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W.P.No.28219 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2023

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.28219 of 2019

R. Saranya

... Petitioner

Vs.

1.The District Collector,
Villupuram District, Villupuram.

2.The Block Development Officer,
Thiruvannainallur Panchayat Union,
Villupuram District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in connection with the impugned order passed by him in Na.Ka.No.4883/2019/PE4 dated 29.08.2019 and to quash the same and further direct the respondents 1 & 2 to reinstate the petitioner into service with all consequential service and monetary benefits.

For Petitioner : Mr.S. Sivakumar

For Respondents : Mr.K.H. Ravikumar,
Government Advocate [R1]
Mr.P.S. Shanmugasundaram [R2]



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ORDER

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The petitioner herein was regularly appointed to the post of Assistant Cook through the proceedings of the Personal Assistant (NMP) to District Collector, Villupuram, in Na.Ka.No.PE4/2721/2017 dated 21.06.2017 in a regular time scale of pay. Through the impugned order dated 29.08.2019, she was removed from service on the ground that the Record Sheet produced by her for Admission No.02765, to establish that she had studied up to 8th standard, is bogus. Challenging the same, the present Writ Petition has been filed.

2. The learned counsel for the petitioner submitted that no inquiry was conducted prior to the impugned order dated 29.08.2019 and therefore, the order cannot be sustained.

3. Per contra, the learned Government Advocate appearing for the first respondent, had produced copy of the letter of the District Educational Officer dated 30.12.2020, which states that an inquiry was conducted with two retired Headmistresses, one retired Block Educational Officer and the present Block Educational Officer and based on such an inquiry, the education certificates produced by the petitioner was found to be bogus and



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WEB COPY accordingly, the impugned punishment was imposed. The learned Government Advocate also placed reliance on the terms of the appointment order and submitted that, in case the educational certificates submitted by the petitioner is subsequently found to be bogus, she would be removed from service without any prior notice and therefore, submitted that non-conduct of the inquiry will not affect the impugned order.

4. It is not in dispute that the petitioner was regularly appointed to the post of Assistant Cook in the Panchayat School. Likewise, it is also not in dispute that no prior inquiry was conducted before the impugned punishment order was passed. In service jurisprudence, when a Government employee is regularly appointed into service and when the authorities intend to take action against such an employee for any delinquency, the proper procedure for imposing of any punishment would be preceded by a Show Cause Notice and by framing charges against such an employee and thereafter, an inquiry needs to be conducted in which, the employee requires to be given due opportunity to put forth her objection, as well as to cross-examine any of the witnesses to be examined during the course of inquiry. After the inquiry report, the Disciplinary Authority is also



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required to seek for further explanations from the delinquent, on the inquiry report, in case the charges are held to be proved and thereafter take a final call.

5. The only reason assigned by the respondents in not conducting an inquiry is that, one of the terms of the appointment order states that, in case the education certificates or community certificate produced by the employee at the time of appointment is found to be bogus, her services would be terminated without any prior notice. Such a unilateral condition in the appointment order, would not be binding on the petitioner. It requires to be kept in mind that in case, the petitioner raises objections to any of these unilateral conditions at the time of her appointment, she may be deprived of the appointment.

6. The legal ratio that an inquiry should precede a punishment, has been settled through various decisions of this Court, as well as the Hon'ble Supreme Court, which cannot be given a go-by. Furthermore, in the inquiry conducted by the District Educational Officer with the retired Headmistress and Block Educational Officers, the petitioner was admittedly



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not given an opportunity to either participate or cross-examine these witnesses. The entire procedure adopted by the District Educational Officer in coming to the conclusion that the education certificates produced by the petitioner is bogus, is one sided and the petitioner did not have an opportunity to even look into the statements made by these witness in their inquiry, in which the petitioner did not participate. As such, no credence could be given to such a report and the consequential punishment of removal from service cannot be sustained.

7. At this juncture, the learned counsel for the petitioner drew attention of this Court to the Transfer Certificate issued by the Department of School Education, Tirunavalur dated 22.08.2019. Even this document *prima facie* evidences that the petitioner had studied in the Panchayat Elementary School between the period 2001-2006, till 5th Standard. Incidentally, the essential qualifications prescribed for the post of Assistant Cook, a pass or fail in 5th Standard. If this document is taken into consideration, it can be said that the petitioner did possess the required qualification for the post.



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8. The learned counsel for the petitioner sought to explain the certificate handled by the respondents as bogus, was submitted by her cousin brother, who was inimically disposed to him and at whose complaint, the respondents have also removed the petitioner from service.

9. Now that the petitioner is in possession of certain documents which evidences that she had studied up to 5th Standard, the respondents could be directed to verify the genuinity of such a Transfer Certificate. Further, since the entire exercise adopted by the respondents is illegal, she would be entitled for reinstatement, together with all the benefits.

10. In the light of the above findings, the impugned order dated 29.08.2019 passed by the first respondent, is hereby quashed. Consequently, the first respondent herein shall forthwith pass appropriate orders, reinstating the petitioner into service with all the consequential service and monetary benefits, including the arrears of pay. Such orders shall be passed atleast within a period of two (2) weeks from the date of receipt of a copy of this order.



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11. Accordingly, the Writ Petition stands allowed. No costs.

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Speaking/Non-speaking Order

Neutral Citation: Yes/No

Index: Yes/No

Internet: Yes/No

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To

- 1.The District Collector,
Villupuram District, Villupuram.
- 2.The Block Development Officer,
Thiruvannainallur Panchayat Union,
Villupuram District.



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M.S.RAMESH,J.

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