candidate fulfilled the important requisites. This crucial evidence was not taken into account. ~~There is suppression of facts, which is totally biased.~~



Thereafter, by an order dated 04.04.1981, the delinquent was removed from service. After the death of the delinquent, his wife preferred an appeal and several writ petitions and finally has preferred a petition before the Labour Court. Exhibits W-1 to W-23 was marked on behalf of the second respondent and the management has marked Exhibits M-1 to M-15 and there was no oral evidence on either side. After referring to the rules relating to Agricultural Mazdoors, the Labour Court has granted the said award and the same is legally valid and sustainable in law. Therefore, prayed to dismiss the writ petition.

7. Heard Mr. A. Thirumurthy, learned Counsel appearing for the petitioner and Mr. A. Rahul, learned Counsel appearing for the respondents No.3 & 5 to 11.

8. The petitioner relied on Tamil Nadu Civil Services (Discipline and Appeal Rules), under Rule-8 penalties are prescribed. Under Explanation-III, it has been stated that the removal of a person from the Civil Service of the State Government shall not disqualify him for further employment but the dismissal of a person from the Civil Service of the State Government shall ordinarily disqualify him for future employment. Since the delinquent was dismissed from service for the embezzlement charge while he was working as Village Karnam in Ramanathapuram District the delinquent is disqualified for the government service. Therefore, the delinquent was not entitled to future employment in the Government service. Since the delinquent has concealed the said fact, the delinquent is not entitled to any employment in the Government service. Therefore, a show cause notice was issued and after proper enquiry the delinquent was dismissed from service. After the lapse of 13 years, the wife of the deceased delinquent has preferred a petition before the Honourable Labour Minister and thereafter, before the Deputy Commissioner of Labour and thereafter, submitted a representation in the year 2000 and filed a writ petition. Again a writ petition was filed and thereafter, liberty was granted to the second respondent to prefer a petition before the Industrial Tribunal. The Industrial Tribunal without going into the merits of the case, especially, without considering the fact the delinquent was dismissed from service for embezzlement, has entertained the belated claim from the wife and granted this award which is against law.

9. Per contra, the respondents have submitted that the delinquent was appointed as Agriculture Coolie, for such appointment, the only requisite qualification is proper physique and fit to work. The respondents relied on G.O.Ms.No.121, Food and Agricultural Department dated 31.01.1953, wherein, the Government has made Madras Agricultural Mazdoors Service Rules, which is applicable to the regular Mazdoors in various Agricultural Research



Class I: Skilled Mazdoors

Class II: Unskilled Mazdoors

The qualification for an appointment of an unskilled Mazdoor prescribed under Rule 6 is "must have practical knowledge in local Agriculture and must have good physique". After taking into consideration of these two qualifications, the Selection Committee has appointed the delinquent and it was well within a knowledge of the Selection Committee that the delinquent was convicted for embezzlement while working as Village Karnam.

10. The contention of the respondents are that the delinquent requested to examine Mr.Venkataramana Agronomist, C.T.Natarajan, Assistant Agronomist and M.Arumugam, Farm Manager. Out of these three witnesses, C.T.Natarajan was alone examined and the Farm Manager, M.Arumugam was not examined. The witness C.T.Natarajan stated that he was aware that the delinquent Sethuraman was convicted earlier and his selection was made by G.V.Ramana, the then Agronomist and he further deposed that only two important requisites are necessary for the appointment of Casual Mazdoors and therefore, the delinquent was appointed. Now the issue for consideration is when a person is convicted for embezzlement, is that person entitled to future employment in the Government service. Generally, any convicted person, that too when a person was convicted for embezzlement will not be considered for future Government employment. The claim of the respondent is the qualification prescribed is only practical knowledge in local Agriculture and must have good physique. It has not been stated for unskilled Mazdoor, if he is convicted in a Criminal Case, he should not be appointed. This argument cannot be sustained especially when there is an allegation of embezzlement. If it is for any other Criminal Case, the lenient view might be taken but not for the case of embezzlement or misappropriation. However, the Selection Committee has taken a decision in spite of embezzlement, the delinquent was granted an appointment. In the wisdom of the Selection Committee, since it is only an Agricultural Mazdoor work, physical fitness and knowledge in the local Agriculture is sufficient. Therefore, it cannot be stated that the delinquent has concealed the fact of earlier conviction. The subsequent Management in his wisdom has considered the conviction as a bar for Government employment. Therefore, the disciplinary proceeding was initiated and finally ended up in dismissal from service. Whether the decision of the earlier Committee is right or the decision of the subsequent Committee is right, cannot be the issue. Now the issue is whether the delinquent had concealed the conviction. The facts stated supra will clearly indicate that the delinquent has not concealed the fact of conviction. Therefore, the respondents are right in stating that there is no concealment. Therefore, this Court is of the considered view that there is no concealment of fact of conviction.



11. The delinquent died in the year 1993 and the second respondent has preferred this petition after the lapse of 13 years. The removal from service was in the year 04.07.1980 and the delinquent died in the year 1993. The delinquent has not preferred any petition challenging his removal from service, but after the lapse of 13 years, the delinquent's wife has preferred this petition. As rightly pointed out by the petitioner, this petition is a belated one. On seeing the cause title, the said Govindammal, who is the wife of the delinquent also died and the son of the delinquent also died. Now only one son and three daughters are alive. The deceased Sethuraman's grandchildren was also added as parties. Therefore, this Court is taking into consideration that the delinquent has not concealed the fact of conviction but the conviction is for embezzlement / misappropriation, the delinquent has not preferred any petition for his removal from service, this Court is of the considered view that the award needs modification.

12. It is submitted by the respondents that the delinquent was not paid any subsistence allowance during the enquiry proceedings. Since the delinquent has not preferred any appeal against the dismissal from service, the award granting a relief to count the period were the delinquent remained out of job for calculating the terminal benefits, ought to be set aside. Therefore, this Court passes the following order:

- a. The respondents shall pay the 100% subsistence allowance during the period of suspension
- b. The respondents are directed to disburse the terminal benefits that are applicable as per Rules for the period from 04.12.1967 to 04.04.1981.
- c. The impugned order directing the writ petitioner to count the period were the delinquent remained out of job for calculating the terminal benefit is set aside.
- d. Apart from the above the writ petitioner is directed to pay Rs.25,000/- as compensation for the agony caused to the delinquent Sethuraman.
- e. The Labour Court award is modified as stated supra.

13. With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

14. Before parting, this Court is of the view that according to Reformatory Theory, the object of punishment should



be to bring about the moral reform of the offender. It is based on the humanistic principle, that even if an offender commits a crime, he does not cease to be a human being. He may have committed a crime under circumstances which might never occur again. He must be educated and taught some art or industry during the period of his imprisonment so that he may be able to start his life again after his release from jail. In the present case the Agriculture Coolie job was granted after his release, in order to reform the delinquent, therefore there is no harm in granting an agriculture coolie job and the writ petitioner need not agitate this issue to this extent.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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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 Presiding Officer,
Labour Court, Madurai.

+1 CC to M/s.A.RAHUL, Advocate (SR-3875[F] dated 03/02/2022)

+1 CC to M/s.A.THIRUMURTHY, Advocate (SR-4032[F] dated 03/02/2022)

Order made in

W.P. (MD) No.17693 of 2015

03.02.2022

SVS(CO)

TR(04.04.2022) 7P 4C