



W.P.(MD).Nos.9300 and 9301 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.10.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).Nos.9300 and 9301 of 2017

and

**W.M.P.(MD).Nos.7069, 7070, 7071, 7072, 11417 and 11418 of 2017 and
11282 and 11366 of 2021**

W.P.(MD).No.9300 of 2017:

S.Periyasamy

... Petitioner

Vs.

The Executive Officer,
Ayakudi Town Panchayat,
Tirunelveli District.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the respondent in its Na.Ka.No.8/2015/A1 dated 28.03.2016 and the consequential proceedings Na.Ka.No.8/2015 dated 25.04.2017 and quash both the orders as illegal, void and without any authority of law.

W.P.(MD).No.9301 of 2017:

S.Jesu Antony

... Petitioner

Vs.

The Executive Officer,
Ayakudi Town Panchayat,
Tirunelveli District.

... Respondent



W.P.(MD).Nos.9300 and 9301 of 2017

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the respondent in its Na.Ka.No.8/2015/A1 dated 28.03.2016 and the consequential proceedings Na.Ka.No.8/2015 dated 25.04.2017 and quash both the orders as illegal, void and without any authority of law.

(In both Writ Petitions):

For Petitioners : Mr.V.Vijayshankar

For Respondent : Mr.Veera Kathiravan,
Additional Advocate General,
Assisted by,
Mrs.D.Farjana Ghoushia,
Special Government Pleader.

COMMON ORDER

The Writ Petitions have been filed for Writ of Certiorari to quash the impugned orders dated 28.03.2016 and the consequential proceedings dated 25.04.2017.

2. The brief facts as stated in the affidavit of both the Writ Petitions are that the petitioners had registered their names in the Employment Exchange, pursuant to which their names were sponsored in the respondent Town Panchayat in June 2001. The petitioners appeared for interview and got selected. The petitioners were issued appointment orders on 09.07.2001. The



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petitioners were subjected to medical examination and all other formalities. The appointments were initially on consolidated basis of Rs.1500/- per month and would be brought on time scale of pay on completion of 3 years of service. On 01.08.2006, the petitioners were appointed on time scale of pay with effect from 23.06.2006. Even though, the petitioners are entitled to regularize after 3 years that is in July 2004, the petitioners were granted regularization only from June 2006. The petitioners have completed 14 years of service. The respondent vide order dated 01.12.2015 placed the petitioners under suspension on the ground that the petitioners had got employment under the “Physically Handicapped Quota” and the medical examination also revealed that the petitioners are a normal person and they are not handicapped person, since the very allegations against the petitioners are that the petitioners had got employment under Physically Handicapped quota is absolutely wrong. Hence, the petitioners constrained to file W.P.(MD).Nos.22900 and 22901 of 2015 challenging the order of suspension order. The said Writ Petitions were dismissed vide order dated 18.12.2015 and the petitioners have filed Writ Appeal in W.A.(MD).Nos.1467 and 1468 of 2015. The Hon'ble Division Bench vide order dated 23.09.2016 quashed the orders of suspension holding that there was no absolute basis in suspending the petitioners and directed to reinstate the petitioners into service. However, liberty was granted to the respondents/ employers to continue with the Domestic Enquiry. On 28.03.2016,



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a charge memo was issued alleging that the petitioners have obtained employment under Physically Handicapped quota and wrongly claimed the priority. The petitioners submitted a detailed explanation on 14.05.2016 refuting the allegations and pointing out that the petitioners were not a Physically Handicapped person and had not submitted any disability certificate and not claimed any benefits / concessions on the basis of being handicapped and also not appointed against the Physically Handicapped quota. The petitioners submitted that when they were subjected to medical examination, it would clearly revealed that they were not Physically Handicapped. Since their explanation were not satisfactory, an enquiry officer was appointed and the petitioners were called for enquiry on 28.12.2016. The petitioners appeared before the Enquiry Officer and submitted their detailed explanation. The petitioners requested the Enquiry Officer to conduct enquiry as per rules. But strangely, the submission of the petitioners was not accepted by the Enquiry Officer. No witnesses were examined and no documents were marked during enquiry. The enquiry was concluded in just half an hour by receiving the statement of the petitioners and the enquiry was one sided. The enquiry officer submitted a report and the same was forwarded vide notice dated 25.04.2017 calling upon the petitioners to furnish explanation. The very allegation is without any basis or material. Therefore, the petitioners have approached this Court by way of filing this Writ Petition.



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3. When the Writ Petition came up for admission, this Court has granted interim stay. Based on the interim stay, the petitioners are continuing their service till date.

4. The respondent have filed counter along with vacate stay petition stating that the petitioners were not handicapped and by fraud, got an appointment as Pump Operator. The appointment under physically handicapped quota is proved by the records of the District Employment Exchange Office on 11.06.2001 and 20.06.2001. Based on the proceedings of the Deputy Director for Welfare dated 27.10.2015, the respondent Town Panchayat was directed to conduct medical examination and on medical examination, it reveals that the writ petitioners are a normal person and not physically handicapped. Hence, the respondent prayed to dismiss this Writ Petition.

5. Heard Mr.V.Vijayshankar, learned counsel for the petitioner and Mr.Veera Kathiravan, learned Additional Advocate General, assisted by, Mrs.D.Farjana Ghoushia, learned Special Government Pleader appearing for the respondent and perused the records.



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6. The learned Additional Advocate General vehemently submitted that that the petitioners had obtained job by committing fraud and relied on the communication of the Employment Exchange Officer, which extracted hereunder:

OPEN COMPETITION/PRIORITY/GENERAL

PHYSICALLY HANDICAPPED.

3033/97.	S.Periasamy,	1.5.76.	SSLC & NTC Pump	
25.10.93.	S/o.P.Senthur,	Hindu.	Mechanic &	Selected
	Pandian,	Maraver.	NAC.Pump Mechanic	
	C/o.Dharmar,			
	Arunthathiar Theru,			
	10/1/3, Hospital,			
	East Side, Ayikudy Post.			

PHYSICALLY HANDICAPPED.

22/87.	S.Jesu Antony,	17.5.69.	SSLC failed	
7.87.	S/o.Simiyoornraj,	Christian.		Selected
	Agarakattu Post	Nadar.		
	& Village,			
	Ayikudy Via,			
	Shencottah Tk.			
	627 852.			

The respondents further submitted that charge memo and the enquiry was completed. The challenge before this Hon'ble Court is the subsequent notice along with the enquiry report. Charge memos and enquiry notices cannot be challenged before any Court of law. If there is any violation in the principles of



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natural justice, then alone it can be challenged before the Court of law. If the charges are vague, this Court has power to interfere with. The very filing of the Writ Petitions are not maintainable and this Court has no jurisdiction to entertain these Writ Petitions, since the very charge memo is challenged.

7. The learned counsel appearing for the petitioners submitted that the very basis of the issuance of charge memo itself is illegal. The contention of the petitioners is that they had never ever stated that they are Physically Handicapped either before the Employment Exchange or before the respondent authorities. When the petitioners were recruited on consolidated pay, immediately a medical examination was conducted and the report says that the petitioners are not handicapped. At this point of time itself, the respondent ought to have stated that the recruitment is only for the Physically Handicapped and the petitioners are not eligible. Having allowed the petitioners based on the medical certificate to continue their service for the past 14 years, suddenly, the respondent cannot wake up and dismiss the writ petitioners from service stating that the petitioners had committed a fraud. The very charge is vague and the respondents ought to be restrained from proceeding further in the enquiry proceedings and relied on a judgment rendered in the case of Anant R.Kulkarni Vs. Y.P. Education Society and others reported in (2013) 6 SCC 515 is extracted hereunder:



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“15. In Surath Chandra Chakrabarty Vs. State of West Bengal, this Court held, that it is not permissible to hold an enquiry on vague charges, as the same do not give a clear picture to the delinquent to make out an effective defence as he will be unaware of the exact nature of the allegations against him, and what kind of defence he should put up for rebuttal thereof. The Court observed as under: (SCC p.553 para 5)

“5. ... The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has also to be stated. This rule embodies a principle which is one of the specific contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded, he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him”.

8. This Court had given its anxious consideration on the rival submissions. On scrutiny of the registration card of the petitioners, it is seen the petitioners had registered themselves in a General Category before the Employment Exchange and there is no evidence to allege that the petitioners have registered under physically handicapped category and they have never ever claimed priority quota under physically handicapped. Even the medical examination report filed at the time of joining the service, had stated that the petitioners are not physically handicapped. When the respondents failed to



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notice the same at the time of appointment, more so at the time of joining, cannot allowed to state this allegation after 14 years of service of the petitioners. Moreover, it is the mistake committed by the Employment Exchange by circulating a letter stating that the petitioners have registered under Physically Handicapped category. The mistake committed by the Employment Exchange cannot be saddled on the petitioner.

9. The petitioners had registered themselves in the General Category and had served for the past 14 years, hence based on merits and on equity the petitioners are bound to continue in the service. Therefore, the enquiry and the impugned notice are liable to be quashed and the same is quashed. The respondents are directed to allow the petitioners to continue in service.

10. In view of the above, the Writ Petitions are allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

20.10.2022

Index : Yes / No
Internet : Yes/ No
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S.SRIMATHY, J.

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To
The Executive Officer,
Ayakudi Town Panchayat,
Tirunelveli District.

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