



W.P.(MD).No.2088 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.2088 of 2016

and

W.M.P.(MD).Nos.1800 and 1801 of 2016

M.Gopala Krishnan

... Petitioner

Vs.

The Executive Officer,
Special Grade Town Panchayat,
North Valliyoor,
Tirunelveli District.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the impugned order of the respondent in Na.Ka.No.415/2015 dated 07.01.2016 and quash the same.

For Petitioner : Mrs.M.Rajeswari

For Respondent : Mr.K.K.Udhayakumar



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ORDER

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This Writ Petition is filed to quash the impugned suspension order dated 09.07.2016.

2. The petitioner belongs to Most Backward Class community. Originally, the petitioner fails in SSLC and subsequently, appeared in the private examination and passed in SSLC. The respondent has called for application to fill up the post of Sweeper and the petitioner's name was sponsored by the Employment Exchange under General Category. The respondent also issued call letter to the petitioner and directed him to attend the interview on 28.07.2011 along with all necessary certificates. At the time of interview, the petitioner had produced the required certificates and after verifying the same, the Appointment Committee appointed the petitioner on 28.07.2011 under General category. The petitioner also produced the physical fitness certificate. In the meanwhile, the respondent Executive Officer had entertained doubt to appoint the petitioner, hence he sought a clarification from the Regional Director of Panchayat Raj. After obtaining clearance from the said authority, the petitioner was appointed and the petitioner had joined the service and is working from 2011 onwards.



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3. Subsequently the Joint Director had issued a notice to the petitioner directing him to appear before the Medical Board on 30.12.2015 for ascertaining the physical disability of the petitioner. On receiving the same, the petitioner had approached the respondent and informed that he is not physically handicapped person, in such circumstances, the physical examination is not necessary. However, it was informed to the petitioner that the medical examination was conducted for all the appointments made in the Panchayat. When the petitioner appeared before the Doctor, a specific question was asked to the petitioner whether the petitioner is physically handicapped and the petitioner replied that he is not physically handicapped. Thereafter, the Doctor has not conducted any physically examination or medical test. Subsequently, the respondent issued the impugned order of suspension dated 07.11.2016. Aggrieved over the same, the petitioner is before this Court.

4. At the time of admission, this Court has not granted any interim stay. The learned counsel appearing for the petitioner as well as the respondent submitted that based on the suspension order, the petitioner was not allowed to continue his service.



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5. The Learned Counsel appearing for the respondent on instructions submitted that the appointment of sweepers, scavengers, drivers and other posts in the Panchayat ended up in huge scam. Therefore, the appointments made to such post were directed to be scrutinized and they are referred for medical examination. Based on the report, the appointees were either suspended or dismissed or subjected them to disciplinary enquiry and several steps were taken to set right the illegality of such appointment.

6. The Learned Counsel for the respondent further submitted that the petitioner was not physically disabled person, but the post was allotted to the priority category of physically disabled person. Therefore, the impugned order was issued, charge memo was issued, enquiry was conducted and final order was not passed. The respondents are awaiting the result of this writ petition.

7. Heard Mrs.M.Rajeswari, learned counsel for the petitioner and Mr.K.K.Udhayakumar, learned counsel for the respondents and perused the records and documents submitted by the parties.

8. The contention of the petitioner is that at the time of registering himself in the employment exchange, he has not mentioned that he is physically



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handicapped category at all. Even in the call letter issued to the petitioner, it is not mentioned about the petitioner in the category of physically disabled person. At the time of joining, the petitioner submitted fitness certificate issued by the competent Doctor and in the fitness certificate also it is not mentioned that the petitioner is physically handicapped. Based on all these documents, the petitioner was appointed. More so, there was a doubt with regard to the appointment of the petitioner regarding the marks obtained by the petitioner and it was clarified and approved by the Regional Director of Panchayat Raj, thereafter only the petitioner appointed. In such circumstances, it is evident that there is no misrepresentation on the part of the petitioner. In such circumstances, the petitioner cannot be found fault.

9. The Learned Counsel appearing for the respondent submitted that this Court has considered a similar case in W.P.(MD).Nos.11113 and 11114 of 2017 vide order dated 27.09.2022 and remitted the case to conduct enquiry and reconsider the issue. In the aforesaid Writ Petitions, the petitioners had misrepresented before the Employment Exchange and have recorded their name under physically handicapped category with 50% / 60% disability. On Medical Board examination, the Board has certified that there is no physical deformity with the petitioner. Since both were inconsistent, this Court directed the



respondent to conduct an enquiry. But, in the present case, there is no misrepresentation at all. The relevant portion is extracted hereunder:

“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.

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



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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.

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

10. The Learned Counsel appearing for the petitioner submitted that the similar issue was considered by the Court in another writ petition in W.P. (MD)No.9300 and 9301of 2017 vide order dated 20.10.2022 and has allowed the writ petition. The relevant portion is extracted hereunder:

7. The learned counsel appearing for the petitioners submitted that the very basis of the issuance of charge memo itself is illegal. The



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contention of the petitioners is that they had never ever stated that they are Physically Handicapped either before the Employment Exchange or before the respondent authorities. When the petitioners were recruited on consolidated pay, immediately a medical examination was conducted and the report says that the petitioners are not handicapped. At this point of time itself, the respondent ought to have stated that the recruitment is only for the Physically Handicapped and the petitioners are not eligible. Having allowed the petitioners based on the medical certificate to continue their service for the past 14 years, suddenly, the respondent cannot wake up and dismiss the writ petitioners from service stating that the petitioners had committed a fraud. The very charge is vague and the respondents ought to be restrained from proceeding further in the enquiry proceedings and relied on a judgment rendered in the case of Anant R.Kulkarni Vs. Y.P. Education Society and others reported in (2013) 6 SCC 515 is extracted hereunder:

“15. In Surath Chandra Chakrabarty Vs. State of West Bengal, this Court held, that it is not permissible to hold an enquiry on vague charges, as the same do not give a clear picture to the delinquent to make out an effective defence as he will be unaware of the exact nature of the allegations against him, and what kind of defence he should put up for rebuttal thereof. The Court observed as under: (SCC p.553 para 5) “5. ... The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has also to be stated. This rule embodies a principle which is one of the



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specific contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded, he cannot possible, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him”.

8. This Court had given its anxious consideration on the rival submissions. On scrutiny of the registration card of the petitioners, it is seen the petitioners had registered themselves in a General Category before the Employment Exchange and there is no evidence to allege that the petitioners have registered under physically handicapped category and they have never ever claimed priority quota under physically handicapped. Even the medical examination report filed at the time of joining the service, had stated that the petitioners are not physically handicapped. When the respondents failed to notice the same at the time of appointment, more so at the time of joining, cannot allowed to state this allegation after 14 years of service of the petitioners. Moreover, it is the mistake committed by the Employment Exchange by circulating a letter stating that the petitioners have registered under Physically Handicapped category. The mistake committed by the Employment Exchange cannot be saddled on the petitioner.

9. The petitioners had registered themselves in the General Category and had served for the past 14 years, hence based on merits and on equity the petitioners are bound to continue in the service. Therefore, the enquiry and the impugned notice are liable to be quashed and the



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same is quashed. The respondents are directed to allow the petitioners to continue in service.

10. In view of the above, the Writ Petitions are allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.”

11. Therefore, this Court is of the considered opinion that the judgment rendered in the W.P.(MD)No.9300 of 2017 is applicable to the present case and not the judgment rendered in W.P.(MD)No.11113 of 2017.

12. Therefore the impugned order of suspension is quashed. The respondents are directed to allow the petitioner to continue his service. The petitioner is directed to report duty on 03.07.2023. For the non-employment period, the petitioner is not entitled to any back wages. However, the petitioner is entitled to continuity of service. Since this Court has held that the petitioner is not at fault and in the light of the judgment rendered in W.P.(MD)No.9300 of 2017 the respondent shall drop disciplinary proceedings. In view of the above, this Writ Petition is allowed in above terms. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

28.06.2023

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

Note: Issue Order Copy on 30.06.2023.



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To

The Executive Officer,
Special Grade Town Panchayat,
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S.SRIMATHY, J.

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