



W.P.No.674



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.06.2024

Pronounced on : 31.07.2024

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THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.6740 of 2017

and

W.M.P.No.2264 of 2020

K.Sundaram

... Petitioner

Vs.

1. The Principal Secretary to Government,
Social Welfare & Nutritious Meal Programme Department,
Secretariat, Chennai – 600 009.
2. The Director of Social Welfare,
Chennai – 600 032.
3. The Secretary,
State School Examination Committee,
Directorate of Government Examinations,
DPI Campus, College Road,
Nungambakkam, Chennai-6.
[R3 suo-motu impleaded vide order dated 24.11.2023]

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned orders passed by: a) the 1st respondent in G.O.(D) No.210, Social Welfare & Nutritious Meal Programme (SW1) Department, dated 25.11.2016 and



b) the 2nd respondent in his proceedings No.183/Admn.5(3) /2012, dated 15.03.2016 and to quash the same and c) consequentially direct the respondents to confer postings as Junior Assistant besides restoration of status quo ante position in respect of petitioners service prior to the dismissal from service with all consequential benefits vis-à-vis prevailed as on before 15.03.2016.

For Petitioner : M/s.R.S.Anandan

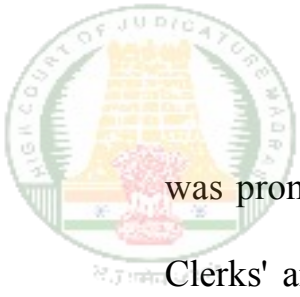
For Respondents : Mr.M.Murali,
Government Advocate

ORDER

This Writ Petition has been filed challenging the order passed by the Respondent No.2 in proceedings bearing செ.மு.ந.க.எண்.183/நிர் 5-3/2012 dated 15.03.2016, imposing the punishment of dismissal from service under Rule 8(viii) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and the order passed by the Respondent No.1 on appeal in G.O (D) No.210, Social and Nutritious Meal Programme (SW1) Department, dated 25.11.2016.

2. The brief facts that are relevant for disposal of the Writ Petition are as under:-

2.1. The petitioner herein was initially appointed as 'Office Assistant' on being sponsored by the Employment Exchange on 01.09.1981 and thereafter, he



was promoted to the post of 'Junior Assistant' under 20% quota meant for 'Record Clerks' and basic servants basing upon the SSLC Marks Memo produced by the petitioner and accordingly, the petitioner joined duty on 23.12.1991. His services were also regularized through proceedings bearing செ.மு.ந.க.எண்.124633/நிர்.3.3/93 dated 03.01.1994 in the cadre of 'Junior Assistant'.

2.2. Whiles, the Respondent No.2 issued a charge-memo in ந.க.எண்.27034/நிர் 5-3/2009 dated 17.03.2011 to the petitioner containing two charges. The said charges reads as under:-

“ குற்றச்சாட்டு 1

திரு.கே.சுந்தரம், இளநிலை உதவியாளர், பள்ளி இடைநிலைக் கல்வியில் தேர்ச்சி பெறாமலேயே தேர்ச்சி பெற்றதாக பொய்யான மதிப்பெண் பட்டியல் சமர்ப்பித்து அலுவலக உதவியாளர் பணியிலிருந்து இளநிலை உதவியாளர் பதவி உயர்வு பெறப்பட வேண்டுமென்ற நோக்கத்தோடு செயல்பட்டு அரசினை ஏமாற்றி பதவி உயர்வு பெற்றுள்ளார் என குற்றம் சாட்டப்படுகிறது.

குற்றச்சாட்டு 2

இவர் பொய்யான மதிப்பெண் பட்டியல் சமர்ப்பித்து



பதவி உயர்வு பெற்றதன் மூலம் அரசு பணியாளர்களுக்கான நன்னடத்தை விதி 1973 ன் விதி எண் 20ஐ மீறியுள்ளார் என குற்றம் சாட்டப்படுகிறது.”

2.3. From the perusal of the said charge-memo, it is noticed that the Respondent No.2 has initiated disciplinary proceedings against the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules (hereinafter referred to as 'the Rules' for short) against the petitioner on the ground that the petitioner has submitted a bogus marks memo of having passed the SSLC, though factually he has not passed the SSLC examination and got promotion to the post of 'Junior Assistant' by deceiving the Government. Further, it is also evident from the charge-memo that the basis for issuing the said charge is the Letter bearing கடித எண்.00692/வி2(4)/2008 dated 02.06.2009 of the Joint Director (Personnel), Secretary, State School Examination Board, Directorate of Government Examinations, Chennai and the bogus marks statement certificate with Registration No.545434/ TMR Code No.090987 dated 08.02.1990. In response to the above said charge-memo, the petitioner submitted his explanation denying the charge. Consequently, an Enquiry Officer was appointed for conducting an enquiry into the charges levelled against the petitioner. The Enquiry Officer conducted an enquiry



and came to the conclusion that both the charges levelled against the petitioner are true. Basing upon the said enquiry report, the Respondent No.2 herein passed final orders dated 15.03.2016, dismissing the petitioner from service and the said order was confirmed by the Respondent No.1 through G.O (D) No.210 dated 25.11.2016. It is aggrieved by the said orders of punishment, the petitioner filed the present Writ Petition.

3. Heard Mr.R.S.Anandan, learned counsel for the petitioner and Mr.M.Murali, learned Government Advocate appearing for the respondents and also perused the entire material on record.

4. The learned counsel for the petitioner contended that the charges levelled against the petitioner are not proved as required under law. In support of his contentions, he submitted that the entire basis for the Enquiry Officer to conclude that the charges levelled against the petitioner as proved is the Letter dated 02.06.2009 of the Joint Director (Personnel), Secretary, State School Examination Board, Directorate of Government Examinations, Chennai stating that the SSLC Marks Memo produced by the petitioner is a fake certificate. But the said document, though was referred to in the charge-memo and relied upon by the



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Enquiry Officer for arriving at his conclusions, the authority who issued the said letter was not examined as witness and no opportunity to cross-examine the said witness was afforded to the petitioner. Thus, it is contended that the said letter is not proved by the Department in order to place reliance on the said documents to conclude the charge as proved. He also further contended that the so-called fake SSLC certificate stated to have been produced by the petitioner is also not placed on record to enable the petitioner to establish that the said SSLC Marks Memo produced by the petitioner is a genuine certificate. He also further contended that the petitioner was promoted to the post of 'Junior Assistant' as early as in the year 1991 and whereas the charge-memo in question was issued for the first time only in the year 2011, i.e., almost after a lapse of 20 years and therefore, the entire charge and the consequential proceedings are liable to be quashed as time barred. He also further submitted that, though the respondents have got a doubt about the genuineness of the SSLC Certificate produced by the petitioner as early as in the year 2007, the respondents have not taken any steps till the year 2011 and when charge-memo was issued and further the enquiry proceedings were also kept pending till the year 2015 and it is only just before the petitioner attaining the age of superannuation, the impugned punishment of dismissal from service was imposed on the petitioner, thereby the benefit of entire service of more than 35 years



rendered by the petitioner was taken away. The learned counsel for the petitioner also placed strong reliance on the decision of the Hon'ble Apex Court in the case of ***“Roop Singh Negi -vs- Punjab National Bank and others”*** reported in **2009 (2) SCC 570** and also various other decisions of this Court.

5. On the other hand, the learned Government Advocate appearing for the respondents contended that the Enquiry Officer has gone in detail into the charges levelled against the petitioner, especially the Letter dated 02.06.2009 of the Joint Director (Personnel), Secretary, State School Examination Board, Directorate of Government Examinations, Chennai and that the charges are proved against the petitioner. He also further submitted that in the Letter dated 02.06.2009 of the Joint Director (Personnel), Secretary, State School Examination Board, Directorate of Government Examinations, Chennai, it was categorically mentioned that the SSLC certificate produced by the petitioner is a fake certificate, as the same belongs to another candidate by name M/s.G.Geetha and therefore, the action of the petitioner in producing a fake certificate and availing the benefit of promotion has rightly been considered by the Enquiry Officer and the Disciplinary Authority, resulting in imposing the punishment of dismissal from service.



6. This Court has carefully considered the submissions made on either side and also perused the entire materials available on record.

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7. From the perusal of the counter-affidavit filed by the Respondent No.1, it is seen that it was on 24.12.2007 for the first time the Child Development Project Officer, Ambattur in her Letter No.393/A1/2007 requested the Respondent No.3 to verify the genuinity of the SSLC Marks Memo produced by the petitioner and in turn, the Respondent No.3 through its Letter dated 02.06.2009 informed the the Child Development Project Officer, Ambattur about the status of the SSLC Marks Memo produced by the petitioner. But for the reasons best known, the Respondent No.2 has initiated disciplinary proceedings by issuing a charge-memo against the petitioner only on 17.03.2011 i.e., almost after a lapse of 2 years. Even the said proceedings that were initiated on 17.03.2011 were continued till 05.03.2016 when the final order imposing the punishment of dismissal from service was imposed on the petitioner. Thus, the respondents have taken almost a decade for concluding the proceedings after having entertained a doubt on the SSLC Marks Memo produced by the petitioner.

8. The report of the Enquiry Officer was accepted in toto by the Respondent



No.2 and the punishment in question was imposed on the petitioner. As seen from the report of the Enquiry Officer, the entire basis for concluding that the charges levelled against the petitioner are proved is only the letter of the Respondent No.3 dated 02.06.2009. Though the alleged fake SSLC certificate produced by the petitioner was shown as one of the documents to be relied upon by the respondents for establishing the charges, the same is not made available before the Enquiry Officer and admittedly, the alleged fake certificate was withheld by the Respondent No.3 and not returned. Though the said letter dated 02.06.2009 was strongly relied upon and the contents of the said letter were extracted in extenso in the report of the Enquiry Officer, neither the Respondent No.3 nor any of the employees working the office of the Respondent No.3 are examined as witness to prove the contents of the said letter dated 02.06.2009 during the course of the enquiry. The said letter dated 02.06.2009 was put against the petitioner resulting in imposing the major punishment of dismissal from service. The contents of the said letter dated 02.06.2009 are taken as true and the Enquiry Officer proceeded to hold that the charges levelled against the petitioner as proved. In spite of the petitioner disputing the contents of the said letter strongly and requested for re-verification of the genuineness of the SSLC Marks Memo produced by the petitioner, neither the Enquiry Officer nor the Respondent No.2 has taken any steps for re-verification of



the same nor the said letter dated 02.06.2009 was proved before the Enquiry Officer by examining the concerned person from the office of the Respondent No.3.

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9. The Hon'ble Apex Court while dealing with the case of the ***“Roop Singh Negi -vs- Punjab National Bank and others”*** reported in **2009 (2) SCC 570** pertaining to disciplinary proceedings has been pleased to hold that the Departmental proceedings is a quasi-judicial proceedings and the Enquiry Officer performs a quasi-judicial functions and as such, he has an obligation and duty to arrive at a finding upon taking into consideration the material brought on record by the parties and on proof of the documents that are produced by the respective parties can only be relied upon for rendering his findings. The relevant paragraph from the said decision reads as under:-

“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into



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consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.”

10. In the instant case, in the absence of examining either the Respondent No.3 or any of the Officer or employee from the office of the Respondent No.3 to prove the contents of the Letter dated 02.06.2009, the action of the Enquiry Officer in treating the contents of the said letter as true and thereby arriving at a conclusion that the charges levelled against the petitioner as proved is totally arbitrary and illegal. Further, the charges that are levelled against the petitioner are required to be



established by the respondents, but surprisingly the Enquiry Officer has proceeded to render a finding that the petitioner has failed to establish that the SSLC Marks Memo produced by him is a genuine certificate. Especially, in the context of the fact that the SSCL Marks Memo produced by the petitioner before the respondents was forwarded to the Respondent No.3 and the Respondent No.3 has admittedly not returned the same and also the fact that neither the Enquiry Officer nor the Respondent No.2 has taken any steps to get the said SSLC Marks Memo back and place the same during the course of enquiry, the question of the petitioner establishing the genuineness of the said certificate does not arise. The respondents having framed the charges against the petitioner, are under obligation to bring home the said charges in order to impose the punishment on the petitioner. But neither of these two things are done by the respondents in the instant case. The Respondent No.2, having appointed the Enquiry Officer, blindly accepted the findings recorded by the Enquiry Officer without considering the objections raised by the petitioner against the report of the Enquiry Officer and proceeded to impose the punishment of dismissal from service through impugned proceedings dated 15.03.2016 and the same was confirmed by the Respondent No.1 by issuing Government Order dated 25.11.2016 in a mechanical manner. Even assuming that the petitioner has an obligation to prove the genuineness of the SSLC Marks Memo produced by him,



the same is not made available to the petitioner by the respondents. Further, in order to prove the genuineness of the said SSLC Marks Memo, the petitioner can only produce, either the Hall Ticker of having appeared for the said examination or the receipt of examination fee etc., which are pertaining to the year 1990. Admittedly, it is only for the first time in the year 2011, the petitioner was informed about the charge against him i.e., after a lapse of 2 decades and expecting the petitioner to produce the other material in support of the petitioner having appeared for the SSLC Examination in the year 1990/1991 is highly impossible due to long lapse of time. Thus, there is any amount of prejudice caused to the petitioner because of the delay in initiation and conclusion of the disciplinary proceedings against the petitioner.

11. The petitioner attained the age of superannuation on 31.03.2016 i.e., immediately after imposing the punishment. Further, it is also necessary to notice that the petitioner while filing an appeal before the Respondent No.1 has also made a request for continuing him in the post of 'Office Assistant' in which he was initially appointed. A similar request was also made by the petitioner while the enquiry was pending before the Enquiry Officer. This aspect of the matter was also not taken into consideration by the Respondent No.1 while passing the order dated



25.11.2016.

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12. In the light of the conclusion arrived at by this Court on the defective procedure that is followed by the Enquiry Officer while conducting enquiry on the charges framed against the petitioner, the impugned orders are liable to be set aside. Then the next question that would fall for consideration is, what should follow the setting aside of the impugned orders.

13. As already noted above, the alleged submission of fake SSLC Certificate relates back to the year 1991, which admittedly came to the notice of the respondents only in the year 2007 and the disciplinary proceedings were concluded only after almost about a decade, in the year 2016, the petitioner also attained the age of superannuation on 31.03.2016 the matter needs to be examined. In the normal course, after having found fault with the procedure followed by the Respondents, this Court would remand the matter back to the respondents for re-doing the entire exercise. But in the instant case, having taken note of the fact that the petitioner has already attained the age of superannuation on 31.03.2016 and also the fact that the alleged misconduct relates back to the year 1991 i.e., more than 2 decades old and 3 decades by now and also the request made by the



petitioner to continue in the post of 'Office Assistant' in which he was initially appointed, this Court is of the considered view that this is a fit case where this Court itself should give a quietus to the matter.

14. Accordingly, while setting aside the impugned orders bearing செ.மு.ந.க.எண்.183/நிர் 5-3/2012 dated 15.03.2016 and G.O (D) No.210, Social and Nutritious Meal Programme (SW1) Department dated 25.11.2016, the respondents are directed to treat the petitioner as continued in the post of 'Office Assistant' throughout since the date of his initial appointment i.e., from 01.09.1981 till the date of attaining the age of superannuation on 31.03.2016 and pay all terminal benefits payable to him as expeditiously as possible at any rate within a period of two months from the date of receipt of a copy of this order.

15. Accordingly, the writ petition is partly allowed. No costs. Connected Miscellaneous Petitions, if any shall stand closed.

31.07.2024

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Index : Yes / No

Speaking order / Non-speaking order



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Neutral Citation : Yes / No

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- To
1. The Principal Secretary to Government,
Social Welfare & Nutritious Meal Programme Department,
Secretariat, Chennai – 600 009.
 2. The Director of Social Welfare,
Chennai – 600 032.
 3. The Secretary, State School Examination Committee,
Directorate of Government Examinations,
DPI Campus, College Road,
Nungambakkam, Chennai-6.



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MUMMINENI SUDHEER KUMAR, J.

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Pre-Delivery Order made in
W.P.No.6740 of 2017

31.07.2024