



W.P.No.16593 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:16.06.2023

Delivered on: 23 .06.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.16593 of 2018

&

W.M.P.No.19762 of 2018

D.Jagadeesh Kumar

... Petitioner

Vs.

The Chairman
Chennai Port Trust ,Chennai

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the impugned proceedings of the respondent in No.MEE/E4/1429/2018/MM dated 26.06.2018 and to quash the same and consequently to direct respondent to reinstate the petitioner with continuity of service as a confirmed employee and to pay the monetary benefits and other service benefits applicable to the regular/permanent employee of the Chennai Port Trust.

For Petitioner : Mr.Balan Haridas

For Respondent : Mr.R.Karthikeyan
Standing Counsel



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ORDER

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Writ Petitioner has approached this Court seeking issuance of a Writ of Certiorafied Mandamus to quash the proceedings in No.MEE/E4/1429/2018/MM dated 26.06.2018 and to consequently direct the respondent to reinstate the petitioner with continuity of service as a confirmed employee and to consequently pay all service and monetary benefits that would be applicable to a regular/permanent employee of the respondent.

2. The petitioner's case is that he was appointed as Assistant Materials Manager with the respondent Port Trust in the year 2016. He was found to be qualified and he also subjected himself to medical examination besides producing all necessary documents required. The petitioner was initially put on probation period for a period of two years, commencing from 27.06.2016. The petitioner had submitted an experience certificate issued by his former employer M/s Sundaram Fasteners Limited dated 08.12.2015 along with another previous employer M/s. Peevee Precision Works Pvt. Ltd, Chennai at the time of applying for the post.

3. It is the case of the petitioner that while he resigned from M/s.



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Sundaram Fasteners Ltd, they had insisted on three months notice as against the one month's notice the petitioner had given and therefore he was not allowed to resign and he had to leave the service of his former employer on not good terms.

4. While the petitioner was in service with the respondent Port Trust, he received a show cause notice dated 16.06.2018 alleging that he had produced a fake certificate of experience dated 07.12.2015 from M/s. Sundaram Fasteners Ltd, Chennai. The petitioner immediately gave a reply to the said show cause notice enclosing all relevant documents to prove that he had worked with Sundaram Fasteners Limited and that he did not submit any fake experience certificate and also categorically asserting that he left from M/s. Sundaram Fasteners Limited with terms not being very smooth with the employer and therefore there was a possibility of the said employer wrecking vengeance by causing embarrassment to the petitioner.

5. It is the further case of the petitioner that despite his detailed reply



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the impugned termination order came to be passed by the respondent within four days of his submitting the reply to the said show cause notice. Challenging the said impugned order of termination on the ground that it is in violation of principles of natural justice, no opportunity being given or even an enquiry held and that the records produced along with the detailed reply were not positively and objectively considered by the respondent Trust, the petitioner has filed the present Writ Petition.

6. The respondent Port Trust has filed a counter affidavit stating that even in the general instructions to candidates it was specifically mentioned that the Trust would verify the antecedents or documents submitted by a candidate at any time either at the time of appointment or during his tenure of service and if the documents were found to be fake or if the candidate had clandestine antecedents/background then his or her service shall be liable to be terminated. According to the respondents, the petitioner states that he provided an experience certificate dated 08.12.2015 where as the experience letter submitted to the respondent Trust which also was independently



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verified by them with the former employer of the petitioner was dated 07.12.2015. Therefore, according to the respondent Port Trust all was not well and when the respondent Trust has received the information that the former employer had not issued such a certificate, they were wholly justified in passing the impugned order.

7. The petitioner filed a reply affidavit to the said counter reiterating the facts set out in the affidavit in support of the Writ Petition and also stating that there is no reason for the petitioner to give any fake experience certificate and the very fact that he was employed during the relevant period of time with M/s.Sundaram Fasteners Ltd was in never dispute. Terming one certificate to be fake and dismissing him from service, without even holding an enquiry, was certainly illegal and improper. With regard to two dates, the petitioner has filed a reply to the additional affidavit wherein he has stated that two letters, one dated 07.12.2015 and another dated 08.12.2015 were given by M/s. Sundaram Fasteners Ltd setting out the petitioner's roles and responsibilities and excepting the date there was no other change in the



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content and both the letters were identical in all other aspects. Moreover, both the letters were not addressed to any specific person and therefore the mere fact that there were two dates for the very same letter is of no consequence or significance whatsoever. The petitioner also stated that he joined the post of Assistant Materials Manager on 27.06.2016 based on his qualification and various other factors and not merely or blindly based on the certificate of experience produced by him. Moreover, the petitioner also refers to the advertisement issued by the respondent Trust wherein it is seen that for the post of Assistant Materials Manager Grade I, work experience is not prescribed as mandatory but only work experience of two years being desirable. The petitioner denies the correspondence between the respondent and M/s.Sundaram Fasteners Ltd and therefore prayed to this Court that reliance cannot be placed on such documents which were prejudicing the interest of the petitioner.

8. The respondent has also filed a counter to the reply affidavit filed by the petitioner, where the respondent reiterates the general instructions to the



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candidates and also refers to the verification process undertaken by them to verify the genuineness of the experience certificate. Moreover, according to the respondent, the petitioner was only undergoing probation and therefore without assigning any reasons the petitioner could be terminated. The respondent therefore sought for dismissal of the Writ Petition.

9. Heard Mr.Balan Haridas, learned counsel for the petitioner and Mr.R.Karthikeyan, Standing counsel for the respondent Port Trust.

10. Learned counsel placed the arguments based on various affidavits available before this Court and also documents filed by way of typedset. The counsel also stated that a statutory appeal was available to the petitioner as per Regulation 21 of the ChPTE (Classification, Control & Appeal) Regulations 1988 and therefore even on this score, Writ Petition was liable to be dismissed. Reliance was placed on the judgment of the Hon'ble Supreme Court in **2016 8 SCC 471, Avtar Singh Vs. Union of India & Ors**, for the proposition that fraud and misrepresentation would vitiate a transaction and



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when employment was obtained based on a forged documents, it rendered the employee liable for termination.

11. Dealing with the submission regarding availability of statutory appeal, when an employee is terminated without even giving him an opportunity or holding an enquiry, it is in clear violation of the fundamental rights of a person and therefore it is not necessary for the Court to always relegate the parties to the statutory remedies available under the respective acts and the Writ Petition can very well be maintained in such circumstances. Here also, despite issuing a show cause notice to the Writ Petitioner and calling for explanation from the Writ Petitioner and the petitioner also having submitted his detailed explanation, the act of the respondent Port Trust by proceeding to pass an impugned order of termination within four days thereafter, without holding an enquiry is clearly in violation of the rights guaranteed to a citizen of this Country under the Constitution. Therefore, this Court holds that the Writ Petition is maintainable.



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12. Coming to the next question as to whether the petitioner has obtained employment by producing a fake certificate, this Court would like to recollect the ratio laid down by the Hon'bl Supreme Court in *Avatar Singh's* case, where the Supreme Court at paragraph 33 has stated as follows:

“ The fraudulently obtained appointment orders are voidable at the option of employer, however, question has to be determined in the light of the discussion made in this order on impact of suppression or submission of false information.”

13. Further the Hon'ble Supreme Court has held in the very same judgment held that

“ Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.”

14. Applying the ratio laid down by the Hon'ble Supreme Court to the facts of the present case, the only issue that boils down for consideration is as



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to whether the certificate said to have been issued by the former employer of the petitioner can be termed as fake, on the basis of which the petitioner gained employment in the respondent port Trust. Even though the former employer of the petitioner has denied having issued such an experience certificate, the factum of the petitioner having worked with them for the relevant period of time has been categorically and specifically admitted. The very purpose and object of the respondent Trust requiring an experience certificate is only to ascertain whether the petitioner has had the necessary experience to render him fit for the employment with the respondent Trust. There may be motives or reasons best known to the former employer of the petitioner for disowning the experience certificate. However, as rightly pointed out by the learned counsel for the petitioner, when the petitioner left the former employer's service, his terms with the employer was not good, the possibility of the said employer playing mischief also cannot be ruled out. In any event, the respondent Port Trust ought to have given an opportunity to the petitioner to prove his explanation to the show cause notice by way of holding a fair enquiry. Admittedly, the respondent has not conducted any



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enquiry and without affording any opportunity, has terminated the petitioner.

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15. In this connection, learned counsel for the respondent Trust would invite the attention of this Court to Chennai Port Trust Employees' (Classification, Control and Appeal) Regulations, 1988, especially Regulation No.8 dealing with penalties. Referring to the said Regulation, learned counsel would submit that a reading of entire Regulation pertaining to penalties, drawing a distinction between minor penalties and major penalties, the respondent was justified in straight way terminating the services of the petitioner who was appointed only on probation and was undergoing the period of probation.

16. Per contra, learned counsel for the petitioner would rely on Regulation 12 which prescribes the procedure for imposing penalties. Regulation 12(1) states that no order imposing penalties specified in clause 5 to 9 of Regulation 8 shall be made except after an enquiry is held in the manner provided in Regulations 12 and 13. However, learned counsel for the



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respondent Trust would submit that explanation to Regulation 8 would justify the action of the respondent and there was no necessity to follow Regulation 12 or the procedure contemplated thereunder.

17. It would be relevant to refer to the impugned order passed by the respondent. According to the impugned order, the respondent has found the act of the petitioner to attract misconduct under Regulation 4(4) and 4(17) and was therefore liable for major disciplinary action as provided under Regulation 8 (b) (ix) and Regulation (9) of Chennai Port Trust Employees' (Classification, Control & Appeal) Regulation 1988 and under Regulation 16 of Chennai Port Trust Employees' (Recruitment, Seniority & Promotion) Regulation 2008.

18. It is thus clear that the respondents have taken disciplinary action against the petitioner under Regulation 8 (b) which is a major penalty and Sub-clause (9) which deals with dismissal from service, which was ordinarily a disqualification for the future employment under the Board as well. Having



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invoked the said provision, it is not open to the respondent to turn around and say that a person undergoing probation was not entitled to an enquiry as contemplated under Regulation 12. Moreover, Regulation 17 also is a Regulation which an exception culled out to Regulations 12 to 16. It was a case where the disciplinary authority was satisfied that it was not reasonably practicable to hold an enquiry in the manner provided under Regulations, then the disciplinary authority should record reasons for the same in writing. Here admittedly, no such reasons have been recorded in writing for dispensing with an enquiry as mandated under Regulation 12.

19. This Court, therefore holds that the action of the respondent Trust is wholly unjustified and against the principles of natural justice and terminating the petitioner without affording any opportunity to him, leave alone a fair opportunity and not adhering to their own Regulations is clearly violative of the petitioner's rights and warrants interference by this Court.

20. Accordingly, Writ Petition is allowed and the impugned order is set



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aside and the respondent shall hold an enquiry and also afford an opportunity by way of personal hearing to the petitioner to defend the charges proposed in the show cause notice dated 16.06.2018, including permitting the petitioner to examine the author of the experience certificates issued by M/s. Sundaram Fasteners Limited. This exercise shall be completed within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

23.06.2023.

Internet:Yes
Index:Yes/No
Neutral Citation:Yes/No
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To
The Chairman
Chennai Port Trust
Chennai

P.B.BALAJI, J.,
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Pre-delivery order in
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