



W.P.(MD)No.9859 of 2023

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Reserved On : 11.09.2024

Delivered On : **09.12.2024**

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.9859 of 2023

and

W.M.P.(MD)Nos.8688, 8690, 8691 and 23442 of 2023

G.Sarawathy

... Petitioner

Vs.

- 1.The Principal Secretary Government,
Labour and Employment Training,
Fort St. George, Chennai - 600 009.
- 2.The Director of Employment,
Labour and Employment Department,
SIDCO Industrial Estate,
Guindy, Chennai - 600 032.
- 3.The Additional Director (Craftsmen Training),
Employment and Training Department,
Guindy, Chennai - 600 032.
- 4.The Commissioner
Labour and Employment Department,
Guindy, Chennai - 600 032.
- 5.The Tamil Nadu Public Service Commission,
Rep. by the Deputy Secretary,
Government Estate, Anna Salai,
Chennai - 2.
- 6.The Joint Director of Employment and Training,
NGO Colony, Tirunelveli - 7.



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7.The Principal

Government Industrial Training Institute,
Tenkasi.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in செ.மு.ஆணை எண்.49525/அப2/2012 dated 03.04.2023, on the file of the third respondent and to quash the same and further directing the 3rd respondent to reinstate the petitioner in service as Junior Assistant cum Typist and to regularize the petitioner's initial appointment of Junior Assistant cum Typist forthwith and pay the withheld increments along with arrears to the petitioner with interest.

For Petitioner	: Mr.R.Maheswaran
For Respondents 1 to 4, 6 & 7	: Mr.C.Baskaran
	Government Advocate
For 5 th Respondent	: Mr.J.Anand kumar

ORDER

The Writ Petition has been filed, to quash the impugned order dated 03.04.2023, on the file of the third respondent and further directing the 3rd respondent to reinstate the petitioner in service as Junior Assistant cum Typist and to regularize the petitioner's initial appointment of Junior Assistant cum Typist forthwith and pay the withheld increments along with arrears to the petitioner with interest.

2.Heard the learned counsel appearing for the petitioner, the learned Government Advocate appearing for the respondents 1 to 4, 6



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and 7, the learned counsel appearing for the fifth respondent and carefully perused the entire materials available on record.

3.The petitioner's husband Thiru.T.Muthuswamy, (Emp. No. 210/C821), while working in M/s.Ashok Leyland Company Ltd., died in harness on 21.02.1994. In accordance to G.O.Ms.No.395, Personnel and Administrative (Per-S) Department, dated 04.11.1993, the petitioner applied to the Revenue Divisional Officer, Pudukottai, seeking certificate for Destitute Widow. She was issued Destitute Widow Certificate, vide a Reference No.A8/9922/94, dated 28.07.1994, by the Revenue Divisional Officer, Pudukottai.

4.The petitioner applied for the post of Junior Assistant cum Typist included in Group IV Services 1996-1997 conducted by the fifth respondent Tamil Nadu Public Service Commission under the Destitute Widow Category (Register No.212218). By virtue of the Destitute Widow Certificate issued by the Revenue Divisional Officer, Pudukottai, the petitioner was provisionally selected for appointment to the post of Junior Assistant cum Typist and she was allotted to the Department of the second respondent, vide fifth respondent Memorandum No.723/PSD-D3/99, dated 20.01.1999. Thereafter, she was issued with a posting order and she joined duty on 12.02.1999 in Government Industrial Training Institute, Pudukottai. She was subsequently transferred to the office of



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the seventh respondent and she joined duty on 07.05.2005.

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5.In the interregnum, on verification of genuineness of the petitioner's Destitute Widow claim by the fifth respondent Commission, the District Collector, Pudukottai, the head of the authority, who issued Destitute Widow Certificate to the petitioner, in Letter No.33863/94/R1, dated 23.01.2001, has informed that as per revised instructions issued in G.O.Ms.No.395, Personal and Administrative Reforms (Per-S) Department, dated 04.11.1993, a person was eligible for issuance of Destitute Widow Certificate only if income from all the sources including pension does not exceed Rs.1,000/- per month. But in the case of the petitioner, she was in receipt of a family pension of Rs.1,750/- per month from 22.02.1994, after the demise of her husband Thiru.Muthusamy, who died while serving in M/s.Ashok Leyland and declared the Destitute Widow Certificate dated 28.07.1994, issued to her by the Revenue Divisional Officer, Pudukottai, as bogus and sought the original certificate from the 5th respondent to be cancelled, if it was available with them.

6.Under such circumstances, the 5th respondent removed the name of the petitioner, who was selected under the Destitute Widow category from the approved list, vide a Letter No.723/PSD-D3/99, dated 02.11.2001 and communicated the same to the 3rd respondent, seeking a



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copy of termination order. Accordingly, a show cause notice was issued to the petitioner, alleging that she was not eligible for appointment under Destitute Widow category as she had concealed material facts about her income received in the form of monthly pension of Rs.1,750/- per month, which she was receiving after the demise of her husband. The contention of the respondents 3 and 5 is that, the petitioner was informed about the sanction of family pension of Rs.1,750/- with effect from 22.02.1994 under the Employees Family Pension Fund Scheme, 1971, by a Letter dated 10.04.1995 from the Office of the Provident Fund Commissioner, Trichy. But she was issued Destitute Widow Certificate by the Revenue Divisional Office, at Pudukottai, on 28.07.1994, that is, before the receipt of family pension sanction details. Hence, the claim of status of Destitute Widow by the petitioner ceases to exist, after she was sanctioned a family pension of Rs.1,750/- per month. But it is claimed by the respondents that the petitioner fraudulently concealed this information while submitting application to the 5th respondent, seeking employment as Junior Assistant Cum Typist under Group IV services, fraudulently claiming the status of Destitute Widow.

7. Thereafter, aggrieved by the act of the 5th respondent, cancelling her appointment in Letter No.723/PST/T3/99, dated 02.11.2001, the petitioner challenged its validity before this Court in W.P.No.6945 of 2007. This Court by order, dated 05.06.2012, allowed the Writ Petition,



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by observing that once a person is appointed by the Government on the recommendation of the Tamil Nadu Public Service Commission, the competent authority to take action is the State Government or other authority competent under the Rules and that the Tamil Nadu Public Service Commission being neither appointing authority nor punishing authority can only make recommendations to the concerned department for taking action against the employees for any lapses. Further this Court observed that it shall be open to the State Government to take appropriate disciplinary action against the petitioner, if so advised, in accordance with law by taking note of the recommendation of the 5th respondent Tamil Nadu Public Service Commission, pointing out the fraud played by the petitioner in seeking appointment.

8. Due to these complexities in the service of the petitioner despite serving as Junior Assistant Cum Typist for more than 20 years, her services could not be regularized in that post, as her initial appointment is under challenge for seeking appointment with a certificate that had been declared bogus by the competent authority. Hence, her claim for regularization and subsequent benefit were not considered by the 3rd respondent. However, only based on the interim order granted by this Court, by order, dated 10.09.2009, she was allowed to continue in the Government service by the 2nd respondent's proceeding No. 75572/Estt3/2001, dated 27.10.2009. Pending regularization of service of



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the petitioner in the post of Junior Assistant cum Typist, her annual increments were also not sanctioned. As she did not complete probation in that feeder post, she was not considered for promotion to the next level as well. Under such circumstances, she filed yet another Writ Petition before this Court in W.P.(MD)No.154 of 2021, seeking to direct the respondent authorities to regularize her service from her initial date of appointment as Junior Assistant cum Typist and pay the withheld increments along with the arrears as requested in her representation dated 21.02.2020. This Court was pleased to dispose of the same on 07.01.2021, to consider the representation of the petitioner dated 21.02.2020, within a period of 8 weeks from the date of receipt of copy of the aforesaid order by the authorities concerned. In the meanwhile, in terms of the operative portion of the order passed by this Court in W.P.No.6945 of 2007, disciplinary action came to be initiated against the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and a charge memo was also issued with a reference No.49525/OP2/2012 dated 15.09.2021, wherein it was alleged that the petitioner had concealed the receipt of family pension of Rs.1,750/- per month to claim the status of Destitute Widow as per the certificate dated 25.07.2000, endorsed by the Revenue Divisional Officer, which was against the guidelines issued in G.O.Ms.No.395, Personal and Administrative Reforms (Per-S) Department dated 04.11.1993. As the foundation of the petitioner's appointment itself was in dispute, without



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regularizing her service, the third respondent initiated disciplinary proceedings as against her. Following which, an enquiry officer was also appointed to enquire into the charges framed against the petitioner in the third respondent's proceedings No.49525/OP2/2012 dated 09.11.2012. The enquiry officer submitted his report that the charges against the petitioner were not proved without considering the fact that the destitute widow certificate issued by the petitioner was declared bogus by the competent authority. Hence, the third respondent contradicting the findings of the enquiry officer considered the charge as proved and according to the guidelines issued in G.O.Ms.No.190, Personal and Administrative Reforms (S) Department, dated 09.06.1995 for proven charges, imposed a punishment of dismissal from the civil service of the State Government vide proceedings No.49525/OP2/2012 dated 03.04.2023. Challenging the same, this Writ Petition came to be filed.

9.The learned counsel for the petitioner categorically submitted that after a period of nearly 22 years, disciplinary action under Rule 17(b) has been initiated as against the petitioner by the third respondent. Despite the enquiry officer giving a clean chit in favour of the petitioner that the charges against her are not proved. Deviating from the decision of the enquiry officer, the third respondent has proceeded to inflict capital punishment on the petitioner, which is shockingly



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disproportionate and against all the principles of natural justice. Further relying upon yet another Government Order in G.O.Ms.No.229, Personal and Administrative Reforms Personal Department, Government of Tamil Nadu, dated 07.04.1998, the learned counsel contended that for the purpose of issuance of Destitute Widow Certificate, the monthly income should be Rs.4,000/-. However, when the petitioner was issued with the Destitute Widow Certificate, she was sanctioned with the monthly family pension of Rs.1,750/-, but as on the date of application, she was actually not receiving the said amount. He further categorically contended that now at the verge of her retirement, the impugned order has come down as a severe blow on her future living and sustenance. In view of the same, he pressed for quashing the impugned order and allowing the Writ Petition.

10.Per contra the learned Government Advocate categorically contended that despite the enquiry officer holding that the charges against the petitioner is not proved and the enquiry officer had failed to consider the significant fact that the Destitute Widow Certificate relied upon by the petitioner for the purpose of getting employment under the Destitute Widow category itself has been declared bogus by the competent authority, that is, the District Collector who is the head of the Destitute Widow Certificate issuing system and on that grounds, he pressed for dismissal of the Writ Petition.



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11. In *Lazarus Estates Limited v. Beasley* (1956) 1 All ER 341, Lord Denning observed at QB pp. 712 and 713 : (All ER p. 345 C) “.... *no judgment of a Court, no order of a minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.*” In the same judgment, Lord Parker, L.J. observed that “*fraud vitiates all transactions known to the law of however, high a degree of solemnity* (722).”

12. Now, fully fortified by the observation in the judgment extracted supra, I am of the considered view that suppression of material facts with respect to the issuance of Destitute Widow Certificate by the petitioner would amount to fraud and the same would certainly affect the conditions of service of the petitioner. Even the principles of natural justice are not required to be complied with in, if fraud vitiates everything and the same will go to the root of matter, more particularly in service jurisprudence, the same will shake the foundation of the appointment itself by questioning the same. It is now well known that a fraud vitiates all solemn acts, and on that basis, though the petitioner did not actually receive the monthly pension amount of Rs.1,750/- on the date of issuance of Destitute Widow Certificate, the same had been sanctioned on that particular date. So, the petitioner should have disclosed the same to the certificate issuing authority. That apart, on the date of making application before the 5th respondent Commission, for the said job, she



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was actually receiving the said amount of monthly pension and hence, she ought not to have applied to the said post under the Destitute Widow category.

13.For more clarity, I would like to record that the petitioner after the death of her husband, had made an application for Destitute Widow Certificate on 04.11.1993. She was issued with Destitute Widow Certificate on 28.07.1994 by the Revenue Divisional Officer, Pudukottai. The Commissioner of employees Provident Fund Organization, Tiruchirappalli, sanctioned the family pension to the petitioner only on 10.04.1995 and she commenced to receive the same with effect from 10.04.1995. However, she made an application for the post of Junior Assistant cum Typist included in group IV services 1996-1997 conducted by the 5th respondent Commission during the year 1997.

14.Having commenced to receive the family pension, the petitioner ought not to have applied under the category of Destitute Widow by making use of the Destitute Widow Certificate issued by the competent authorities before she was sanctioned with the family pension of Rs. 1,750/-. The same would amount to suppression of material facts which is obviously, a fraudulent act. Any candidate applying for a responsible Government service should be honest enough to disclose the complete truthful personal particulars for the purpose of getting the appointment.



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Any misrepresentation at the very threshold of making an application is an indication that even in future the petitioner's conduct could not be relied upon. Though the petitioner's counsel claimed the benefit of G.O.Ms.No.229 dated 07.04.1998, the benefit of the same cannot be given to the petitioner for the reason that the aforesaid G.O. will not have any retrospective effect categorically holding that fraud vitiates everything and the same would go to the root of the matter affecting the condition of service of the petitioner in totality.

15.In view of the same, this Court is not inclined to interfere with the impugned order of removal of the petitioner from service. However, it is made clear that the respondents are not entitled to initiate any recovery proceedings as against the petitioner, in view of the long service rendered by the petitioner in the respondents office for the past more than 22 years.

16.With the above directions, the Writ Petition stand dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

09.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn



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L.VICTORIA GOWRI, J.

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