

(2009) 10 MAD CK 0062

In the Madras High Court

Case No : Writ Petition No. 35154 of 2006 and O.A. No. 7874 of 1998

A. Rajam

APPELLANT

Vs

Director of Social Welfare and Nutritious Meal Scheme

RESPONDENT

Date of Decision : 30-10-2009

Acts Referred:

Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 17

Citation : (2009) 10 MAD CK 0062

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : No appearance, for the Appellant; R. Neelakantan, GA, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The petitioner filed O.A. No. 7874 of 1998, seeking to challenge the orders, dated 19.2.1998 and 16.7.1998 passed by

the first respondent, the Director of Social Welfare and Nutritious Meal Scheme.

2. By an order, dated 19.2.1998, a charge memo under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules was framed

against the petitioner, charging that in order to get her name included in the list of selectees for the year 1996 for the post of Women Rural Welfare

Officer, the petitioner had given a bogus SSLC certificate and got her promotion.

3. She was also charged that from the post of Child Welfare Organizer to the post of Rural Welfare Officer, the Minimum General Educational

Qualification (MGEQ) was prescribed as SSLC. The details were called for from the eligible persons who are entitled to be promoted. The

petitioner gave a false SSLC certificate and got her promotion.

4. The certificate produced by the petitioner was sent for verification by the Director of Government Examinations. It was found that it was a fake

certificate. Subsequently, the petitioner contended that she had written SSLC examinations as a private candidate during March, 1986, October,

1993, April, 1994 and October, 1994 and 1995 and she had passed the SSLC. Though the certificate may have some mistakes, she had no

intention to cheat the Government. There was an unusual delay in getting verification done.

5. Subsequently, on the basis of the enquiry, the petitioner was asked to submit her further explanation. In the enquiry report, it was found that the

petitioner has given a bogus certificate for having passed SSLC only with a view to secure earlier the higher post. The registration number given for

the year October, 1995 for having written the examination related to an another candidate and not to the petitioner. Even without giving any

explanation, the petitioner has moved the Tribunal, challenging the charge memo and the show cause notice. The Tribunal held that no oral enquiry

was conducted by examining the witnesses and it was only a personal hearing. Therefore, an interim stay was granted.

6. In view of the abolition of the Tribunal, the matter stood transferred to this Court and was renumbered as W.P. No. 35154 of 2006.

7. On notice from the Tribunal, the respondent has filed a reply affidavit, dated 8.2.2000. In the reply affidavit, in paragraphs 8 and 9 it was

averred as follows:

8. Regarding Para 6(g) it is submitted that there is no witness in this case, since the disciplinary case was based on documentary evidence viz., the

report of Department of Government Examinations. The applicant was given with an opportunity to go through the letter of the Department of

Government Examinations and after due adherence of rules, the proceedings impugned has been passed by the respondent.

9. Regarding Para 6(h) it is submitted that the Department of Government Examinations is the authority who conducts SSLC Examinations and

they are the authority to verify the SSLC Certificates with their records. Hence, the report of the Department of Government Examinations has to

be relied upon in the disciplinary case, initiated against the applicant.

8. The only question arises for consideration is whether in a case of this nature,

any elaborate enquiry is contemplated as found by the Tribunal while granting an interim order?

9. In the present case, it must be stated that when a person lacks educational qualification, the appointment can be nullity and no irregularity is

found. In such circumstances, any appointment or promotion contrary to the statutory rule will be void in law as held by the Supreme Court in

Pramod Kumar Vs. U.P. Secondary Education Services Commission and Others, and State of Manipur and Others Vs. Y. Token Singh and

Others, .

10. Further it must be stated that in a case of suppression of fact and securing an order, if the facts are admitted, there is no need for any further

notice. Any amount of explanation would not have improved the case of the petitioner as held by the Supreme Court in A.P. Social Welfare

Residential Educational Institutions v. Pindiga Sridhar reported in (2007) 13 SCC 352. The following passage found in paragraph 7 of the said

judgment may be usefully extracted below:

7. The High Court on the basis of the erroneous view upset the well-merited judgment of the learned Single Judge. By now, it is well-settled

principle of law that the principles of natural justice cannot be applied in a straitjacket formula. Their application depends upon the facts and

circumstances of each case. To sustain the complaint of the violation of principles of natural justice one must establish that he was prejudiced for

non-observance of the principles of natural justice. In the present case, the fact on which the appellant terminated the services of the respondent

appointed on compassionate ground was admitted by the respondent himself that when he applied for the post on compassionate ground by his

application dated 6-5-1996, his mother was in service. So also when he secured the appointment by an order dated 22-11-2002 his wife was in

service since 3-8-1997 as Extension Officer in Rural Development and later on promoted as Mandal Parishad Development Officer at the time

when he was appointed on compassionate ground. These facts clearly disclose that the appointment on compassionate ground was secured by

playing fraud. Fraud cloaks everything. In such admitted facts, there was no necessity of issuing show-cause notice to him. The view of the High

Court that termination suffers from the non-observance of the principles of

natural justice is, therefore, clearly erroneous. In our view, in the given facts of this case, no prejudice whatsoever has been caused to the respondent. The respondent could not have improved his case even if a show-cause notice was issued to him.

11. It was pointed out by the Supreme Court that in a case of fake appointments, cancellation can be made without notice and no mandamus can be issued in such circumstances vide its judgment in *State of Manipur and Others Vs. Y. Token Singh and Others*, .

12. In the light of the above, this Court is not inclined to entertain the writ petition. Hence the writ petition will stand dismissed. However, there will be no order as to costs.