



W.A(MD)No.846 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.06.2024

CORAM:

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

**W.A(MD)No.846 of 2024
and
C.M.P(MD)No.6313 of 2024**

- 1.The Superintending Engineer,
Theni Electricity Distribution Circle,
TANGEDCO,
Theni – 625 531.
- 2.The Executive Engineer (Distribution),
Periyakulam,
Theni District – 625 601. ... Appellants/Petitioners

vs.

K.Selvaraj ... Respondents/Respondents

PRAYER : Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 02.12.2022 made in W.P(MD)No.12490 of 2018.

For Appellants : Mr.Anand Rajagopalan
for M/s.Agam Legal

For Respondent : Mr.T.Antony Arul Raj



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JUDGMENT

[Judgment of the Court was made by R.SURESH KUMAR, J.)

This Writ Appeal has been directed against the order passed by the Writ Court, dated 02.12.2022 made in W.P(MD)No.12490 of 2018.

2.The respondent/writ petitioner was an employee of the appellant TANGEDCO. Initially, he had been engaged as a contract labour on temporary basis by the employer in the year 1995, thereafter, he was absorbed on regular basis as a Field Assistant (Helper) with effect from 08.06.2009.

3.That absorption itself is pursuant to the Section 12(3) Settlement of the Industrial Disputes Act.

4.Thereafter, there has been disciplinary proceedings initiated against him by issuing a charge-memo, dated 29.11.2016, where the allegation was that in order to verify the age proof of the respondent/writ petitioner when the certificate of birth or any equivalent certificate asked for



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by the employer, he had produced the transfer certificate of the School concerned where he claimed to have studied and subsequently it has been proved that the transfer certificate produced by the respondent/writ petitioner was a forged one.

5. Accordingly, disciplinary proceedings had been initiated and since the fraud committed by the respondent/writ petitioner has been proved and has been admitted also by the respondent/writ petitioner, a punishment of reduction of pay for a period of three years has been imposed by the appellant TANGEDCO/employer to the respondent/employee. Challenging the said punishment, he had moved the Writ Court by filing the said Writ Petition in W.P(MD)No.12490 of 2018.

6. The learned Writ Court, by order dated 02.12.2022, has set aside the said punishment and allowed the said Writ Petition. Aggrieved over the same, TANGEDCO has directed the present Appeal.

7. Heard the learned counsel appearing for the appellants TANGEDCO, who would submit that it is a proven case where the certificate produced by him is fraudulent one or bogus one. When such an admitted



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fraud has been committed by him, for which, the maximum punishment of removal of service also even can be imposed against him. However, the appellant TANGEDCO has imposed only the punishment of reduction of pay for three years even if that has been interfered with by the Writ Court, for which the reasoning and justification given by the Writ Court as reflected in paragraphs 5 to 7 of the impugned order cannot be approved or justified. Therefore, aggrieved over the same, since the appeal has been filed, the learned standing counsel seeks indulgence of this Court.

8.Heard Mr.T.Antony Arul Raj, learned counsel appearing for the respondent/writ petitioner, who would submit that though the respondent/writ petitioner studied in the School, he can be treated only as an illiterate practically as he did not know what has been written in the certificate itself which was produced by him. For the purpose of producing the certificate, he had approached his Trade Union Leaders, who only made arrangements for the certificate, therefore, the production of such a fraudulent certificate is concerned no blame can be put against the respondent/writ petitioner, therefore, since there has been no ill-intention on the part of the respondent/writ petitioner, such a punishment that has been imposed against him is harsh and disproportionate. Therefore,

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interference made by the learned Writ Court is fully justified. Hence the learned counsel appearing for the respondent/writ petitioner seeks dismissal of this Writ Appeal.

9.We have considered the said rival submissions made by both sides and we have perused the materials placed before this Court.

10.The reason for interference by the Writ Court against the order of punishment awarded by the employer has been stated by the learned Judge from paragraphs 5 to 7 which reads thus:

'5.It is not in dispute that the petitioner produced a bogus certificate. But the question that arises for consideration is whether on this ground, he should be levied with the impugned punishment. The impugned punishment does have three fold consequences on the petitioner. His pay has been reduced to the minimum scale for a period of three years. Only at the end of three years, the petitioner's earlier pay will be resumed. But then, even his future increment will stand postponed. On account of the punishment, his promotion chances will be affected. Therefore, the overall facts cannot be lost sight of. The writ petitioner admittedly is virtually an illiterate. He had studied



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hardly upto 4th standard. The petitioner joined as Casual Labour in the year 1995 and was absorbed as Helper in the year 2009. The said post does not require any educational qualification.

6.In the cases relied on by the learned standing counsel, the issue involved the possession of educational qualification. In the case on hand, the petitioner was asked to produce his school certificate only for age proof. The petitioner being an illiterate had requested the Union leaders to assist him. The transfer certificate which admittedly is fake was produced. The respondents were justified in initiating the proceedings against the petitioner.

7. The only question is whether they were justified in imposing the punishment. The fake certificate is in English and obviously, the petitioner could not have read it. If the petitioner had any intention, he would definitely not have produced the same. This is because, the petitioner had studied in the Panchayat Union Primary School, Ayyankovilpatti, Vathalagundu. His date of birth has been mentioned as 05.05.1977. But in the bogus certificate, his date of birth has been mentioned as 07.03.1975. When the petitioner was asked to produce the school certificate only for age proof, by producing the bogus certificate, he said to have lost two full years. It is well settled that a person can be said to be guilty of misconduct only if there is ill-motive. In this case, the petitioner does not have any ill-motive. He was innocent and naïve. He blindly trusted the Union leaders



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and that is how, he came to produce the fake certificate. While the respondents are justified in initiating the charge memo, they ought to have dropped the proceedings, once the true facts came to light.'

11.The said justification that has been given by the learned Judge is not appealing. The reason being that it is an admitted case where a fraudulent certificate has been produced by the respondent/employee to the employer whether the requirement of the certificate for the purpose of verification of date of birth or any other reason that would not be the matter. Here, the intention of the party as to whether he wanted to produce the fake certificate to the employer is the major question to be answered. Since it is an admitted case where such a fraudulent certificate has been produced by the respondent/employee for which motive cannot be attributed on the Trade Union Leaders as such an escape route that the respondent/writ petitioner wants to find cannot be approved by the Writ Court. However, the Writ Court has accepted the said plea raised by the respondent/writ petitioner and has come to the rescue of him by setting aside the punishment.



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12.If he is an employee working in a Government organization like the TANGEDCO, he must be true to the employer and also to the Society. For the simple reason of producing the certificates, if he has gone to the extent of preparing a bogus or a fake certificate and produced the same to the employer, he may go to any extent during his period of employment and therefore, as a deterrent, there must be a punishment which in fact has been imposed by the employer.

13.As has been stated by the learned standing counsel appearing for the TANGEDCO, even the major punishment of removal of service could have been imposed against him, but taking a lenient view, lesser punishment since has been imposed even that punishment cannot be interfered with by the Court without any plausible reason.

14.The Supreme Court has made it very clear that unless the proportionality of the punishment shocks the conscience of the Court, normally Court would not interfere with the punishment that has been awarded by the disciplinary authority after conducting due enquiry.



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15.In this case, since it is an admitted case on the part of the respondent/employee that he has committed the mistake by producing the fake certificate, such a punishment given to the employee for the reduction of pay for a period of three years is fully commensurate with the violation that has been committed by the employee, therefore, no interference on the said punishment was called for. Hence, the order passed by the Writ Court is erroneous and by way of misplaced sympathy, since such interference has been made by the Writ Court, the said order is liable to be interfered with. Accordingly, the said order is set aside and the Writ Appeal is allowed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

[R.S.K.,J.] [G.A.M.,J.]
11.06.2024

NCC : Yes / No
Index : Yes / No
ps



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To

- 1.The Principal Secretary
(Revenue and Disaster Management Department),
Represented by the Government of Tamil Nadu,
Secretariat,
Chennai.
- 2.The Additional Chief Secretary to Government
(Revenue And Disaster Management Department) and
(Land Survey and Land Tax Department),
Chepauk,
Chennai.
- 3.The District Collector,
Virudhunagar District.
- 4.The Revenue Divisional Officer,
Aruppukottai,
Virudhunagar District.
- 5.The Tahsildar (Revenue),
Aruppukottai,
Virudhunagar District.



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R.SURESH KUMAR,J.
and
G.ARUL MURUGAN,J.

ps

ORDER MADE IN
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