

S.Panjavarnam Vs. the Commissioner,

S.Panjavarnam Vs. the Commissioner,

SooperKanoon Citation : sooperkanoon.com/927572

Court : Chennai

Decided On : Jun-15-2012

Judge : Vinod K.Sharma, J.

Acts : [Constitution of India](#) - Articles 226

Appeal No. : W.P.No.7038 of 2007

Appellant : S.Panjavarnam

Respondent : The Commissioner,

Advocate for Def. : Mr.V.Jayaprakash Narayanan, Adv.

Advocate for Pet/Ap. : Mr.P.Rajendran, Adv.

Judgement :

Prayer:- Writ Petition filed under Article 226 of the [Constitution of India](#) praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the respondent in Na.Ka.No.A5/3338/2001 dated 22.3.2002 and quash the same and direct the respondent to reinstate the petitioner in service with all consequential benefits.

ORDER

1. The petitioner was appointed as Cook Assistant at the Panchayat Union Middle School, Melapoongudi, Sivagangai District. She worked there for four years.
2. The petitioner submits that she was also known as 'Vijaya'. In the school record, the name of the petitioner was entered as 'Panjavarnam', whereas in the ration card it was mentioned as 'Vijaya'.
3. It is the case of the petitioner, that one Mr.Killadi Arumugam attempted to misbehave with her and her eldest daughter. On her resistance, the said Killadi Arumugam threatened her, that he would take steps to remove her from service by using his political contacts. The petitioner therefore filed a complaint with the police on 13.12.2001. On her complaint, Mr.Killadi Arumugam was called to the police station and warned.
4. On account of enmity, Mr.Killadi Arumugam filed a petition with the Commissioner, Sivagangai Panchayat Union, alleging therein, that the petitioner had submitted a School certificate of her younger sister, and secured employment by playing fraud. He also procured recommendation from local MLA in support of his complaint.
5. The Commissioner, on receipt of the complaint, called the petitioner on 10.01.2002 and enquired from her, but petitioner was not furnished with the copies of the complaint filed by Mr.Killadi Arumugam or the local MLA.
6. The petitioner submitted her explanation, to the Commissioner pointing out that her name in the official record was 'Panchavarnam' whereas she was also known as 'Vijaya'. The names of her sisters are Marimuthu wife of Manickam, Podumponnu, wife of Chiinakan and Selvi wife of Thanjan.
7. The Commissioner, instead of ordering enquiry into the matter to prove the allegation of fraud in getting employment, directed the petitioner to get a certificate from the Village Administrative Officer, in support of her defence.
8. The case of the petitioner is that local MLA directed the Village Administrative Officer, not to give any certificate to her, therefore she could not get the certificate.

9. On the failure of the petitioner to submit the certificate called for, the major penalty of removal from service was imposed on the petitioner.
10. The petitioner challenged the impugned order on the ground, that the impugned order cannot be sustained, as it has been passed in violation of statutory rules, as no enquiry was conducted before imposing major penalty of removal from service.
11. The impugned order has also been challenged, on the ground of violation of principles of natural justice by contending, that no show cause notice was issued to the petitioner nor incriminating materials against her was served on her, so as to enable her to submit her explanation.
12. It is also the stand of the petitioner, that copies of the complaint was also not given to her, nor she was permitted to cross examine the complainants, on account of failure to held departmental enquiry.
13. The allegations of malafide against Mr.Killadi and MLA cannot be taken note of, as the petitioner has chosen not to implead either the MLA, or Mr.Killadi Arumugam, as party to this writ petition.
14. However, a reading of the impugned order shows, that the order of removal has been passed, on specific allegation of serious misconduct, therefore, is stigmatic in nature.
15. It is well settled law that stigmatic order of punishment, cannot be passed, without complying with the principles of natural justice, and giving an opportunity of the person to defend himself/ herself. The respondents were under statutory obligation to held enquiry to prove the charge of fraud.
16. The learned Additional Government Pleader, however contends, that the impugned order has been passed in view of the fact that the petitioner, had obtained an employment by playing fraud in submitting the certificate of her sister. The contention of the learned Additional Government Pleader is that, it is now well settled that fraud vitiates everything, and the petitioner, having played fraud, is not entitled to any relief, as the petitioner was provided an opportunity to prove that

her name was 'Panchavarnam', and not 'Vijaya'.

17. On consideration I find that this writ petition deserves to succeed.

18. It cannot be disputed that the employee, who takes employment by playing fraud, has no right to continue with the employment and the service of such an employee can be terminated at any stage.

19. However, before taking steps, it was incumbent on the employer, to prove the change of fraud, by giving an opportunity to the employee concerned to defend himself/herself.

20. In this case, the removal is based on the complaint received at the back of the petitioner, the copy of which was not given to her nor she was given an opportunity to cross examine the complainants.

21. The impugned order of punishment, has been passed in violation of statutory rules governing the service condition. The order is also passed violation of principles of natural justice therefore, cannot be sustained in law.

21. Consequently, this writ petition is allowed, the impugned order is set aside. The petitioner shall be entitled to all the consequential benefits arising from this order. No costs.

22. However, this order shall not debar the respondent to proceed against the petitioner in accordance with law, if so advised.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com