

(2011) 08 MAD CK 0152

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No"s. 5234 of 2007 and 8964 of 2010

S. Sathya Kumar

APPELLANT

Vs

The State of Tamil Nadu and
Others

RESPONDENT

Date of Decision: Aug. 16, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: P. Jyothimani, J

Bench: Single Bench

Advocate: S. Xavier Rajini, for the Appellant; T.S. Mohammed Mohideen, Additional Government Pleader, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. The Petitioner has joined as P. G. Assistant in the Government Higher Secondary School in Karingal on 03.01.1979 and thereafter, was

promoted as Headmaster, Higher Secondary School with effect from 27.01.1995 and as on date working as Headmaster in the Sethu Lekshmi

Bai, Government Higher Secondary School, Nagerocil, Kanyakumari District and he is qualified for the said post. When there was a dispute

regarding his regularization in the post of P.G. Assistant on the ground that his appointment on compassionate ground and he should be paid as

B.T. Assistant scale, he has approached the Tamil Nadir Administrative Tribunal, for regularisation as a P.G. Assistant and by order dated

22.12.1992, the Tribunal has directed to regularise the Petitioner"s service with effect from the original appointment namely on 03.01.1997 and the

SLP filed against the order also was dismissed by the Hon"ble Supreme Court on 19.09.1994. It was, thereafter, the Joint Director of School

Education, has regularised the services of the Petitioner with effect from 03.01.1979 by order dated 04.06.1996. Since there was some delay in

posting the Petitioner as Headmaster, he was shown as Junior to the persons who were appointed after him and therefore, he has made a

representation. In the list of seniority of Headmasters originally issued by the Joint Director, dated 04.06.1996, the Petitioner was shown as S. No.

971 below R. Janarthanam and above Bagavathi Nadar. When a list of persons to be promoted for appointment as District Educational Officers

and District Elementary Educational Officers prepared by the second and third Respondents on 05.12.2007, the Petitioner"s name has been left

out. Therefore, he has filed W.P. No. 5234 of 2007 for a direction to include him in the list of candidates eligible to be considered for promotion

to the post of District Educational Officers and District Elementary Educational Officers according to the seniority. However, in the meantime, the

second Respondent Director of Education has issued a charge memo dated 29.01.2008 which is subject matter of challenge in W.P. No. 8964 of

2010. The charge is that the Petitioner has not maintained accounts regarding the school development funds and therefore, violated the Rule 20(1)

of the Tamil Nadu Government Servant Conduct Rules. The Petitioner has submitted his explanation on 05.03.2008. The committee constituted as

School Development Committee has found that in respect of the maintenance of accounts for school development committee, the Headmaster has

No. role to play. It was, due to that reason that inspite of the charge having been framed by the third Respondent as early as on 13.02.2008 and

the explanation having been submitted by the Petitioner there was no progress, the Petitioner has filed W.P. No. 7565 of 2008 for a direction

against the Director of School Education to complete the disciplinary proceedings based on the charge memo, dated 29.01.2008. This Court, on

18.09.2008, after hearing both the sides has directed the second Respondent to complete the disciplinary proceedings and pass final orders within

six months from the date of receipt of a copy of the order. Even after the lapse of six months, there was No. proceedings initiated based on the

charge memo and the second Respondent has not chosen to obtain any order from this Court for extension for completion of disciplinary

proceedings and it is stated that till date the disciplinary proceedings has not been completed and therefore, the charge memo is challenged in W.P.

No. 8964 of 2010 on the ground that in spite of the order passed in W.P. No. 7565 of 2008 on 18.09.2008 directing the second Respondent to

complete the enquiry within six months time, the enquiry has not been completed and No. extension has been obtained and therefore, the second

Respondent loses his jurisdiction from proceeding with the charge memo.

2. In the counter affidavit filed by the Respondents, it is stated that the charges were framed against the Petitioner u/s 17-b of the Tamil Nadu Civil

Service (Discipline and Appeal) Rules and the second Respondent is authority competent to initiate disciplinary action. In the 2007 panel, the

Petitioner was not included because he has not reached for promotion during that time, for the post of District Educational Officer since the crucial

date was 01.01.2007.

3. It is also denied that the juniors have been given promotion in the panel 2007, the enquiry is also done with Vigilance Department and it is only

after final report received from the Vigilance Department, the Director of Education, can proceed further in the disciplinary proceedings. Therefore,

the Petitioner's name could not be included in the panel namely, in the year 2008-2009. While, it is admitted that in the impugned charge memo

dated 29.01.2008, the Petitioner has given explanation on 05.03.2008 stating that A. Karuppusami, the then Joint Director of School Education,

(Higher Secondary) was appointed as Enquiry Officer by the second Respondent and therefore, requested to submit his Enquiry report by the

second Respondent on 20.02.2010. It is stated that Mr. A. Karuppusami, by his letter, dated 26.08.2010 has submitted that he has gone to

Nagercoil to conduct enquiry and he recorded evidence on 03.07.2009, 24.07.2009, 09.10.2009, 06.11.2009, 27.11.2009 and 29.01.2010.

Thereafter, it is stated that the Petitioner has taken time for examining his witnesses and subsequently in the month of March 2009, the Enquiry

Officer was busy with the examination and valuation and thereafter, he was transferred as Joint Director. It is also stated that the enquiry could not

be taken up further. Therefore, the reasons given by the Respondents in the counter affidavit for not completing the enquiry are that the pendency of vigilance enquiry, non availability of enquiry officer and also time taken by the Petitioner through his counsel.

4. I have considered the submissions made by the learned Counsel on either side and given my anxious thought to the issue involved in these writ petitions.

5. The short point to be decided in this case is as to whether the second Respondent is entitled to proceed with the charge memo having not completed the enquiry within outer limit prescribed by this Court and not having obtained any period of extension showing some sufficient reason.

6. Considering the above said aspect, a Division Bench of this Court in State of Tamil Nadu Vs. T. Ranganathan reported in (2010) 3 MLJ 625,

having consciously taken note of the fact that there may be cases where due to the conduct of the delinquent officer, the disciplinary proceedings

may be continued and therefore, the Department cannot be blamed holding that in such contingency, it is for the Department to point out the non

co-operation of the delinquent officer to obtain extension of time. Holding so, the Division Bench of this Court has held that the Department is

bound to comply with the direction given by Tribunal or the Court. In fact, for arriving at the said conclusion at para 23, it is held as follows:

23. We are conscious of the fact that if there is non-cooperation of the delinquent officer to comply with the time limit fixed by the Court/Tribunal

to complete the enquiry and pass final orders in disciplinary proceedings, the Department cannot be blamed. In such contingency, it is for the

Department to point out the non-cooperation on the part of the delinquent officer finalizing the proceeding and the hardships faced by the

Department in not strictly adhering to the time schedule due to the fault of the delinquent officer or for any valid reason and get appropriate orders

seeking extension of time. At this juncture, it is relevant to point out that even if the time granted originally to complete the enquiry is over, nothing

prevented the Department from filing appropriate application after expiry of the time. It is now well settled in law that application seeking extension

of time can be filed and the Court are having inherent powers to grant further time, even though the original time granted got expired, based on the principles of invoking inherent powers to meet the ends of justice. In this case, there is No. whisper about the non-cooperation of the Petitioner in conducting the enquiry and completing the enquiry within the time. Hence, the Department is bound to comply with the directions issued by the Tribunal in O.A. No. 1535 of 2003.

7. In fact, the Division Bench of this Court arrived at such conclusion relying upon the judgment of the Supreme Court in Commissioner, Karnataka Housing Board Vs. C. Muddaiah reported in (2007) 6 SCC 97 wherein it was held by the Hon"ble Apex Court that the directions issued by the competent Court are to be obeyed strictly without any reservation and the same was also reproduced by the Division Bench which is in the following terms:

31. We are of the considered opinion that once a direction is issued by a competent Court, it has to be obeyed and implemented without any reservation. If an order passed by court of Law is not complied with or is ignored, there will be an end of Rule of Law. If a party against whom such order is made has grievance, the only remedy available to him is to challenge the order by taking appropriate proceedings known to law. But it cannot be made ineffective by not complying with the directions on a specious plea that No. such directions could have been issued by the Court.

In our judgment, upholding of such argument would result in chaos and confusion and would seriously affect and impair administration of justice.

The argument of the Board, therefore, has No. force and must be rejected.

8. By applying the dictum laid down by the Division Bench to the facts of the present case, it is seen that in W.P.(MD) No. 7565 of 2008 filed by the Petitioner for a direction against the second Respondent to complete the disciplinary proceedings in the order, dated 18.09.2008, this Court has directed the second Respondent to complete the disciplinary proceedings initiated against the Petitioner within six months which is as follows:

2. Taking note of the fact that basing on the pendency of the charge memo, the petitioner"s name has not been referred for further promotion to the

post of District Educational Officers and District Elementary Educational Officers, the second Respondent misdirected to complete the disciplinary

proceedings initiated as against the Petitioner under the above said charge memo and to pass final order on the same in accordance with law, and

after following the procedure contemplated under the relevant Rules within a period of six months from the date of receipt of a copy of this order.

No costs. Consequently, connected miscellaneous petition is closed.

9. The six months period has expired by April 2009, and admittedly, the second Respondent has not completed the enquiry before the said date as

elicited above and the second Respondent has also not taken any steps to approach this Court seeking for extension of time for completing the

enquiry. Even, if it is to be taken that the Petitioner has also contributed for not completing the enquiry within the stipulated time, as held by the

Division Bench of this Court, it was the duty on the part of the Department to approach the Court for extension of time on the ground of non co-

operation by the delinquent officer. Having not done so, the second Respondent is not entitled to proceed with the charge memo after the expiry of

time granted by this Court.

10. As repeatedly held by the Hon'ble Apex Court, various orders of the Court are to be obeyed strictly and non obedience will certainly result in

the consequence which includes the quashing of the charge memo as it was done in the judgment of the Division Bench of this Court as stated

above.

11. It is also noted incidentally, it has been the case of the Petitioner that the Petitioner being the Headmaster is not in charge of holding of the

accounts in respect of school development committee. Accordingly, W.P. No. 8964 of 2010 stands allowed and the impugned charge memo

stands quashed. The writ petition in W.P. No. 5234 of 2007 is disposed of.

12. Inasmuch as the impugned charge memo has been set aside due to the reasons stated above, withholding the Petitioner from giving promotion

in the panel of the year 2008-2009 which is due to the reason of pendency of charge is not acceptable in law. If it is the case of the second

Respondent that for the panel of the year 2007, the Petitioner was not entitled for consideration because he has not reached the zone of

consideration, it is for the second Respondent to consider the name of the Petitioner for the subsequent years subject to the eligibility of the

Petitioner. The second Respondent shall by ignoring the charge, confer all the promotional benefits to the Petitioner in accordance with law by

passing necessary orders and such order shall be passed within a period of eight weeks from the date of receipt of a copy of this order. No. costs.

Consequently, connected miscellaneous petitions are closed.