

(2011) 07 MAD CK 0204

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 10717 of 2009

D. Mariapushpakam

APPELLANT

Vs

The Director of School Education
and The District Elementary
Educational Officer

RESPONDENT

Date of Decision: July 18, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226
- Income Tax Act, 1961 - Section 201(1A)
- Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 - Rule 17(b)

Hon'ble Judges: P. Jyothimani, J

Bench: Single Bench

Advocate: K. Asok Kumar Ram, for the Appellant; V. Pandi, Government Advocate, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

P. Jyothimani, J.

Heard the learned Counsel for the Petitioner as well as the learned Government Advocate for the Respondents.

2. The Petitioner was working as Superintendent in the office of the Assistant Elementary Educational Officer, Thuckalay, Kanyakumari District. Certain charges were framed against him under Rule 17(b) of the Tamil Nadu Subordinate Service (Discipline and Appeal) Rules along with other three officers viz., formerly the Assistant Elementary Educational Officer, Thuckalay. The following charges were framed:

Charge No.1

Accused Officer 1 and Accused officer 4 i.e., the Writ Petitioner acted with corrupt motive connived with each other, created a duplicate service roll to Tmt. Annal Rosely, Headmistress of Sri Krishna Vilasam Middle School, Muttacud after having obtained orders from the Director of Elementary Education, knowingly failed to furnish the correct details in the duplicate service register and paved way for claiming excess surrender leave salary to the tune of Rs. 48,391/- to Tmt. P. Annal Rosely and conferred undue advantage to Tmt. Annal Rosely and caused loss of Rs. 48,391/- to Government.

Charge No. 2:

Accused officer (1) and Accused Officer (2) and Accused Officer (4) deliberately failed to obtain income tax returns for the years 1994-95 and 1995-96, and have failed to deduct this income tax amount of Rs. 17,784/- for the above years from the salary of Tmt. P. Annal Rosely, Headmistress, S.K.V. Middle School, Muttacud and remit the amount to the Government and thus caused a loss of Rs. 17,784/- to Government and violated the provisions of Section 201(1A) of Income Tax Act 1961.

Charge No. 3

Accused Officer 3, in connivance with Accused Officer 4, acted with corrupt motive and in connivance with each other approved the appointment of Tmt. R. Krishnaveni, the Craft teacher and committed irregularity by approving a post of Art and L.O.E subject in a vacancy of sewing subject without the approval of the Director of Elementary Education, Accused Officer 4, have claimed and disbursed the full pay of Rs. 1,61,360 to Tmt. R. Krishnaveni, Teacher during the period from 11.12.91 to 31.03.1997 and thereby caused a loss of Rs. 1,61,360/- to the Government in violation of G.O. Ms. No. 242, School Education (P1) Department dated 07.09.2000.

Charge No. 4

Accused officer I, acted with corrupt motive and in connivance with Accused Officer 4, committed irregularity in recommending to approve the appointment of Thiru. N. Russel Raj, a Post Graduate Teacher as Headmaster of S.K.V. Middle School who is not having 5 years of experience in Secondary Grade Post and this appointment was approved by Thiru. C. Subramaniam (Retd), District Elementary Educational Officer in connivance with Thiru. S. Chidambaram, Personal Assistant to District Elementary Educational Officer (Retd) and Thiru Ramakrishnan, Superintendent (Retd) in violation of Government Orders.

3. In respect of these charges, the Petitioner, while denying the same especially with reference to charge No. 1 has stated that inasmuch as the service records of the Headmistress of Sri Krishna Vilasam Middle School, Muttacud, Tmt. Annal Rosely was missing and after obtaining orders from the educational authorities, the records were reconstructed. While doing so, as a Superintendent has called for particulars from the corresponding of the concerned school, based on which, the service

particulars were reconstructed. However, it is his case that the said Headmistress failed to state anything about the particulars regarding the surrender leave enjoyed by her and therefore, the Petitioner was unable to make entry regarding that. It was also his explanation in respect of the said charge that for want of materials only, he was unable to fill up the said particulars. However, he has got an undertaking from the said Headmistress stating that in the event of finding at a later point of time, she has to return the amount received in excess.

4. It is also seen that in respect of the charge No. 3 which relates to the appointment of one Tmt. R. Krishnaveni as a Craft Teacher who has alleged to have been appointed illegally, it has been his case that she was working as a teacher on consolidated pay from 1992-1993 onwards and as per Government Order, she was eligible for regularisation of her appointment and therefore, there was no irregularity in recommending her name for appointment.

5. The matter was referred for the Tribunal for disciplinary proceedings. It is no doubt true that the Tribunal for disciplinary proceedings has made elaborate enquiry and examined the prosecution witnesses and ultimately, the Tribunal in its finding, in respect of the first charge has categorically come to a conclusion that in respect of the Petitioner who was the A-4 officer, the corrupt motive stood not proved. However, finding that it was the Petitioner's recommendation which was the basis for granting benefit to Mrs. Annal Rosely, the Tribunal has found in its finding that charge Nos. 1 and 3 stood proved.

6. The findings of the Tribunal are as follows:

After having made a thorough analysis of the evidences let in by both prosecution and defence that charge (1) is held partly as proved. The part of charge (1) that A.O.(1) and A.O.(4) actuated with corrupt motive connived with each other created a duplicate Service Register is held as not proved but they have created duplicate Service Register and failed to furnish the correct details in the duplicate Service Register and paved way for claiming excess surrender leave salary to the tune of Rs. 48,391/- to Tmt. Annal Rosely is held as proved against A.O.(1) and A.O.(4). The part of charge that A.O.1, A.O.2 and A.O.4 have conferred undue advantage to Tmt. Annal Rosely and caused a loss of Rs. 48,391/- to the Government is held as proved.

Charge (2) is held as not proved against the A.Os:

Charge (3) is held partly as proved to the extent that A.O.1, A.O.3 and A.O.4 have fixed regular scale of pay and paid with effect from 1.9.92 instead of from 9.4.96 to Tmt. Krishnaveni. The Accused Officers have caused a loss of Rs. 82,454/- to the Government by fixing the pay on regular scale to the Craft Teacher Tmt. Krishnaveni without following Government Orders is held as proved.

Charge (4) is held as not proved against Accused Officer.

7. It was accepting the said finding of the Tribunal for disciplinary proceedings, the first Respondent has passed the impugned order imposing punishment of reduction of basic pay of the Petitioner of Rs. 200/- thereby reducing the basic pay from Rs. 9100/- to Rs. 8,900/- for a period of four months. Apart from stating that that reduction will have permanent effect, with the result that it will affect the pensionary benefits of the Petitioner. In addition to that, the first Respondent has directed the recovery of 1/3rd of the amount in respect of the 1st charge namely, Rs. 16,030/- and 1/3rd of Rs. 27,485/- in respect of the third charge total amount of Rs. 43,615/-.

8. The challenge is made on the impugned order of the first Respondent on various grounds including that in respect of the two proven charges, there was No. motive which can be attributable to the Petitioner who was only a Superintendent and it was as already submitted by the learned Counsel for the Petitioner that one of the Assistant Elementary Educational Officer Nagarajan was exonerated from the charges by the Government in passing the Government Orders. Merely because the other Assistant Elementary Educational Officer have accepted the guilt that cannot be attributed to the Petitioner being the Superintendent who is in a lower grade.

9. On the other hand, it is the case of the Respondents as it is seen in the counter affidavit that there is No. flaw in the proceedings conducted by the disciplinary authority and the Petitioner has been given full opportunity to defend himself and there was no violation of principles of natural justice. It is also further stated that even though there was No. corrupt motive which has been attributed to the Petitioner, the Petitioner having caused loss to the Government cannot plead ignorance. Therefore, according to the Respondents as submitted by the learned Government Advocate that the punishment has been given to a very lower extent taking into consideration that the Petitioner was about to retire in a short period of time.

10. I have considered the submissions made on either side and given my anxious thought to the issue involved in this writ petition.

11. Law is well settled that the jurisdiction of this Court under Article 226 of the Constitution of India in respect of the disciplinary proceedings are limited to the procedures which are followed for arriving at a conclusion and not the decision and the decision making process can be scrutinised by this Court under Article 226 of the Constitution of India. The decision making process involves basically principles of natural justice or mala fide which is attributable to the enquiry Officer or proportionality of the punishment which has been imposed. On the facts of the present case, there is absolutely, no doubt, to come to a conclusion that the principles of natural justice has not been violated.

12. The Petitioner has been given ample opportunity to prove his case. Learned Counsel for the Petitioner has taken enormous efforts to go into the factual aspect to

find out as to whether the guilty intention on the part of the Petitioner but unfortunately, this Court cannot re-appreciate the evidence which are let in before the disciplinary authority. But it remains the fact that the charges which are framed especially Nos. 1 and 3 which are said to have been proved by the Tribunal for disciplinary proceedings are basically on corruption, loss caused by the conduct of the Petitioner and other officers are also incidentally stated.

13. As elicited above, in the elaborate proceedings by the Tribunal for Disciplinary Proceedings, it is a categorical finding that there was No. motive attributable to the Petitioner or collusion with the other officers. Therefore, it is clear that the basic aspect of the charge Nos. 1 and 3 have been taken away in the sense that corruption charge stood not proved. In respect of the third charge, learned Counsel for the Petitioner has brought to the notice of this Court that after the impugned order was passed by the first Respondent, the Principal Seat of this Court in W.P. No. 13865 of 2001 filed by the R. Krishnaveni whose appointment was stated to be irregular, has held that her appointment made in the year 1991 on consolidated pay has to be continued and would be eligible for time scale of pay by setting aside the impugned order passed by the educational authorities, dated 28.05.2001. Certainly, the subsequent event which has taken place, at the instance of the said R. Krishnaveni whose appointment is stated to be irregular deserves to be considered.

14. In such view of the matter, since in respect of the first charge that the corrupt motive has been disbelieved by the disciplinary authority and in respect of the third charge that the appointment of the said R. Krishnaveni has been held to be valid, I am of the considered view that the punishment which has been imposed on the Petitioner has to be reconsidered by the first Respondent especially when the first Respondent has chosen not only to reduce the basic pay to an extent of Rs. 200/- per month for a period of four months and has also stated that it will affect the pensionary benefits of the petitioner apart from the order of recovery should be reconsidered.

15. While holding that there is No. flaw in the disciplinary proceedings conducted by the first Respondent, the matter is remanded back to the first Respondent for the purpose of reconsideration of the punishment which has been imposed on the Petitioner, with a direction to the first Respondent to pass appropriate orders regarding the punishment taking note of the above said facts, within a period of 12 weeks from the date of receipt of a copy of this order.

16. With the above direction, the writ petition is ordered accordingly. No. costs.