(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 4i.e., the Writ Petitioner actuated with corruptmotive connived with each other, created aduplicate service roll to Tmt.Annal Rosely,Headmistress of Sri Krishna Vilasam MiddleSchool, Muttacad after having obtained ordersfrom the Director of Elementary Education,knowingly failed to furnish the correct detailsin the duplicate service register and paved wayfor claiming excess surrender leave salary to thetune of Rs. 48,391/-to Tmt.P.Annal Rosely andconferred 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 toobtain income tax returns for the years 1994-95and 1995-96, and have failed to deduct thisincometax amount of Rs. 17,784/-for the aboveyears from the salary of Tmt.P.Annal Rosely,Headmistress, S.K.V.Middle School, Muttacad andremit the amount to the Government and thuscaused a loss of Rs. 17,784/-to Government andviolated the provisions of Section 201(1A) of Income Tax Act 1961.

Charge No. 3

Accused Officer 3, in connivance withAccused Officer 4, actuated with corrupt motiveand in connivance with each other approved theappointment of Tmt.R.Krishnaveni, the Craftteacher and committed irregularity by approving apost of Art and L.O.E subject in a vacancy ofsewing subject without the approval of theDirector of Elementary Education, Accused Officer4, have claimed and disbursed the full pay ofRs. 1,61,360 to Tmt.R.Krishnaveni, Teacher duringthe period from 11.12.91 to 31.03.1997 andthereby caused a loss of Rs. 1,61,360/-to theGovernment in violation of G.O.Ms. No. 242, SchoolEducation (P1) Department dated 07.09.2000.

Charge No. 4

Accused officer I, actuated with corruptmotive and to connivance with Accused Officer 4,committed irregularity in recommending to approvethe appointment of Thiru.N.Russel Raj, a PostGraduate Teacher as Headmaster of S.K.V. Middle School who is not having 5 years of experience inSecondary Grade Post and this appointment wasapproved by Thiru.C.Subramaniam (Retd), DistrictElementary Educational Officer in connivance withThiru.S.Chidambaram, Personal Assistant toDistrict Elementary Educational Officer (Retd)and Thiru Ramakrishnan, Superintendent (Retd) inviolation of Government Orders.

3. In respect of these charges, the Petitioner,while denying the same especially with reference to chargeNo. 1 has stated that inasmuch as the service records of theHeadmistress of Sri Krishna Vilasam Middle School,Muttacad, Tmt.Annal Rosely was missing and after obtainingorders from the educational authorities, the records werereconstructed. While doing so, as a Superintendent hascalled for particulars from the corRespondent of theconcerned school, based on which, the service

particularswere reconstructed. However, it is his case that the saidHeadmistress 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. Itwas also his explanation in respect of the said charge thatfor want of materials only, he was unable to fill up thesaid particulars. However, he has got an undertaking fromthe said Headmistress stating that in the event of findingat a later point of time, she has to return the amountreceived in excess.

4. It is also seen that in respect of the chargeNo. 3 which relates to the appointment of oneTmt.R.Krishnaveni as a Craft Teacher who has alleged tohave been appointed illegally, it has been his case thatshe was working as a teacher on consolidated pay from 1992-1993 onwards and as per Government Order, she was eligiblefor regularisation of her appointment and therefore, therewas No. irregularity in recommending her name forappointment.

5. The matter was referred for the Tribunal fordisciplinary proceedings. It is No. doubt true that theTribunal for disciplinary proceedings has made elaborateenquiry and examined the prosecution witnesses and ultimately, the Tribunal in its finding, in respect of thefirst charge has categorically come to a conclusion that inrespect of the Petitioner who was the A-4 officer, thecorrupt motive stood not proved. However, finding that itwas the Petitioner''s recommendation which was the basis forgranting benefit to Mrs. Annal Rosely, the Tribunal hasfound 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 ofthe evidences let in by both prosecution anddefence 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 eachother created a duplicate Service Register isheld as not proved but they have createdduplicate Service Register and failed to furnishthe correct details in the duplicate ServiceRegister and paved way for claiming excesssurrender leave salary to the tune of Rs. 48,391/-to Tmt.Annal Rosely is held as proved againstA.O.(1) and A.O.(4). The part of charge thatA.O.1, A.O.2 and A.O.4 have conferred undueadvantage to Tmt.Annal Rosely and caused a lossof 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 theextent that A.O.1, A.O.3 and A.O.4 have fixedregular 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 ofRs. 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 againstAccused Officer.

7. It was accepting the said finding of theTribunal for disciplinary proceedings, the first Respondenthas passed the impugned order imposing punishment ofreduction 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 thatreduction will have permanent effect, with the result thatit will affect the pensionary benefits of the Petitioner.In addition to that, the first Respondent has directed therecovery of 1/3rd of the amount in respect of the 1st chargenamely, Rs. 16,030/-and 1/3rd of Rs. 27,485/-in respect ofthe 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 inrespect of the two proven charges, there was No. motivewhich can be attributable to the Petitioner who was only aSuperintendent and it was as already submitted by thelearned Counsel for the Petitioner that one of theAssistant Elementary Educational Officer Nagarajan wasexonerated from the charges by the Government in passingthe Government Orders. Merely because the other AssistantElementary Educational Officer have accepted the guilt thatcannot be attributed the Petitioner being theSuperintendent who is in a lower grade.

9. On the other hand, it is the case of theRespondents as it is seen in the counter affidavit thatthere is No. flaw in the proceedings conducted by thedisciplinary authority and the Petitioner has been givenfull opportunity to defend himself and there was noviolation of principles of natural justice. It is alsofurther stated that even though there was No. corrupt motivewhich has been attributed to the Petitioner, the Petitionerhaving caused loss to the Government cannot pleadignorance. Therefore, according to the Respondents assubmitted by the learned Government Advocate that thepunishment 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 oneither side and given my anxious thought to the issueinvolved in this writ petition.

11. Law is well settled that the jurisdiction ofthis Court under Article 226 of the Constitution of Indiain respect of the disciplinary proceedings are limited tothe procedures which are followed for arriving at aconclusion and not the decision and the decision makingprocess can be scrutinised by this Court under Article 226 of the Constitution of India. The decision making processinvolves basically principles of natural justice or malafide which is attributable to the enquiry Officer orproportionality of the punishment which has been imposed.On the facts of the present case, there is absolutely, nodoubt, to come to a conclusion that the principles ofnatural has not been violated.

12. The Petitioner has been given ampleopportunity to prove his case. Learned Counsel for thePetitioner has taken enormous efforts to go into thefactual 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 letin before the disciplinary authority. But it remains thefact that the charges which are framed especially Nos. 1 and3 which are said to have been proved by the Tribunal fordisciplinary proceedings are basically on corruption, losscaused by the conduct of the Petitioner and other officersare also incidentally stated.

13. As elicited above, in the elaborateproceedings by the Tribunal for Disciplinary Proceedings,it is a categoric finding that there was No. motiveattributable to the Petitioner or collusion with the otherofficers. Therefore, it is clear that the basic aspect ofthe charge Nos. 1 and 3 have been taken away in the sensethat corruption charge stood not proved. In respect of thethird charge, learned Counsel for the Petitioner hasbrought to the notice of this Court that after the impugnedorder was passed by the first Respondent, the PrincipalSeat of this Court in W.P. No. 13865 of 2001 filed by theR.Krishnaveni whose appointment was stated to be irregular,has held that her appointment made in the year 1991 onconsolidated pay has to be continued and would be eligiblefor 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, atthe instance of the said R.Krishnaveni whose appointment isstated to be irregular deserves to be considered.

14. In such view of the matter, since in respectof the first charge that the corrupt motive has beendisbelieved by the disciplinary authority and in respect ofthe third charge that the appointment of the saidR.Krishnaveni has been held to be valid, I am of theconsidered view that the punishment which has been imposedon the Petitioner has to be reconsidered by the firstRespondent especially when the first Respondent has chosennot 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 thedisciplinary proceedings conducted by the first Respondent,the matter is remanded back to the first Respondent for thepurpose of reconsideration of the punishment which has beenimposed on the Petitioner, with a direction to the firstRespondent 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.