



W.P.(MD).Nos.11113 and 11114 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).Nos.11113 and 11114 of 2017

and

W.M.P.(MD).Nos.8521 and 8522 of 2017

W.P.(MD).No.11113 of 2017

S.Ambethkar

... Petitioner

Vs.

The Commissioner,
Sankarankoil Municipality,
Sankarankoil – 627 756,
Tirunelveli District.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent herein in Na.Ka.No.1519/2015/C1 dated 15.05.2017 (received by the petitioner on 31.05.2017) and quash the same and consequently direct the respondent to reinstate the petitioner to back into service as Driver with all attendant and consequential benefits.



W.P.(MD).Nos.11113 and 11114 of 2017

W.P.(MD).No.11114 of 2017

WEB COPY

M.Raj

... Petitioner

Vs.

The Commissioner,
Sankarankoil Municipality,
Sankarankoil – 627 756,
Tirunelveli District.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent herein in Na.Ka.No.1519/2015/C1 dated 15.05.2017 (received by the petitioner on 31.05.2017) and quash the same and consequently direct the respondent to reinstate the petitioner to back into service as Revenue Assistant with all attendant and consequential benefits.

(In both Writ Petitions)

For Petitioners : Mr.N.Balamurali Krishnan

For Respondent : Mr.P.Mahendran

COMMON ORDER

This Writ Petition has been filed for Writ of Certiorarified Mandamus to quash the impugned dismissal order dated 15.05.2017 and consequently direct the respondent to reinstate the petitioners into service as Driver and Revenue Assistant with all attendant and consequential benefits.



W.P.(MD).Nos.11113 and 11114 of 2017

WEB COPY

2. The brief facts as stated in the Writ Petition in W.P.(MD).No.11113 of 2017 are that the petitioner was sponsored through the Employment Exchange, Tirunelveli and he was appointed as Driver in the respondent Municipality in the year 2013. The respondent vide proceedings dated 21.09.2015 placed the petitioner under suspension, since the respondent was contemplating to initiate the departmental proceedings for having entered the Department falsely, claiming priority quota as physically challenged person. The contention of the petitioner is that he has not entered the service as physically challenged person and he was infact surprised to hear about the same only for the first time in the suspension order. On 06.10.2015, he was served with a charge memo containing a single charge. The sum and substance of the charge is that he has joined duty by falsely claiming priority as physically handicapped. The contention of the petitioner is that the physically challenged person cannot be appointed as Driver and he was not furnished any documents that he was physically handicapped at any point of time. The petitioner was directed to appear before the enquiry officer on 31.03.2016 and the petitioner appeared and submitted an elaborate explanation. Again on 17.08.2016, the petitioner was directed to appear before the enquiry officer. Except the petitioner and the enquiry officer, none was present. Once again he submitted the additional



W.P.(MD).Nos.11113 and 11114 of 2017

written explanation on the same date and except receiving the statement, enquiry was not conducted at all. Thereafter, the petitioner received the proceeding from the respondent on 13.01.2017 enclosing a copy of the enquiry report. In the enquiry report, the enquiry officer has not even referred to the contents of the written statement, no documents were verified and no witnesses were enquired. The enquiry report simply states that the contention of the petitioner is rejected and the allegations are proved. Thereafter, the petitioner submitted his representation dated 31.02.2017 explaining the above irregularities of the enquiry report and requested the respondent not to rely on the enquiry report. However, ignoring the same, the respondent who is the disciplinary authority has passed an order of removal from service. Since the impugned order was passed without adhering to the procedures involved in the major penalty proceedings and also in complete violation of principles of natural justice the present Writ Petition is filed.

3. In the second Writ Petition in W.P.(MD).No.11114 of 2017, the petitioner was appointed as Revenue Assistant in the year 2013 in the respondent Municipality and the contention of the petitioner is one and the same in both the Writ Petitions. Hence, both the Writ Petitions were taken up together.



W.P.(MD).Nos.11113 and 11114 of 2017

WEB COPY

4. The learned counsel appearing for the respondent submitted that the petitioners had submitted the employment exchange card, wherein, it has been stated that one petitioner suffers 50% disability and other petitioner suffers 60% disability. In the Regional Medical Board, both the persons were examined and it is evident from the said report that “No Clinical Evidence of Physical Deformity”. In spite of this Medical Certificates, the petitioners were appointed in the respondent Municipality. The respondent further submitted that a complaint was received and it was found that more than 300 persons were appointed in the disability quota in the various Municipalities but they are not disabled persons and petitioners are one among them. Therefore, the respondent submitted that the petitioners are one among 300 persons. Hence the disciplinary proceeding was initiated and the impugned order of removal from service was issued to them.

5. Heard Mr.N.Balamurali Krishnan, learned counsel for the petitioner and Mr.P.Mahendran, learned counsel appearing for the respondent and perused the records.



W.P.(MD).Nos.11113 and 11114 of 2017

WEB COPY

6. It is seen from the records that the enquiry officer has not conducted the enquiry properly. There is no reference to any documents. As rightly pointed out by the learned counsel appearing for the petitioners, there is no reference in the enquiry report about the written statements submitted by the petitioners. The specific allegation was raised by the petitioners is that the petitioners were not allowed to depose or cross examine or verify any documents before the enquiry officer.

7. Therefore, this Court is of the considered opinion that there is clear violation of principles of natural justice. Therefore, this Court deems it fit to remit back the case to the enquiry officer to conduct enquiry afresh and thereafter pass speaking orders. Hence, the impugned order is set aside. The respondents are directed to reinstate the petitioners into service and thereafter, appoint an enquiry officer and conduct a full-fledged enquiry. The petitioners shall be granted adequate opportunities to prove the case and thereafter, the order shall be passed. It is made clear that the petitioners are not entitled to any backwages for the period they were not in service. The said enquiry shall be completed within a period of four (4) months from the date of receipt of a copy of this order.



W.P.(MD).Nos.11113 and 11114 of 2017

WEB COPY

8. With the above direction, the Writ Petitions are allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

27.09.2022

Index : Yes / No
Internet : Yes/ No
Nsr

To
The Commissioner,
Sankarankoil Municipality,
Sankarankoil – 627 756,
Tirunelveli District.



WEB COPY



W.P.(MD).Nos.11113 and 11114 of 2017

S.SRIMATHY, J.

Nsr

W.P.(MD).Nos.11113 and 11114 of 2017

27.09.2022