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WA No. 892 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2024

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No. 892 of 2023
and
CMP No. 8924 of 2023

1. The Secretary to Government
Municipal Administration and Water Supply Department
Fort St. George, Chennai - 600 009
2. The Commissioner of Municipal Administration
6th Floor, Ezhilagam, Chepauk
Chennai - 600 009

.. Appellants

Versus

1. L. Ashok Kumar
Son of V. Lakshmanan
No.20, Kallandi Street
Tiruchengode
Namakkal District

At present residing at
No.5/197, M.M.D.A. Colony
Maduravoyal
Chennai - 600 095
2. The Commissioner
Namakkal Municipality
Namakkal District

.. Respondents



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Appeal filed under Clause 15 of the Letters Patent against the order dated 08.04.2022 passed by the learned Judge in Writ Petition No. 17600 of 2014.

For Appellant : Mr. Silambannan, Additional Advocate General
assisted by Mr. M. Babu Barvezz
Government Advocate

For Respondents : Mr. A.R. Nixon for R1

Mr. M. Rajamathivanan for R2

JUDGMENT

(Judgment of the court was delivered by R. MAHADEVAN, J.)

This intra-court appeal is preferred by the appellants aggrieved by the order dated 08.04.2022 passed by the learned Judge, allowing the Writ Petition bearing No. 17600 of 2014 filed by the first respondent herein.

2. The first respondent herein has filed the aforesaid writ petition praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the orders dated 08.05.2014 and 13.05.2014 passed by the appellant authorities, quash the same and consequently, direct the appellants to reinstate him forthwith and pay all attendant benefits to him.

3.(i) In the affidavit filed in support of the writ petition, it was stated

by the first respondent that he had married one Sumathi @ Bharathi, who



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belongs to Scheduled Caste community, out of love affair and against the wishes of the parents of both sides, on 09.02.1997. The said marriage was solemnized with the support of the relatives of both sides as well as in the presence of the Panchayatdars and they signed the marriage certificate dated 09.02.1997 and the first respondent registered the same with employment exchange. Based on his intercaste marriage, his name was sponsored by the employment exchange under the priority category and he was appointed as Draughtsman by the appointment committee of Komarapalayam Municipality on 05.06.1998 and has been discharging his duties to the utmost satisfaction of his superiors without any complaint. It was also stated by the first respondent that during the first week of December, 1998, his wife Sumathi had left the matrimonial home without his knowledge and in spite of frantic efforts made, he could not ascertain her whereabouts. He also caused a paper publication intimating the missing of his wife, but it had not resulted in locating her whereabouts. While so, in the year 1999, investigation was conducted by the Vigilance and Anti-Corruption Department in relation to a case of illegal gratification said to have been received by one R. Murugan, Sanitary Worker, for the purpose of regularising the service of K. Madhu, Sanitary Worker in Komarapalayam Municipality. During the course of such investigation, it was allegedly noticed that the first respondent had created bogus marriage



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certificate and obtained employment through deceitful means. In this regard, a FIR in Crime No. 221 of 2000 was registered against the first respondent on 08.04.2000, based on which, the first respondent was suspended from service. Challenging the same, the first respondent filed O.A. No. 2968 of 2001 before the Tamil Nadu Administrative Tribunal, Chennai and obtained an order of interim stay on 27.04.2001. Pursuant to the same, the first respondent was reinstated in service. Subsequently, O.A. No. 2968 of 2001 was allowed by the Tribunal by setting aside the order of suspension, *vide* order dated 22.08.2002.

(ii) The first respondent further stated in the writ petition that in connection with the allegation that he had forged the marriage certificate, he was subjected to the disciplinary proceedings. After conducting enquiry, the enquiry officer submitted a report on 29.03.2006 with the finding that there was an inter-caste marriage between the first respondent and one Sumathi. Thereafter, the Commissioner of Municipal Administration, sent a notice dated 03.10.2008 to the first respondent and directed the Enquiry Officer to continue the enquiry by recording the evidence of some more official witnesses. Accordingly, summonses were sent to the first respondent to appear for enquiry. In response, the first respondent appeared for the enquiry, during which, two witnesses were examined. At that stage, the first respondent sent a



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representation dated 15.04.2009 to stop the re-enquiry. However, the enquiry officer, in the absence of the first respondent, recorded the statement of some more witnesses and submitted his enquiry report. Challenging such action, the first respondent filed WP No. 8175 of 2009 to quash the notice dated 03.10.2008 and pass final orders, on the basis of the enquiry report dated 29.03.2006. The writ court, by order dated 07.12.2011 allowed the said writ petition by setting aside the proceedings initiated by the appellant authorities and granting liberty to the first appellant to issue show cause notice to the first respondent indicating the grounds on which they propose to disagree with the findings of the enquiry officer and afford an opportunity to the first respondent to submit his explanation and thereafter proceed further, in accordance with law. Following the said order, the second appellant issued a notice, to which, the first respondent submitted his explanation and requested to drop all further proceedings. Thereafter, the appellant authorities passed the orders dated 08.05.2014 and 13.05.2014 dismissing the first respondent from service. Aggrieved, the first respondent filed the instant writ petition for the relief as stated *supra*.

4. By order dated 08.04.2022, the learned Judge allowed the writ petition, by setting aside the orders passed by the appellant authorities and by



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directing the second appellant to pass orders, reinstating the first respondent in service together with all service and monetary benefits, including the promotional benefits. It was also observed that in case, the first respondent is entitled to promotion to the next higher post, his seniority should be suitably revised and such promotional orders shall be given on par with the first respondent's immediate junior. The appellant authorities were also directed to complete the said exercise within a period of six weeks. Assailing the order so passed by the learned Judge, the appellant authorities are before this court with the present writ appeal.

5.(i) The learned Additional Advocate General appearing for the appellants submitted that the learned Judge did not take note of the fact that the first respondent has secured the employment by deceitful means and allowing him to continue his employment would send wrong signal for others to be emulated. Elaborating further, the learned Additional Advocate General submitted that the first respondent has produced the extract of Hindu Marriage Register of Sub-Registrar, Magudanchavady issued by a Sub-Registrar by name Gopal to make it as if he married one Sumathi, D/o. Raman, who belongs to Arunthathiyar Community. But, the Sub-Registrar of Magudanchavady had reported that no such marriage was registered in their



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office and no one in the name of Gopal served as Sub-Registrar, Magudanchavady and besides that, the signature of the Sub-Registrar in the marriage certificate is also a forged one. Further, the first respondent produced an inter-caste marriage certificate said to have been issued by the Tahsildar in-charge, Sankagiri. However, the Tahsildar, Sankagiri informed that no such certificate was ever issued by the Taluk Office, Sankagiri. It was also stated by the Tahsildar, Sankagiri that nobody was nominated as in-charge Tahsildar during the relevant point of time and he also disowned the seal affixed in the certificate as that of the Taluk Office, Sankagiri. Thus, it was clearly proved that the first respondent, with a criminal intention, had forged the documents and secured the employment by deceitful means and therefore, the second appellant is wholly justified in passing the order of dismissal against the first respondent.

(ii) The learned Additional Advocate General appearing for the appellants also submitted that during the discreet enquiry, it unfolded that the first respondent had married another woman by name Eswari @ Samundeswari for the second time. However, even according to the first respondent, the whereabouts of his first wife Sumathi could not be ascertained. While so, it is clear that during the subsistence of the marriage with Sumathi, the first



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respondent contracted a second marriage, which is impermissible under the Tamil Nadu Government Servants Conduct Rules.

(iii) With respect to the enquiry report dated 29.03.2006, the enquiry officer held the charges as not proved only on the ground that the true extract of the certificate said to have been forged by the first respondent, has not been produced. When the report of the enquiry officer was sent to the appellants, by communication dated 23.07.2008, a direction was issued to continue the enquiry and to record the deposition of official witnesses. At that stage, the first respondent filed WP No. 8175 of 2009 which was allowed on 07.12.2011. As per the directions of the writ Court, a notice dated 15.02.2012 was issued, to which the first respondent submitted his explanation on 08.03.2012. After considering the charge memo, defence statement, enquiry officer's report and the explanation offered by the first respondent, the order of dismissal was slapped on the first respondent. However, the learned Judge quashed the said order on the ground that the time limit fixed in the earlier order dated 07.12.2011 has not been adhered to. It is also submitted by the learned Additional Advocate General that the appellants, after thoroughly examining all the aspects, passed the final order of dismissal impugned in the writ petition. As such, the learned Judge ought to have dismissed the writ petition,



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instead of allowing it by the order impugned herein, which will have to be set aside.

6.(i) Per contra, the learned counsel appearing for the contesting first respondent submitted that the enquiry officer, who submitted his report on 29.03.2006, categorically held that there was an inter-caste marriage between the writ petitioner-first respondent and one Sumathi. In the report dated 29.03.2006, the enquiry officer, after thoroughly going through the materials placed before him, rightly held that the charges framed against the first respondent were not proved. It is no doubt true that the second appellant being the disciplinary authority, has a right to disagree with the views of the enquiry officer. However, the disciplinary authority cannot totally scrap the report dated 29.03.2006 of the enquiry officer and order to conduct a re-enquiry to examine certain witnesses or mark documents. The Department ought to have examined the witnesses on their side before the enquiry officer at the first instance itself and they have no right to examine the witnesses during the re-enquiry proceedings. In fact, the writ court, in the order dated 07.12.2011 made in WP No. 8175 of 2009 filed by the first respondent, was of the opinion that it is well open to the second appellant /disciplinary authority to disagree with the views of the enquiry officer by issuing a show cause notice indicating the grounds on which he proposes to disagree with the report



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of the enquiry officer; it has not directed the disciplinary authority to conduct a re-enquiry or to examine the witnesses afresh. As against the order dated 07.12.2011 made in WP No. 8175 of 2009, the appellants have not preferred any appeal and hence, the said order has attained a finality. While so, the very conduct of re-enquiry or examination of witnesses after the order dated 07.12.2011 was passed by the writ Court is legally unsustainable.

(ii) The learned counsel for the first respondent also contended that the order of dismissal passed by the appellant authorities against the first respondent is liable to be set aside for two reasons. Firstly, the disciplinary authority relied on the deposition of official witnesses examined after the order dated 07.12.2011 was passed by the writ court in WP. No. 8175 of 2009. As per the order dated 07.12.2011, the conduct of re-enquiry itself is invalid and consequently, the deposition of the witnesses recorded during the re-enquiry cannot be relied on by the disciplinary authority to pass the order of dismissal against the first respondent. Secondly, the writ Court, in the order dated 07.12.2011, specifically directed the disciplinary authority to pass final orders within three months. Pursuant to the same, a show cause notice dated 15.02.2012 was issued by the disciplinary authority disagreeing with the report of the enquiry officer. The first respondent also submitted his explanation on



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08.03.2012. However, a fresh enquiry was conducted by the disciplinary authority which is contrary to the directions issued by the writ Court on 07.12.2011. Further, the final order of dismissing the first respondent from service, was not passed within three months, but it was passed only on 08.05.2014, i.e., after two years. Above all, the final order of dismissal was passed by relying upon the deposition of witnesses recorded after the order dated 07.12.2011 was passed by the writ Court. Therefore, the learned Judge, on considering the above procedural flaws committed by the disciplinary authority, has rightly allowed the writ petition filed by the first respondent by the order impugned herein, which does not require any interference by this court.

7. We have heard the learned Additional Advocate General appearing for the appellants, the learned counsel for the contesting first respondent and the learned standing counsel for the second respondent and also perused the materials placed before us, including the original files produced by the department.

8. It appears that the first respondent was appointed as Draughtsman in Komarapalayam Municipality on 05.06.1998. Such appointment came to be



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made upon his name being sponsored by the District Employment Exchange, Namakkal indicating that his name was registered under the priority category viz., intercaste marriage. A few years after the appointment of the first respondent, a charge memo was issued to him on 11.10.2001 alleging that he had fabricated certain documents with a criminal intention to get appointment in the Komarapalayam Municipality under intercaste marriage couple category. In this regard, the case in Crime No. 221 of 2000 came to be registered against him, for the offences punishable under Sections 420, 466, 468 and 471 of Indian Penal Code. However, the investigating officer filed his final report by treating the first information report as "undetectable". Accepting the same, the learned Judicial Magistrate, Tiruchengode in his order dated 03.02.2014 concluded the criminal proceedings as closed.

9. Insofar as the disciplinary proceedings initiated by the appellants against the first respondent, the Zonal Director of Municipal Administration was appointed as an enquiry officer. The enquiry officer submitted his report on 29.03.2006 holding that the charges framed against the first respondent were not proved. While so, it was specifically stated by the enquiry officer that the so-called fabricated documents have not been produced and besides that, no material was made available as to how and where those documents have



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been procured. Therefore, the enquiry officer has given his report dated 29.03.2006 by extending the benefit of doubt in favour of the first respondent.

Disagreeing with the report of the enquiry officer, the second appellant directed the enquiry officer to continue the enquiry by recording some official witnesses. In the mean while, the first respondent approached the writ court by filing WP No. 8175 of 2009 and got an order dated 07.12.2011 in his favour. Thereafter, the second appellant issued notice to the first respondent and the first respondent submitted his explanation. Consequently, the order of dismissal was passed against the first respondent, which was put to challenge in the instant writ petition and the learned Judge, by the order impugned herein, allowed the same.

10. The learned Additional Advocate General appearing for the appellants vehemently opposed the relief granted in favour of the first respondent in the writ petition by contending that the first respondent got employment by producing the forged documents. To substantiate the same, he placed reliance on the original files pertaining to this case. On a perusal of the same, it is evident that during the enquiry before the Zonal Director of Municipal Administration, the first respondent has examined K. Ayyavu, K. Rajendran, A. Thangavel, Arumugam, Nagarajan and Soundarrajan as



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witnesses to show that he married one Sumathi @ Bharathi in their presence and that his wife belongs to Scheduled Caste community namely Arunthathaiyar community. Based on the marriage certificate given by the Panchayatdars on 09.02.1997, the first respondent is alleged to have registered his name with the District Employment Exchange under the Open Competition - priority category. During the enquiry, to the question as to what are the documents produced for registering his name in the Employment exchange, the first respondent stated that he had produced the Diploma in Civil Engineering Certificate, mark list and the marriage certificate dated 09.02.1997 issued by the Panchayatdars. To the question as to what was the qualification of his wife Sumathi and whether her community certificate was produced, the first respondent did not answer.

11. On behalf of the Department, the certificate issued by the Registrar of Marriages to show that the first respondent contracted an inter-caste marriage and the certificate issued by the Tahsildar were produced. By pointing out the above documents, it was submitted on behalf of the Department that both the documents are forged. The enquiry officer, on scrutiny of those documents, concluded that there was no supportive document produced to show, at whose instance the documents have been issued and



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when they were issued. Further, the first respondent stated that he has neither produced those documents nor produced any forged documents.

12. By referring to the documents produced by the department, the Enquiry Officer noticed that the names of the parents of the first respondent were mentioned as Damayanthi and Lakshmanan. Whereas, in the ration card produced by the first respondent, his parents names were mentioned as Udyakumari and Lakshmanan. The enquiry officer therefore opined that a person who seeks to get intercaste marriage certificate, will not normally furnish false and incorrect particulars as it will result in cancellation of the certificate. Accordingly, the enquiry officer concluded that there was nothing to show that the intercaste marriage certificate produced on behalf of the department has been fabricated at the instance of the first respondent. Ultimately, the enquiry officer submitted his report dated 29.03.2006 stating that the charges against the first respondent were not proved.

13. Being dissatisfied with the report so submitted, the second appellant issued the proceedings dated 03.10.2008, which reads as follows:

"A copy of the references cited is enclosed with its enclosures and the Regional Director of Municipal Administration, Salem is requested to continue the enquiry and record the evidence of the following essential witnesses.



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1. *Thiru. Varadharajan, Tashildar, Sankagiri, Salem District*
2. *Thiru. S. Senthamil Selvan, Sub-Registrar, Magudanchavadi, Salem District*
3. *Thiru. K. Periyasamy, formerly Inspector of Police, Vigilance and Anti-Corruption, Salem, now retired.*
4. *The District Employment Officer.*

The Regional Director of Municipal Administration, Salem is requested to submit his further enquiry report along with his specific remarks relating to the charges framed against Thiru. L. Ashok Kumar, formerly Draughtsman, now Overseer, Kulithalai Municipality. The records noted in the annexure are send herewith for reference and return along with the enquiry report.

The enquiry in this regard to be conducted within a period of 2 months and report sent to this office.

On the basis of the above, the very same enquiry officer, who was earlier appointed, continued the further proceedings. In the said process, summonses were issued to the first respondent, who also appeared for enquiry. However, the first respondent preferred WP. No. 8175 of 2009 challenging the proceedings dated 03.10.2008. The writ Court, by order dated 07.12.2011 allowed the said writ petition, by directing the second appellant to issue a show cause notice indicating the grounds on which he proposed to disagree with the findings of the enquiry officer and thereafter, to pass final orders within a period of three months.

14. As directed by the writ Court in the order dated 07.12.2011 passed in WP No. 8175 of 2009, the second appellant issued a notice dated



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15.02.2012 expressing his disagreement with the report of the enquiry officer

dated 29.03.2006 and called upon the first respondent to submit his

explanation. It is pertinent to mention, at this juncture, that in the notice of

disagreement, one of the grounds proposed was that the witnesses on the side

of the disciplinary authority have not been examined. It is, in this context, after

expressing disagreement, issues have been framed and the second appellant

had considered the evidence recorded by the enquiry officer at the first

instance. According to the appellants, even when the enquiry was conducted

earlier, the photocopies of the documents obtained from the office of the

Tahsildar, Sankagiri, Salem, the office of the Sub-Registrar, Magudanchavady,

Salem and the records from the office of the District Employment Officer,

Namakkal, have been produced. While giving the report dated 29.03.2006, the

enquiry officer has only stated that the original documents have not been

produced and therefore, he gave the benefit of doubt in favour of the first

respondent. However, the fact remains that the copies of the documents relied

on by the second appellant were very much available before the enquiry officer

at the first instance itself to prove that the true extract of Hindu Marriage

Register of Sub-Registrar, Magudanchavady produced by the first respondent

stating that it was issued by a Sub-Registrar by name Gopal, was fabricated.

That apart, it was stated by the Sub-Registrar of Magudanchavady that no such



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marriage was registered in their office and no one in the name of Gopal served as Sub-Registrar, Magudanchavady and besides that, the signature of the Sub-Registrar in the marriage certificate was also forged. Similarly, in respect of the inter-caste marriage certificate bearing the signature of the Tahsildar in-charge, Sankagiri, said to have been produced by the first respondent, the Tahsildar, Sankagiri informed that no such certificate was ever issued by the Taluk Office, Sankagiri; nobody was nominated as in-charge Tahsildar during the relevant period and he also disowned the seal affixed in the certificate as that of the Taluk Office, Sankagiri. Thus, there are materials to establish that the first respondent has produced the fabricated documents in support of his claim. While so, the contentions advanced on behalf of the first respondent that the documents produced are not adequate to prove the guilt of the first respondent, cannot be countenanced by this court.

15. It is well settled that the enquiry conducted in the departmental proceedings, cannot be equated with that of the criminal trial. In the criminal proceedings, it is the bounden duty on the part of the prosecution to prove the charges beyond reasonable doubt. Whereas, in the departmental proceedings, it is sufficient to establish the guilt of the delinquent, by applying the principle of preponderance of probabilities. But, in the present case, the evidence produced by the appellants against the first respondent would candidly prove



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that the documents produced by him are fabricated and not genuine. In such circumstances, the reasoning given by the learned Judge for allowing the writ petition filed by the first respondent that the appellants have taken two years time for passing the final orders, cannot be accepted by this court. When the charges framed against the first respondent are so serious in nature that he had secured employment by deceitful means, by producing fabricated documents and also committed the act of bigamy, mere technicalities cannot be made to sway the order passed by the disciplinary authority dismissing the first respondent from service. Thus, the extra time taken by the disciplinary authority to pass final orders in the disciplinary proceedings cannot be a ground to interfere with the order of dismissal passed by him. However, the learned Judge erred in setting aside the orders passed by the appellant authorities, by the order impugned in this writ appeal.

16. In such view of the matter, we set aside the order dated 08.04.2022 passed by the learned Judge in WP. No. 17600 of 2014, and consequently, allow this writ appeal. No costs. Connected miscellaneous petition is closed.

[R.M.D., J] [M.S.Q., J]

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