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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.04.2024

PRONOUNCED ON : 24.04.2024

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU

Writ Appeal No.1219 of 2021

1.The Secretary to Govt.,
Energy Department,
Government of Tamil Nadu,
Fort St., George,
Chennai – 600 009.

2.The Chief Electrical Inspector to Govt.,
Thiru-vi-ka Industrial Estate,
Guindy, Chennai – 600 032. ... Appellants

Vs

1.B.Ganesh

2.The Secretary,
Tamil Nadu Public Service Commission,
Omandurar Government Estate,
Anna Salai, Chennai – 600 002. … Respondents

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PRAYERS: Writ Appeal have been filed under Clause 15 of Letter Patent against the order dated 02.12.2020 made in W.P.No.35227 of 2013.

For Appellants : Mr.R.Neelakandan AAG
Assisted by Mr.M.Bindran AGP

For Respondents : Mr.Ravikumar Senior Counsel for
M/s Paul & Paul for R1

Mr.I.Abrar Md. Abdullah
Standing counsel for TNPSC R2

JUDGMENT

(Judgment of the Court was made by Mr.K.KUMARESH BABU., J)

The Intra-Court Appeal has been preferred challenging the order passed by the learned Single Judge in setting aside the order of the Government, wherein the selection of the first respondent herein was cancelled.

2.Heard Mr.R.Neelakandan, learned Additional Advocate General assisted by Mr.M.Bindran, learned Additional Government Pleader appearing for the appellants and Mr.Ravikumar, learned Senior counsel appearing for the first respondent and Mr.I.Abrar Md. Abdullah, learned Standing counsel appearing for the second respondent.

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3.The learned Additional Advocate General appearing for the appellants would submit that for the recruitment to the post of Assistant Electrical Inspector a notification was issued in the year 2008. The first respondent herein had also applied to the said post. The respondent's certificate namely the experience certificate was sent for verification to the Government Chief Electrical Engineer along with various other individuals. The said authority by his communication, dated 22-09-2008 had shortlisted 11 candidates/individuals, who, according to him had the practical experience as required under the notification. He would submit that the name of the first respondent had not been shortlisted by the said authority as having practical experience in consonance with the notification that has been issued. The name of one S.Ganesan, had been recommended. By mis-take the name of the first respondent had been forwarded by the TNPSC, upon which the appellants had acted upon and an order of appointment had also been issued. He would submit that the first respondent did not meet the prescribed qualifications for being recruited to the post of Assistant Electrical Inspector. The said discrepancy had come to light, only when one

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of the unsuccessful candidate had approached this Court and during the verification of particulars, while dealing with the said Writ Petition, it had come to light that the name of the first respondent had been recommended wrongly by the TNPSC. It was one S.Ganesan who was found to have the requisite qualification by the Chief Electrical Inspector to Government, but erroneously, the first respondent had been called for interview and appointment order was also given. Since the first respondent could not be selected and having been placed in the selection list by the TNPSC, it had decided to cancel the selection of the first respondent and had forwarded the same to the Appellants. Since the selection itself had been cancelled by the Tamil Nadu Public Service Commission, the consequential order of appointment would automatically be cancelled.

4.He would further submit that the learned Single Judge without looking at the factual aspects particularly that his experience certificate was not in consonance with the notification had proceeded on the basis that the first respondent was fully qualified to be appointed, had held that the cancellation was arbitrary. The learned Single Judge had also misconstrued the

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earlier order of this Court, as if an order had been passed in his absence affecting his interest. He would submit that the Hon'ble Court in the said Writ Petition had not given any positive direction. In the said case, when the discrepancy has been pointed out, the learned Single Judge had only recorded the statement made by the TNPSC indicating that necessary action is being initiated had non-suited the petitioner therein for his relief. Therefore, the first respondent was not a proper or necessary party in the said Writ Petition. Hence, the direction issued by the learned Single Judge directing reinstatement with continuity of service as a person without qualification to be continued in public employment is not proper. Therefore, he would seek interference of the order passed by the learned Single Judge.

5.Countering his arguments, Mr.Ravikumar, learned Senior counsel appearing for the first respondent would submit that it is not the case of the appellants that the first respondent was not qualified in the written examination. After selection in the written examination, it was the second respondent herein who had called the first respondent for interview, which he had attended on 25.11.2009, as being successful in the

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selection process, the appellants had also issued a Government Order appointing him as Assistant Electrical Inspector and thereafter posting orders were also given.

6.It has been admitted by the appellants that there has been a mistake that had been committed by the TNPSC for which the first respondent should not be penalised. Further, he would submit that the first respondent had been in service for almost three years, when the order impugned in the Writ Petition was passed and during the said period of three years, there has been no complaint whatsoever against the first respondent of his performance. This fact itself would conclude that the first respondent has sufficient practical experience to perform the duties for which he had been recruited. He would further submit that when such an order of cancellation was made, the first respondent had not been put on notice. He would submit that the first respondent had been appointed in a regular service and when his services are sought to be terminated on whatever grounds, it is incumbent upon the authority to put on notice the first respondent and therefore, the order would be hit by violation of

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principles of natural justice and on that ground also, the order of the learned Single Judge need not be interfered with.

7.He would further submit that the main contention of the appellants was that the order of cancellation was made pursuant to the order passed by the learned Single Judge. He would submit that as rightly held by the learned Single Judge in the order impugned before us that such an order passed in the absence of the first respondent cannot be sought to be enforced against him. He had also relied upon various judgments of Hon'ble Apex Court to contend that when the mistake is not on the part of the employee, the Court should give remedy to the employee concerned and should not be put against him. Therefore, he would submit that there is no error on the part of the employee.

8.Mr.I.Abrar Md. Abdullah, learned Standing counsel appearing for the second respondent TNPSC would submit that the entire mistake of selecting the first respondent was due to an inadvertent mistake and he would reiterate the argument of the learned Additional Advocate General

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and submit that that one S.Ganesan alone had been found to be having the requisite practical experience and the first respondent who had a similar name had been wrongly called for an interview by the second respondent and was forwarded for selection to the appellants. He would submit that when the first respondent did not have the requisite qualification, he cannot be claimed to be continued in service. He would further submit that the judgments relied upon by the learned Senior counsel appearing for the first respondent would not be applicable to the facts of the present case, as the case of the first respondent is a peculiar one. Therefore he would submit that the appeal has to be allowed.

9.We have heard the rival submissions made by the learned counsel appearing for their respective parties and perused the materials placed on record.

10.The first respondent had participated in the recruitment process pursuant to the notification issued by the second respondent on 04.06.2008. It is also an admitted fact that the first respondent had been successful in the

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written examination. However, prior to the interview, the Controller of the Examination of the second respondent had addressed a letter to the Government Chief Electrical Engineer for verifying the practical experience certificates produced by the successful candidates in the written examination. The same had also been produced before us and various particulars of the candidates had also been enclosed. The name of the first respondent has also been shown in the said list. As claimed by the first respondent the name of one S.Ganesan has also been included. After verification of the said certificates, the Chief Electrical Inspector to Government have addressed a letter to the Controller of the Examination of the second respondent indicating that the 11 candidates out of the list sent by the second respondent alone could be considered, as having the practical experience that is required for the post. The name of the first respondent does not find place in the said list and the name of S.Ganesan finds place in the said list.

11.It is an admitted case of the appellants as well as the second respondent that due to the mistake committed, the first respondent had been

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called for interview in the place of one S.Ganesan and his name has also been recommended to the Government for appointment upon which the appellants have also issued an order of appointment. It is an admitted case that one unsuccessful candidate had approached this Court and only during the verification of the claims, the said mistake that had been committed, had been found. Therefore, during the final hearing, the same was placed before the learned Single Judge, who recorded the said statement, had proceeded to dismiss the Writ Petition filed by the unsuccessful candidate. There has been no positive direction to direct the appellants to cancel the order of selection. In such an event, the finding of the learned Single Judge that an order passed without the first respondent being a party to a proceedings cannot be put against him in our considered view cannot be sustained.

12.The first respondent, according to the appellants and the second respondent, is that he does not possess the requisite practical experience as notified, as a qualification for recruitment. Admittedly, the names of the successful candidates in the written examination seem to have been forwarded by the second respondent to the Government Chief Electrical

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Engineer to assess the practical experience certificate. It is not disputed that the said authority is not an expert authority to verify the practical experience.

13.While that being so, when an expert had verified such practical experience certificate and had only found 11 persons to have the practical experience, as per the notification for being considered for further course, then such a recommendation cannot be interfered with by this Court. It is not the case of the first respondent that he had produced the practical experience certificates as required under the notification. Even if he makes such a claim, the same cannot be entertained for the simple reason that an expert authority had not found the practical experience certificate produced by the first respondent to be a practical experience in consonance with the notification.

14.When that being so, he cannot be said to be a fully qualified person. But however, it is the admitted case of the appellants as well as the second respondent that an inadvertent error had occurred in calling for the

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first respondent for interview in the place of S.Ganesan who was found to be qualified.

15.It may be true that it is not the mistake of the first respondent but however, the first respondent also cannot claim equity, since he does not fulfil the practical experience which was one of the essential qualification prescribed under the notification.

16.The other contention of the learned Senior counsel for the first respondent was that the violation of principles of natural justice. The principles of natural justice cannot be extended to the facts of the present case, when the first respondent had been found to be not a qualified person in view that he did not possess the requisite practical experience, he cannot claim to continue in the said post. His selection had been cancelled by the Government based upon the recommendation of the TNPSC. It would only be an empty formality to put on notice, the first respondent of the proposed action. Had the first respondent been fully qualified as per the Notification and if his selection sought to be set aside on certain procedural

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infirmities, then following the principles of natural justice could be insisted upon. In the present case, the first respondent had not been shown to have the qualified practical experience and when that being so, it would only be an empty formality in following the principles of natural justice.

17.These aspects have not been considered by the learned Single Judge while interfering with the Government Order. There is no finding of fact that the first respondent is fully qualified nor did the learned Single Judge had appreciated the case of the appellants that there has been an unqualified person, who had been wrongly appointed due to the mistake that had been committed for the reasons stated above, we have no other choice except to interfere with the order passed by the learned Single Judge.

18.From the facts narrated above, it could be seen that not only an unqualified person had been selected and appointed, but a person who is fully qualified had been thoroughly left out of the selection process. Nothing has been brought on record before this Court that the appellants had sought to rectify the mistake by calling the said S.Ganesan for further

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process even when it had been fully aware that the mistake committed as early as in the year 2013.

19.Further, the first respondent was aged about 42 years at the time of filing the Writ Petition. Had the authorities been more careful, the first respondent would have had an opportunity of participating in any other recruitment and would have been beneficially engaged elsewhere. For the mistake that had been committed at the end of the authorities, it is true that the first respondent cannot be punished, but however we would not have interfered with of the order of the learned Single Judge for the reason that his practical experience certificate had not been found to be in consonance with the notification, we are of the view that the first respondent cannot be continued in service, but however, because of the action of the authorities namely the appellants and the second respondent, the first respondent has lost his opportunity of participating in any future recruitment or even obtaining a better job opportunity.

20.For the reasons and findings, we are of the considered view that the appellants and the second respondent are liable to compensate the first

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respondent which we quantify at a sum of Rs.5,00,000/- to be payable by the first appellant herein.

21.In fine, this Writ Appeal is allowed and the order of the learned Single Judge made in W.P.No.35227 of 2013, is set aside and a direction to the first appellant to pay a sum of Rs.5,00,000/- to the first respondent, within a period of four weeks from the date of receipt of a copy of this order. It is open to the appellants to take action against the erring officials, if they are in service. However, there shall be no order as to costs.

(D.K.K.,J.) (K.B., J.)
24.04.2024

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation:Yes/No
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D.KRISHNAKUMAR.,J.
and
K.KUMARESH BABU.,J.

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To

The Secretary,
Tamil Nadu Public Service Commission,
Omandurar Government Estate,
Anna Salai, Chennai – 600 002.

Writ Appeal Nos.1219 of 2021

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