



W.P.(MD)No.14125 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.14125 of 2020
and
W.M.P(MD)No.11775 of 2020

G.Antony Darwin

... Petitioner

Vs.

1.The Appellate Authority Under

The Tamil Nadu Shops and Establishment Act /
Joint Commissioner of Labour,
Madurai.

2.The Management

Tamil Nadu Mercantile Bank Limited,
57, V.E. Road,
Thoothukudi - 628 002.

3.The Branch Manager

Tamil Nadu Mercantile Bank Limited,
Paramakudi Branch,



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Paramakudi.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned order in TNSE 04/2017 dated 02.01.2020 on the file of the first respondent and to quash the same and consequently direct the second respondent management to reinstate the petitioner into service with all consequential service and monetary benefits.

For Petitioner : Mr.G.Gnanagurunathan

For Respondents : Mr.S.P.Maharajan - for R1
Special Government Pleader
Mr.M.E.Ilango - for R2 & R3

ORDER

This writ petition has been filed to quash the impugned order in TNSE 04/2017 dated 02.01.2020 on the file of the first respondent and consequently direct the second respondent management to reinstate the petitioner into service with all consequential service and monetary benefits.



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2. The learned counsel appearing for the petitioner submitted that the second respondent had issued a notification for appointment to the post of Peon and the petitioner had participated in the selection process for the post of Peon prescribing the basic educational qualification for the post as minimum 10th standard and maximum 12th standard. Out of sheer innocence, he had thought that a declaration of pass in 10th standard, but there was no intention much less wilful intention to suppress or conceal the factum of he passed in 12th standard with Diploma. A pass in the 10th standard being sufficient educational qualification for the post of Peon, he had stated in his application that he has passed 10th standard and produced the Duplicate Transfer Certificate obtained from the School where he studied. However, the second respondent Bank also considering his Socio-economic status, issued an appointment letter, dated 21.01.2013 in favour of the petitioner. After training, he working from 07.02.2013 onwards in the third respondent branch as Probationary sub staff. From the date of appointment, he has been working sincerely to the utmost satisfaction of his employer, without giving any room whatsoever.



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3. As per the notification of the Bank, the minimum educational qualification is 10th standard and maximum 12th standard and hence, having higher qualification of 12th standard is in tune with the notification.

Since the Bank had taken steps to declare his probation, he had produced all his 12th standard certificates along with Diploma Certificate. Therefore, the Bank had issued a charge-memo, dated 15.07.2014 alleging that the petitioner suppressed his application to the appointment to the post of Peon and produced false 10th standard transfer certificate. Therefore, the petitioner submitted his explanation on 19.07.2014 and 01.09.2014. An enquiry was conducted on 15.11.2014 and on the same day, it was concluded. Thereafter, the Enquiry Officer has drawn a proven minute as against the petitioner. Subsequently, a show-cause notice was issued, for which, the petitioner submitted his explanation on 12.01.2015 and thereafter, second show-cause notice was issued on 19.01.2015 and submitted his explanation on 23.01.2015. Thereafter, the petitioner was dismissed from service on 19.02.2015. As against the dismissal order, the petitioner preferred an appeal before the first respondent and the same was taken on file as TNSE 04/2017 after condoning delay in filing the appeal



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and after hearing both sides, the first respondent passed the impugned order, dated 02.01.2020. Challenging the same, the present writ petition is filed with the aforesaid prayer.

4. The learned counsel for the petitioner further submitted that though the petitioner acquired Higher Secondary as well as Diploma Certificate, however, minimum educational qualification for the post required is 10th standard and maximum is 12th standard and the petitioner has not suppressed any fact, has acquired qualification 10th standard pass which was declared in the application and the same is not suppression of material facts and it is not a false declaration, however, the respondent arrived at a conclusion that the petitioner made a false declaration in the application, for which, they passed the impugned termination order, which is not sustainable one. Accordingly, he prayed for allowing the writ petition.

5. In support of his contention the learned counsel for the petitioner relied upon the decision of the Hon'ble Apex Court judgment in **Mohd.Riazul Usman Gani and Others Vs. District and Sessions Judge,**



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Nagpur and Others reported in **2000(2) SCC - 696**, wherein, it has been held as follows :

"19. We do not know what are the duties attached to the post of a peon. But perhaps one thing peons are not required to do the work of sweepers or gardeners. Qualifications for gardeners and sweepers have been separately provided in the Recruitment Rules and the only qualification for both the categories of these posts is "good physique and also to carry out the duties attached to the post."

20. If an employee does not perform the duties attached to the post disciplinary proceedings can certainly be taken against him. An employer cannot throw up his hands in despair and devise a method denying appointments to a person who otherwise meets the requisite qualifications on the ground that if appointed, he would not perform his duties. Qualification prescribed is minimum. Higher qualification cannot become a disadvantage to the candidate."



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6. Per contra, the learned counsel appearing for the respondents 2 and 3 submitted that the petitioner challenged the dismissal order before the first respondent/Appellate Authority under the Tamil Nadu Shops and Establishments Act / Joint Commissioner of Labour, Madurai in TNSE 4 of 2017 and the same was dismissed by the first respondent. Challenging the said order, the present writ petition is filed. The petitioner was already working temporarily in the Bank and he was aware that the maximum qualification prescribed for the post of Peon in the Bank is only 12th standard. Hence, he suppressed the fact about his actual qualification and mentioned in his application, dated 12.01.2013 as if his qualification prescribed was only 10th standard pass. Further, the petitioner has also produced the Diploma Transfer Certificate as if he had only studies upto 10th standard and he has also not even mentioned orally that he is a Diploma holder. The petitioner was considered for declaration of probation and confirmation of service and only at that time, he submitted his 12th standard certificate and also Diploma in Electrical and Electronics Certificate to the Bank. It is to be noted that the order appointment itself clearly states that the appointment is liable to be terminated without



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assigning any reason, if it is found that the information furnished is false or incorrect. Admittedly, the petitioner had submitted not only the false information but also he had submitted an improper document. Hence, the appointment itself becomes abinitio void in terms of the conditions contained in the order of appointment. Hence, he prayed for dismissal of the writ petition.

7. In support of his contention, the learned counsel for the respondents 2 and 3 relied upon the judgment in the case of **Chief Manager, Punjab National Bank and another Vs. Anit Kumar Das** reported in **2020 SCC online SC 897**, wherein, it has been held as follows :

"7.3 Thus, as held by this Court in the aforesaid decisions, it is for the employer to determine and decide the relevancy and suitability of the qualifications for any post and it is not for the Courts to consider and assess. A greater latitude is permitted by the Courts for the employer to prescribe qualifications for any post. There is a rationale behind it. Qualifications are prescribed keeping in view the need and interest of an Institution or an Industry or an



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establishment as the case may be. The Courts are not fit instruments to assess expediency or advisability or utility of such prescription of qualifications. However, at the same time, the employer cannot act arbitrarily or fancifully in prescribing qualifications for posts. In the present case, prescribing the eligibility criteria/educational qualification that a graduate candidate shall not be eligible and the candidate must have passed 12th standard is justified and as observed hereinabove, it is a conscious decision taken by the Bank which is in force since 2008. Therefore, the High Court has clearly erred in directing the appellant Bank to allow the respondent-original writ petitioner to discharge his duties as a Peon, though he as such was not eligible as per the eligibility criteria/educational qualification mentioned in the advertisement.

8. Even on the ground that respondent – original writ petitioner deliberately, wilfully and intentionally suppressed the fact that he was a graduate, the High Court has erred in directing the appellant Bank to allow the respondent – original writ petitioner to discharge his duties as a Peon. In the application/bio-data, the respondent - original writ petitioner did not mention that he was a graduate. Very cleverly he



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suppressed the material fact and declared his qualification as H.S.C., whereas as a matter of fact, he was holding a degree in the Bachelor in Arts. Had it been known to the bank that he was a graduate, he would not have at all been considered for selection as a Peon in the bank. That thereafter when scrutiny of the documents was going on and when the respondent – original writ petitioner produced a graduation certificate, at that time, the bank came to know that he was a graduate and therefore not eligible and therefore the bank rightly cancelled his candidature and he was not allowed to join the bank in the subordinate cadre. Therefore, on the aforesaid ground alone, the High Court ought not to have allowed the writ petition when it was a clear case of suppression of material fact by the original writ petitioner. An employee is expected to give a correct information as to his qualification. The original writ petitioner failed to do so. He was in fact over-qualified and therefore ineligible to apply for the job. In fact, by such conduct on the part of the respondent –original writ petitioner, one another righteous candidate has suffered for his mischievous act. As held by this Court in the case of Ram Ratan Yadav (supra), suppression of material information and making a false statement has a clear



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bearing on the character and antecedents of the employee in relation to his continuance in service. A candidate having suppressed the material information and/or giving false information cannot claim right to continuance in service. Thus, on the ground of suppression of material information and the facts and as the respondent – original writ petitioner even otherwise was not eligible as per the eligibility criteria/educational qualification mentioned in the advertisement which was as per Circular letter No. 25 of 2008 dated 06.11.2008, the bank rightly cancelled his candidature and rightly did not permit him to resume his duty."

(Emphasis added)

8. The learned counsel for the respondents 2 and 3 further submitted that admittedly the petitioner was declared as if 10th standard and submitted a duplicate Transfer certificate and thereafter, when completing the probation period, he has given the 12th certificate as well as Diploma Certificate, which is contrary to the declaration made before the authority, at the time of submitting the application and the issue arises in the present writ petition is no longer *res-integra*. The Hon'ble Apex Court has categorically



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held when the petitioner deliberately, wilfully and intentionally suppressed the fact that he is a Diploma holder and suppressing the said higher qualification for acquiring the basic post of Peon which is not eligible as per the eligible criteria educational qualification. Even as per the eligible criteria mentioned in the recruitment rules, the minimum educational qualification is 10th standard and maximum educational qualification is 12th standard, however, the petitioner acquired Diploma Certificate which is more than 12th standard. Accordingly, he prayed for dismissal of the writ petition.

9. Heard the learned counsel on either side and perused the materials available on record.

10. The facts in the present case are not in dispute. Admittedly, the petitioner had joined the duty as Peon by submitting his application mentioning that 10th standard pass, whereas, the eligible criteria for the particular post is minimum 10th standard and maximum 12th standard. The petitioner did not disclose his educational qualification as Higher Secondary



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qualification as well as Diploma qualification. Suppressing the higher qualification, he mentioned only 10th standard pass and the same is contrary to the declaration made by the petitioner at the time of submitting the application and this Court perused the decision of Hon'ble Apex Court, which is clearly applied to the present case on hand. Accordingly, applying the ratio laid down by the Hon'ble Apex Court, this writ petition is liable to be dismissed.

11. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

06.02.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No

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1.The Appellate Authority Under
The Tamil Nadu Shops and Establishment Act /
Joint Commissioner of Labour,
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M.DHANDAPANI, J.

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