IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2023

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A. No.1181 of 2021

R.Sundararajan ... Appellant

v.

1.The Personal Assistant (General),
To District Collector,
Perambalur District, Perambalur.

2.The District Revenue Officer,
Perambalur District. ... Respondents

Prayer : Writ Appeal is filed under Clause 15 of the Letter Patent, praying to set aside the order in W.P.No.14932 of 2010 dated 08.11.2019.

For Appellant : Mr.R.Singaravelan
Senior Advocate
for Mr.M.Muruganantham

For Respondents : Mr.Abishek Murthy
Government Advocate

JUDGMENT

(Judgment of the Court was made by *MOHAMMED SHAFFIQ,J.*)

The present writ appeal has been filed challenging the order of the learned Single Judge affirming the order of dismissal passed in the disciplinary proceedings on the premise that the appellant had secured / obtained employment as Driver on the basis of a forged/ bogus school certificate indicating that he had completed 8th Standard.

2. Brief facts:

i) The appellant studied in Kulathur Panchayat Union Middle School, Kulathur, Alathur Panchayat Union upto 8th Standard. However, due to financial constraint, he was unable to continue his studies any further. The appellant registered his name with the Employment Exchange, Trichy. Based on the same, he was called for interview to the post of Driver by the District Collectorate, Perambalur and was appointed as a Jeep Driver at District Collectorate, Perambalur on 03.12.1997.

ii) Subsequently, he was serving as Driver for the Revenue Divisional Officer and P.A.(General) to the Collector.

iii) While so, on the basis of an alleged petition/ complaint that the appellant has produced bogus educational certificate to secure employment, a report was called for as to the genuineness of the educational / academic qualification of the appellant. Accordingly, a report was submitted by Mr.Rangaswamy, Assistant Elementary Education Officer, Alathur dated 27.07.2004 that the certificate and the details in the admission register of the school were found to be matching. In other words, the certificate was found to be genuine.

iv) A complaint is stated to have been lodged with the Chief Minister Special Cell that the report as to the genuineness of the school certificate of the appellant issued by Mr. Rangaswamy was false and was issued, after taking / accepting a bribe and thus, the report dated 27.07.2004 was unreliable.

v) Pursuant thereto, a report was called for from the District Chief Educational Officer, Perambalur. Accordingly, a report was submitted wherein it was stated that the school certificate of the appellant was not genuine and that, action was initiated against Mr. Rangaswamy, Assistant Elementary Education Officer, Alathur who had submitted the earlier report dated 27.07.2004.

vi) The appellant was served with a charge memo dated 09.06.2006 wherein on the basis of report filed by the Elementary Educational Officer, Ariyalur dated 08.02.2006 and the report of the Chief Educational Officer, Perambalur dated 29.03.2006, the appellant was charged as having obtained/ secured government employment on the basis of bogus educational / school certificate.

vii) The 1st Respondent vide proceedings dated 30.10.2006 appointed the Tahsildar, Veppanthattai as Enquiry Officer to conduct the Oral Enquiry.

During the course of oral enquiry on 27.12.2006, charges were explained to the appellant. No witness was examined to speak on the report of the Elementary Educational Officer and the Chief Educational Officer dated 08.02.2006 and 29.03.2006 respectively. Thereafter, the appellant was served with a Memo dated 29.05.2007 enclosing a copy of the enquiry officer's report dated 09.05.2007 wherein it was stated that the charges framed against the appellant were proved.

viii) The appellant was directed to submit his representation with regard to the enquiry officer's report. Pursuant to the same, he submitted his detailed explanation denying the charges *vide* his letter dated 26.08.2007, wherein it was submitted that there was no correction in the record sheet available with the appellant, while also explaining that the alleged correction/insertion in the remark note, which formed the basis for the respondents to believe that the appellant had tampered/forged the academic records, fails to take into account the fact that the said document/register is maintained by the Headmaster of the School, who had affixed his initial with regard to the said correction and the appellant has no control over the said document/ register.

ix) The appellant approached this Court by filing W.P.No. 3999 of 2008 challenging the charge memo dated 09.06.2006 and the enquiry report dated 09.05.2007. This Court directed that an opportunity must be afforded to the appellant to examine the school records so as to enable him to put forth his explanation. The relevant portion of the said order is extracted hereunder:

> *"5. The further proceedings pursuant to the enquiry report shall be kept in abeyance until the respondents afford the petitioner an opportunity to examine the school records and if he has any explanation to offer with regard to the material alternations referred to in the enquiry report, the respondents may consider the same and finalise the enquiry report, the respondents may consider the same and finalise the enquiry report. Thereafter, the entire exercise shall be concluded within a period of four weeks from the date of receipt of a copy of h\this order. After that, the respondents are entitled to take action in accordance with law. No costs. The connected miscellaneous petitions are closed."*

x) Pursuant to the above directions of this Court, the appellant was directed to appear before the Personal Assistant (General) to the District Collector on 18.06.2008 and again on 29.12.2008. It is submitted that on both dates, no witness was examined. A comparison was made by the enquiry officer of the remark note with the pay register to verify whether the signatures in both the documents/registers matched. The said verification revealed that there were minor variations in the signatures between the two documents/registers. The disciplinary authority thereafter proceeded to hold that the delinquency against the appellant was proved and accordingly *vide* order dated 15.12.2009 inflicted the punishment of dismissal from service. The admission register, mark list, attendance register though intended to be examined/verified to find whether the signature in the documents furnished by the appellant matched with the said records to ascertain the genuineness of the school certificate produced / furnished by him, the said exercise was not carried out for want of those documents.

xi) The appellant preferred an appeal before the 2nd Respondent who dismissed the appeal affirming the order of the disciplinary authority. It is observed in the order of the 2nd Respondent that Alathur Elementary School Educational Officer, Mr. Rengaswamy who issued the certificate to the appellant was summoned on 21.04.2010, to which he had sent letter dated 07.05.2010 stating that the incident had happened in the year 2004-05 and due to passage of time, he was unable to verify the same with records and expressed his inability to attend the enquiry as he was not in a good condition both physically/mentally. The order of the 2nd Respondent proceeds to record that the Headmaster of Kulathur Panchayat Union Middle School, who had issued the certificate Mr.Chellamuthu (since retired) was enquired on 09.02.2010 and he had deposed that the signature in the certificate is not his signature and the certificate is bogus. Examination of Mr.Chellamuthu is stated to have been carried out without the appellant being present and statement was recorded without the knowledge of the appellant nor was the appellant permitted to cross-examine the said Headmaster. However, *vide* order dated 29.05.2010, the 2nd respondent / Appellate Authority had confirmed the order of the disciplinary authority holding that the certificate produced by the appellant is bogus and rejected the appeal after finding that Mr.Rangaswamy, the officer who submitted the 1st report was charged with having received bribe and that, action has also been taken under Tamil Nadu Civil Service (Discipline and Appeal) Rules for furnishing false report relating to the genuineness of the school certificate of the appellant.

3. Aggrieved, the appellant filed a writ petition in W.P.No.14932 of 2010 challenging the order of dismissal passed by the 1st Respondent and the order passed by the 2nd Respondent dated 15.12.2009 and 29.05.2010 respectively, on the premise that the entire proceeding stands vitiated for having been made in gross violation of the principles of natural justice, and for failing to take into account the relevant factors / materials and for taking into account irrelevant factors / materials.

4. Order of the learned Single Judge:

4.1. The contention of the appellant that the impugned order has been made in violation of principles of natural justice was not justified inasmuch as the appellant had not raised the issue of not being permitted to cross examine the Headmaster at the time of enquiry conducted by the enquiry officer.

4.2. Though there was a challenge to the charge memo, earlier in

W.P.No.3999 of 2008, this Court issued a direction to permit the appellant to examine the School Records to put forth his explanation which was stated to be considered at the time of passing the final order. In view of the same, the plea of the orders being passed, in violation of principles of natural justice was rejected.

4.3. Insofar as the contention that the appellant produced genuine certificate, the learned Single Judge held that the appellant had knowledge about the manipulation of the school record and thus, the alleged failure of the appellant to approach the concerned authority against the said illegal action is indicative of malafides on his part. Having held so, the learned Judge dismissed the writ petition.

4.4. It is against the above order of the learned Single Judge that the appellant has come up with this appeal.

5. Case of the Appellant:

i) The issue regarding the genuineness of the educational certificate was originally raised in the year 2004 and the enquiry was closed on receiving a report from the Elementary Education Officer, Alathur dated 27.07.2004 wherein it was found that the certificate submitted by the appellant was genuine. It was reopened on the basis of a fresh report from Elementary Educational

Officer, Ariyalur District dated 08.02.2006 and Chief Educational Officer, Perambular dated 29.03.2006 which indicated that there was variation in the signature of the Headmaster and thus, concluded that the certificate produced by the appellant was not genuine.

ii) The enquiry was conducted in a perfunctory manner. The order of dismissal was made on the basis of the alleged inquiry with Mr. Chellamuthu, Head Master of Kulathur Panchayat, Union Middle School who had issued the school certificate, wherein he had deposed that the signature in the certificate is bogus. However, the said inquiry was not carried out in the presence of the appellant and statements were recorded without the knowledge of the appellant nor was the appellant permitted to cross examine the witness.

iii) The records were more than 23 years old and on perusing the same, the disciplinary authority had arrived at a conclusion that the certificate was bogus which was affirmed by the Appellate Authority though it was found that the attempt to compare it with contemporaneous records such as Admission register, mark list, examination register and attendance register, failed as the documents were not available. The enquiry was thus incomplete and the allegation being one of fraud, the benefit of doubt ought to have been given to the appellant.

6. Case of the Respondents:

i) The order of the learned Judge is made after considering the material on record and thus, does not warrant any interference.

ii) The learned Judge found that enquiry revealed that there is variation in the signature and thus, concluded that the certificate was bogus and not genuine, which does not warrant interference.

iii) That the appellant had obtained employment by submitting a bogus certificate, which is a grave offence and thus, the order of learned Judge refusing to interfere with the order of the disciplinary authority made on the strength/basis of the report by the District Educational Officer, Ariyalur is justified.

7. Heard both sides. Perused the materials available on record.

8. We are of the view that the order of the learned Single Judge suffers from the following infirmities, which are fatal to its validity:

(i) Burden on the party alleging fraud - wrongly placed on the appellant:

8.1. The allegation of submitting bogus certificate is one relating to fraud and thus the onus is on the respondents who made the allegation. However, the learned judge recorded that the appellant had knowledge of manipulation of school record, while proceeding to observe that though a complaint was lodged before the competent authority to investigate the matter, it was not followed up diligently, which is indicative of lack of bonafides on the part of the appellant. The said observations of the learned Judge would reveal the following :

a) The learned Judge had concluded that the certificate was bogus.

b) The appellant had knowledge about the fraud / manipulation and he had not demonstrated his bonafide by taking genuine effort against the authority who had committed the said fraud.

8.2. The above reasoning of the learned Judge is contrary to settled position that the burden is on the party making the allegation of fraud / forgery to prove the same by letting in evidence. In the present case, it is the Respondents who had made the allegation of fabricating documents/ fraud against the appellant and thus, the burden is on the Respondents to prove the same. However, the learned judge had proceeded on the basis that the appellant had knowledge of manipulation of record and had failed to demonstrate his bonafide by taking action against the authority who had committed the alleged fraud. The said approach would show that the learned Judge required the appellant to discharge the burden of demonstrating that the certificate was genuine and not bogus / fraud which is contrary to the settled principle that the burden is on the party making the allegation. In this regard, it may be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of *Shrisht Dhawan (smt) vs. Shaw Bros.,* reported in *(1992) 1 SCC 534,* wherein it was held as under:

> *"10. Fraud is essentially a question of fact, the burden to prove which is upon him who alleges it. He who alleges fraud must do so promptly. There is a presumption of legality in favour of a statutory order....."*

The above judgment was followed in the case of *Mohan Singh vs. Amar Singh* reported in *(1998) 6 SCC 686*, wherein it was held as under:

> *"34. ....It has also been held that the burden to prove fraud or collusion is on the person alleging it...."*

ii. Misconception as to the nature of the defence set-up by the appellant:

8.3. The learned Judge had erred in finding that the appellant having knowledge of the alleged manipulation, did not pursue with the concerned authority. The said finding clearly reveals gross misconception in the mind of the learned judge as to the case set up by the appellant. It was the consistent case of the appellant that the certificates / documents were genuine and not bogus. That being so, the question of knowledge or action being initiated for manipulation by the appellant against the authority would not arise. The order of the learned judge placing reliance on the said aspect, which apart from being misconceived, is irrelevant rather extraneous in resolving the issue and thus, the same stands vitiated for taking into account the irrelevant factors / materials. It is trite law that any order which takes into account irrelevant or leaves out relevant factors / materials would vitiate the proceedings.*

<u>(iii)Benefit of doubt - allegation of fraud - to be extended to the person charged / alleged :</u>

8.4. We also find that the learned judge ought to have seen that the lower authorities intended to verify the genuineness of the signature by comparing it with contemporaneous records such as Admission register, mark list, examination register and attendance register. However, the said exercise was not carried out as the said materials were unavailable. The very fact that the lower authorities intended to carry out the said exercise would reveal that there were doubts in the mind of the lower authorities as to the genuineness or otherwise of the certificate and the above exercise was intended to be carried out to clear the doubt. However, in the absence of relevant records being available, the case of the department would continue to remain only in the realm of doubt with regard to a serious and grave allegation of fraud made against the appellant. It is trite law that a case / allegation of fraud whether in a civil, criminal or disciplinary proceedings is very serious and grave and the benefit of

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**M.V. Bijlani v. Union of India, (2006) 5 SCC 88*
Oriental Investment Co. Ltd. v. CIT, (1957) 32 ITR 664

doubt, if any, must be extended to the party / person charged with the said offence viz., fraud. Thus, when the enquiry itself is incomplete in view of non availability of document resulting in inability to compare the signature with contemporaneous records, an exercise which was intended to be carried out to clear the doubt in the mind of the authorities below. In such circumstances, the benefit of doubt ought to have been extended to the appellant. In this regard, it may be relevant to refer to the following judgments:

i)*The Management, STC vs. Joint Commissioner of Labour and Anr.,* in W.A.No.363 of 2019, Madras High Court dated 14.02.2019:

> "*12. When a charge alleged against a person is criminal in nature, the burden of proof is on the person, who alleges so. Only after the initial burden is proved, the burden shifts on the opposite party to disprove the allegation against him. In the instant case, there was nothing to show that the second respondent was responsible for committing the alleged fraud of erasing the original school register. Hence, in our considered view, the first respondent rightly refused to agree with the approval for dismissal of the second respondent from service.*"

<u>*ii) Union of India v. Chaturbhai M. Patel & Co., (1976) 1 SCC 747 :*</u>

> *" It is well settled that fraud like any other charge of a criminal offence whether made in civil or criminal proceedings, must be established beyond reasonable doubt: per Lord Atkin in A.L.N. Narayanan Chettyar v. Official Assignee, High Court, Rangoon [AIR 1941 PC 93 : 196 IC 404] . However suspicious may be the circumstances, however strange the coincidences, and however grave the doubt, suspicion alone can never tale the place of proof. In our normal life we are sometimes faced with unexplained phenomenon and strange coincidences, for, as it is said truth is stranger than fiction."*

iii) CIDCO v. Vasudha Gorakhnath Mandevlekar, (2009) 7 SCC 283:

*"**17.** If an allegation is made that a lower grade employee was responsible for withholding the said document from the higher authorities, proof therefor was necessary. It is wholly unlikely that the seniority lists of the officers which are prepared by the higher authorities would contain the same mistake as purported to have been committed by the lower authorities. The appellant prima facie is bound by its own records. If any fraud is alleged, it must be proved. Only because there appears to be a so-called interpolation, the same by itself would not lead to a conclusion that the respondent had supplied a wrong date of birth."*

(emphasis supplied)

Kerr on the Law of Fraud and Mistake (11th Edition) by L.McDonnell and J.G.Monroe at Page No.672:

....

The law in no case presumes fraud. The presumption is always in favour of innocence, and not of guilt. In no doubtful matter does the Court lean to the conclusion of fraud. Fraud is not to be assumed on doubtful evidence. The facts constituting fraud must be clearly and conclusively established[1]. Circumstances of mere suspicion will not warrant the conclusion of fraud[2].....

(emphasis supplied)

(iv) Mere tendering of documents as not proof of content thereof :

8.5. The impugned proceedings have been made on the basis of remark note of the school and report of the D.E.O. The above materials / records were merely tendered without any witness being examined and thus cannot be taken as proof of the content thereof. In this regard, it may be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of *Roop Singh Negi vs.*

1 Bowen v.Evans (1848), 2H.L.C.257; M'Cormick v. Grogan (1869), Ind. App.1; p.669;

2 Parfitt v. Lawless (1872), 2 P.&D.471;M'Cormick v. Grogan (1869), Ind. App.1; p.669, ante; Thomson v. Eastwood (1877), 2 App. Cas.233.

Punjab National Bank reported in (2009) 2 SCC 570. The relevant portions of the aforesaid judgment are extracted hereunder:

> *"**14.** Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. <u>No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof.</u> Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.*
>
> **........**
>
> ***23.** Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof."*
>
> *(emphasis supplied)*

9. To sum up, the order of the learned Single Judge is unsustainable for the following reasons:

a. The burden of disproving the allegation of fraud has been placed erroneously on the appellant contrary to the settled principle that the burden is on the person alleging fraud.

b. The enquiry was incomplete inasmuch as the documents intended to be verified to determine the genuineness of the signature/document viz., admission register, mark list, examination register and attendance register, were unavailable. The enquiry never crossed the realm of doubt being entertained by the authorities below, in which event, the benefit of doubt ought to have been extended to the appellant who is faced with the serious charge of forgery/fraud.

c. The documents relied upon by the department were merely tendered without any witness being examined and thus, the contents thereof cannot be taken to have been proved.

d. The order of the learned Single Judge suffers from gross misconception of the case set up by the appellant by looking to action being initiated by the appellant against the alleged manipulation of documents overlooking the fact that the consistent case of the appellant was that the said certificates/ documents were genuine.

10. In view of the above reasons, the order of the learned Single Judge is liable to be set aside and is hence, set aside. Consequently, the orders impugned in the writ petition are also set aside. Accordingly, the writ appeal stands allowed. No costs.

[R.M.D., J.] [M.S.Q., J.]
20.09.2023

Index: Yes/No
Speaking order / Non speaking order
Neutral Citation: Yes/No
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