



W.P.(MD).No.18427 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.18427 of 2017

and

W.M.P.(MD).Nos.14861 and 14862 of 2017

K.Murugesh

... Petitioner

Vs.

1.The Chairman cum Managing Director,
Tamil Nadu Newsprint and Papers Limited,
Head Office, No.67, Mount Road,
Guindy,
Chennai – 600 032.

2.The General Manager (HR),
Tamil Nadu Newsprint and Papers Limited,
Kagithapuram – 639 139,
Karur District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order issued by the second respondent in his proceeding No. HR/06/3932 dated 21.12.2016 and quash the same as unconstitutional and illegal and consequently direct the respondent to reinstate the petitioner in the post of Semi -skilled(D) Paper Machine- Mechanical with all attendant and monetary benefits.



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For Petitioner : Mr.S.Ramsundar Vijayraj

For Respondents : Mr.Ajmal Khan,
Senior Counsel,
For Mr.M.P.Senthil

ORDER

This Writ Petition is filed to quash the order dated 21.12.2016 and consequently direct the respondent to reinstate the petitioner in the post of Semi-skilled (D) Paper Machine-Mechanical with all attendant and monetary benefits.

2. The petitioner has completed S.S.L.C in the year 2003 and I.T.I. Course in Fitter Trade at N.M.S.Annapackiam Jeyaraj Nadar I.T.I Chinnatharapuram, Erode District. The respondents issued notification to fill up the post of Semi-skilled "C" Energy Operator for TNPL Unit – II through paper publication dated 29.08.2015. The petitioner applied to the said post along with the educational qualification and attended the interview on 08.12.2016. After verifying the certificates, the respondents have appointed the petitioner on 22.03.2016 and the petitioner joined the service.



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3. At the time of application, the petitioner has enclosed the service certificate issued by one M/s. Mersen India Private Limited, wherein it is stated that the petitioner has worked as CNC Operator and Milling Machine Operator from 01.04.2010 to 30.12.2014 which was issued by the Chief Executive of the said Company on 31.12.2014. The contention of the petitioner is that the M/s. Mersen India Private Limited was engaged by one Servo Craft HR Solution Private Limited, Chennai as their agents. During the said period 01.04.2010 to 30.12.2014, the said employer had deducted amount towards Provident Fund from the petitioner salary account.

4. After joining the second respondent office, the Vigilance Officials of the respondent office during their normal verification of the certificates have reported insofar as the petitioner's experience certificate is concerned, as if the said Company is not in existence. The contention of the petitioner is that due to natural calamities in Tamil Nadu during Thane Cyclone in December, 2015, the said M/s. Mersen India Private Limited was inundated and the said Company was closed and not reopened. Thus, no records are available to verify the petitioner's experience with the said Company. During the verification of the



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Vigilance officials, the service records of the petitioner could not be traced.

Based on the Vigilance Officials report, the petitioner was forced to accept that he has submitted fake certificate and due to threatening, the petitioner has submitted his resignation based on which he was discharged from service. Aggrieved over the same, the petitioner is before this Court.

5. The respondents have filed counter as well as additional counter stating that the Vigilance Officials have submitted the report that the certificate submitted by the petitioner is forgery and the petitioner was not employed with M/s. Mersen India Private Limited. The petitioner while submitting his resignation has also accepted that the said certificate was forged and fake one and he has committed such mistake. Considering the future of the petitioner, a sympathetic view was taken and he was relieved from service on 21.12.2016. Infact, the forging of documents is a criminal offence and the respondents ought to have set in law in motion by lodging the criminal complaint against the petitioner, but the respondents were not inclined to spoil the petitioner's future by considering his age and thus, relieved the petitioner from service through impugned order without initiating criminal and disciplinary proceedings. The petitioner has given only the details of M/s.Mersen India



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Private Limited and never mentioned about his working with M/s. Servocraft HR Solutions Private Limited. After relieved from service, the petitioner has submitted representations on various dates wherein he has submitted that M/s.Servocraft HR Solutions Private Limited has acted as the agency of M/s.Mersen India Private Limited. The Chennai Office of M/s.Mersen India Private Limited was closed due the Thane Cyclone in the year 2015. The Bangalore office did not have any documents pertaining to his employment. On the contrary, the petitioner has got a service certificate from the Head Plant and Technical of the M/s. Mersen India Private Limited, Bangalore and it was sent along with the representations. All these factors were not disclosed at the time of submitting the application and these facts are only after thought. Therefore, the respondents submitted that the petitioner has committed criminal act. Therefore, he is not entitled to any relief. The respondents further stated that the petitioner being a workman, the petitioner ought to have raised the Industrial Dispute under 2(a). When the petitioner is having effective alternative remedy, this Writ Petition is not maintainable. Moreover, there are disputed question of facts. Therefore, the present Writ Petition is not maintainable. For all these reasons, the respondents prayed to dismiss this Writ Petition.



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6. Heard Mr.S.Ramsundar Vijayraj, learned counsel for the petitioner and Mr.Ajmal Khan, learned Senior Counsel, for Mr.M.P.Senthil, appearing for the respondents and perused the records.

7. The first contention of the petitioner is that he has served in the M/s.Mersen India Private Limited until 2014 and the certificate was issued in 2014. Subsequently, it was closed in the year 2015 and the certificate verification was carried out in the year 2016. Since M/s.Mersen India Private Limited, Chennai office was closed in the year 2015 itself and the records maintained in the Chennai office were destroyed because of Thane cyclone and the particulars were not available. Therefore, he requested the respondents to reconsider the case of the petitioner. This contention was refuted by the respondents by stating that before submitting the experience certificate, the petitioner ought to have verified properly and ought to have submitted. This contention of the respondents cannot be accepted. Any employee would not have knowledge especially the intricacies of companies M/s.Mersen India Private Limited and M/s.Servocraft HR Solutions Private Limited and their tie up. Especially the petitioner is not expected to aware of the fact that



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M/s.Servocraft HR Solutions Private Limited has acted as the agency of M/s.Mersen India Private Limited. When the petitioner was discharged the petitioner has taken efforts to ascertain the facts and has submitted representation to this effect. The petitioner being an ITI qualified Semi-skilled (D) Paper Machine-Mechanical is not expected to know the tie up with the two private limited companies. At the most the petitioner can approach the employer to issue experience certificate and the same was issued. This is confirmed with an additional information which the petitioner belatedly that the EPF contribution was deducted from his salary during this period. Even though this information is belatedly submitted, but it ought to be taken that the petitioner has taken earnest effort to prove his case and it cannot be taken against the petitioner.

8. The respondents submitted that at the time of resignation, the petitioner has accepted his guilt and subsequently he cannot turn around and place any records and the same is not acceptable. This contention of the petitioner cannot be accepted. Any person if stated that the document is forged, liable for criminal complaint and there is a possibility of put the person behind bars, would be afraid of such action and his mental status would be to submit



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resignation. This resignation and the acceptance of guilt was submitted when the petitioner was in absolute duress. Therefore, the respondents cannot take this acceptance of guilty and resignation when the person was in duress.

9. It is seen that the Vigilance Officials has relied on the email communication submitted by one Kumar Kiran of M/s.Mersen India Private Limited, Bangalore. Based on the email, the Vigilance officials have submitted a report. The Bangalore company ought to have ascertained the Chennai company or at least ought to have ascertained the M/s.Servocraft HR Solutions Private Limited before issuing such communication. The Bangalore has played with the life of the petitioner.

10. The Vigilance officials have not conducted proper enquiry. At least when the petitioner has submitted a representation and disclosed the facts that the Chennai Office was closed, due to Thane Cyclone, hence records are not available at Chennai Officer. Based on this fact the respondents ought to have requested the Bangalore Office to clarify this fact.



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11. The petitioner has further submitted certain documents, especially the communication given by the Employees Provident Fund Organization, where it has been stated that an amount was deducted in the Employees Provident Fund account which would indicate the petitioner has served in the Institute. The M/s. Servocraft HR Solutions Private Limited has given a relieving letter, where it has been clearly indicated that the petitioner has served in the Institute as CNC Operator and Milling Operator and Maintenance. These certificates ought to be taken into account and further chance should be granted to the petitioner.

12. Therefore, this Court is of the considered opinion that the petitioner deserves one more chance.

13. Therefore, this Court is inclined to set aside the impugned order and hence, the impugned order is quashed. The respondents are directed to reconsider based on the records submitted by the petitioner and grant one more opportunity to the petitioner to prove himself before the authorities. The said exercise shall be completed within a period of three (3) months from the date of receipt of a copy of this order.



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14. In view of the above, this Writ Petition is allowed. No costs.

Consequently, connected miscellaneous petitions are closed.

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

To

- 1.The Chairman cum Managing Director,
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- 2.The General Manager (HR),
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S.SRIMATHY, J.

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