(2010) 10 MAD CK 0236

Madras High Court

Case No: Writ Petition No. 36662 of 2007

G. Leela Kumari	APPELLANT
Vs	
The Government of Tamil Nadu and The Director of Collegiate Education	RESPONDENT

Date of Decision: Oct. 18, 2010

Acts Referred:

- Constitution of India, 1950 - Article 20
- Evidence Act, 1872 - Section 25
- Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 - Rule 17

Hon'ble Judges: P. Jyothimani, J

Bench: Single Bench

Advocate: G. Amal Raj, for the Appellant; N. Senthil Kumar, A.G.P. for Respondent Nos. 1 and 2, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P. Jyothimani, J.
The Petitioner has prayed for issuance of a writ of certiorarified mandamus calling for the records of the Respondents, especially the first Respondent relating to his proceedings made in G.O.(D) No. 220 Higher Education (G-2) Department dated 14.12.2006 and quash the same as null and void, illegal and invalid and consequently directing the Respondents to reinstate her in service with all service and monetary benefits.

2. The writ Petitioner was appointed as Junior Assistant on 26.6.1966 through Tamil Nadu Public Service Commission and posted in the office of Sub-Registrar, Thenkanikottai of Krishnagiri District and she was transferred to Government Arts College, Krishnagiri in the year 1967 and thereafter in the year 1968, she was

transferred to Government Arts College, Ponneri and after that in the year 1970, she was transferred to Nandanam Arts College, Chennai and thereafter to Lady Wellington Training College, Triplicane in the year 1972 and while she was working in the office of Director of Collegiate Education, Chennai in the year 1974, she was promoted as ''Assistant'' on 10.2.1977 and thereafter in the year 1990, she was promoted as ''Superintendent'' and posted at Government Training College, Kumarapalayam and after that in the year 1992, she was transferred to Institute of Advance Study in Education, Saidapet and thereafter transferred to the Office of the Director of Collegiate Education, Chennai in 1997. She was promoted as ''Bursar'' in the year 2000 and posted to Government Arts College, Tindivanam and her date of superannuation, as per records, is 31.7.2007. While the Petitioner was working as ''Bursar'' in Tindivanam, certain charges were framed against her, which came to be cancelled and fresh charges were framed against her under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules on 22.8.2002.

3. Ten charges were framed against the Petitioner which are all relating to her conduct as Bursar, including that she has permitted one Office Assistant P. Venkatesan to go on other duty for personal reasons; that she has taken loan from ''Madura Bank'' Employees Government Servants and Co-operative Bank attached to the Office of the Director of Collegiate Education without obtaining prior permission from the employer and therefore it is in violation of Rule 6(4) of Conduct Rules; that she has misappropriated Government funds to an extent of Rs. 3,160/-on 10.10.2001 by not remitting the amount payable by one S.V. Govindarajan to Villupuram Co-operative Society; that she has misappropriated Rs. 1,000/-on 5.11.2001 by remitting only Rs. 36,102/-instead of Rs. 37,102/-from the salary of teaching and non-teaching staff and after coming to know about the irregularity, she has remitted Rs. 1,000/-to the Principal; that she was irresponsible in not maintaining the accounts; that when the College Principal has permitted her to disburse Rs. 480/-from P.D.II consolidated funds, she has filled up cheque for Rs. 10,480/-instead of Rs. 480/-and excess amount of Rs. 10,000/-got misappropriated; that as against the sanctioned amount of Rs. 11,467/-by the Principal to meet certain expenses, she has drawn the amount of Rs. 22,767/-and misappropriated the amount of Rs. 12,300/-; that she has drawn the amount of Rs. 17,500/-instead of Rs. 7,500/-as sanctioned by Principal from P.D.II Consolidated Cash fund on 20.3.2001 and thus misappropriated the amount of Rs. 10,000/-; that as against the sanctioned amount of Rs. 766/-by the Principal from P.D.II consolidated cash fund, she has drawn Rs. 15,766/-and thus misappropriated the amount of Rs. 15,000/-along with Rs. 916/-collected from students on 22.1.2001 and that without the approval of the Principal, she has drawn the amount of Rs. 22,000/-as her own from PD-II consolidated cash fund and misappropriated the entire amount.

4. As against the above ten charges, the Petitioner has submitted her explanation on 26.11.2002, denying each and everyone of the charges. However, in respect of one of the charges, viz., Charge No. 10, while denying the charge of misappropriation of

Rs. 22,000/-, she has stated that by mistake she has drawn the amount in sports account and immediately after she came to know about the mistake, she has deposited the amount. The first Respondent has appointed an Inquiry Officer, who has submitted his report on 27.3.2003. A reference to the Inquiry Officer''s report shows in clear terms that the Inquiry Officer has not directed the Department to let in evidence in respect of each and everyone of the charges framed against the Petitioner and it is clear that no witness was examined by the Inquiry Officer with respect to each and everyone of the charges, but on the other hand, the Inquiry Officer has either relied upon certain statements given by the Petitioner or relied upon certain documents available with him in respect of the charges. Except charge No. 1, in respect of all other charges, the Petitioner was found guilty and the Inquiry report states that all the other charges have been proved against the Petitioner and the Inquiry Officer also given his finding in respect of many of the charges against the Petitioner based on the statement obtained from her. The Inquiry Officer''s report was sent to the Petitioner, for which, she has given her reply denying the charges. After obtaining consent from Tamil Nadu Public Service Commission, which has recommended the Government for dismissal of the Petitioner from service, the Government passed Government Order in G.O.(D). No. 220, Higher Education (G-2) Department, dated 14.12.2006 dismissing the Petitioner from service by imposing the major punishment. In the meantime, the Government passed Government Order in G.O.(D) No. 127, Higher Education (G-2) Department, dated 31.7.2006 stating that the Petitioner who attained the age of superannuation was not allowed to retire from service in order to enable them to proceed with the charges and thereafter the Government Order dated 14.12.2006 came to be passed dismissing her from service.

5. Heard the learned Counsel for the Petitioner and the learned Additional Government Pleader.

6. A reference to the impugned order of the first Respondent shows that the first Respondent has totally relied upon the Inquiry Officer''s report but failed to note that the Inquiry Officer has not followed the procedure in a manner known to law and also in utter violation of Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules and no witness has been produced from the side of the Department and only by getting statement from the delinquent, he has concluded and submitted his report. Therefore, the primary reason on which the impugned order is to be quashed is that the inquiry conducted before the impugned order came to be passed was totally illegal and not in accordance with the procedure for conducting Disciplinary Proceedings in respect of Government servants.

7. Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, as relied upon by the Petitioner, is as follows:

17(b). (i) Without prejudice to the provisions of the 8 Public Servants'' Inquiries Act, 1850, (Central Act XXXVII of 1850), in every case where it is proposed to impose on a

member of a service or on a person holding a Civil Post under the State any of the penalties specified in items (iv), (vi), (vii) and (viii) in Rule 8, the grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged, together with a statement of the allegation, on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required, within a reasonable time to put in a written statement of his defence and to state whether he desires an oral inquiry or to be heard in person or both. An oral inquiry shall be held if such an inquiry is desired by the person charged or is directed by the authority concerned. Even if a person charged has waived an oral inquiry, such inquiry shall be held by the authority concerned in respect of charges which are not admitted by the person charged and which can be proved only through the evidence of witnesses. At that 9 inquiry oral evidence shall be heard as to such of the allegations as are not admitted, and the person charged shall be entitled to cross-examine the witnesses to give evidence in person and to have such witnesses called, as he may wish, provided that the officer conducting the inquiry may, for special and sufficient reason to be recorded in writing, refuse to call a witness. Whether or not the person charged desired or had an oral inquiry, he shall be heard in person at any stage if he so desires before passing of final orders. A report of the inquiry or personal hearing (as the case may be) shall be prepared by the authority holding the inquiry or personal hearing whether or not such authority is competent to impose the penalty. Such report shall contain a sufficient record of the evidence, if any, and a statement of the findings and the grounds thereof. Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has, and which exercises such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor or partly recorded by its predecessor and partly recorded by itself.

Provided that if the succeeding inquiry authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross-examine and re-examine any such witnesses as hereinbefore provided:

Provided further that where there is a complaint of sexual harassment within the meaning of Rule 20-B of the Tamil Nadu Government Servants'' Conduct Rules, 1973, the Complaints Committee established in each Government Department or Office for inquiring into such complaints, shall be deemed to be the inquiring authority appointed by the Disciplinary Authority for the purpose of these rules and the Complaints Committee shall hold the inquiry so far as practicable in accordance with the procedure laid down in these Rules.

Provided further that the Government Servant may take the assistance of any retired Government servant to present the case on his behalf but may not engage a legal practitioner for the purpose unless the inquiring authority is a legal practitioner or the inquiring authority, having regard to the circumstances of the case, so permits.

8. While the Rule specifically contemplates that the oral enquiry to be conducted in respect of the charges framed under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules which relate to major punishment to be imposed, it has been the well established principles of natural justice as held by the Honourable Supreme Court at least from the decision in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., that principles of natural justice contemplates that departmental proceedings are to be conducted in conformity with the principles of natural justice and in the inquiry proceedings the Department has to let in proper evidence by witnesses and such witnesses have to be allowed to be cross-examined by the delinquent and after perusal of the evidence let in by both sides, a proper decision has to be arrived at. While referring to the concept of reasonable opportunity of being heard as enshrined under Article 311(2) of the Constitution of India, the Honourable Supreme Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., , has enunciated the various steps that have to be followed in conducting disciplinary proceedings as seen in paragraph No. 28, which is extracted as under:

28. The position in law can also be looked at from a slightly different angle. Article 311(2) says that the employee shall be given a "reasonable opportunity of being heard in respect of the charges against him". The findings on the charges given by a third person like the Inquiry Officer, particularly when they are not borne out by the evidence or are arrived at by overlooking the evidence or misconstruing it, could themselves constitute new unwarranted imputations. What is further, when the proviso to the said Article states that, "where it is proposed after such inquiry to impose upon him any such penalty such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed", it in effect accepts two successive stages of differing scope. Since the penalty is to be proposed after the inquiry, which inquiry in effect is to be carried out by the disciplinary authority (the Inquiry Officer being only his delegate appointed to hold the inquiry and to assist him), the employee''s reply to the Inquiry Officer''s report and consideration of such reply by the disciplinary authority also constitute an integral part of such inquiry. The second stage follows the inquiry so carried out and it consists of the issuance of the notice to show cause against the proposed penalty and of considering the reply to the notice and deciding upon the penalty. What is dispensed with is the opportunity of making representation on the penalty proposed and not of opportunity of making representation on the report of the Inquiry Officer. The latter right was always there. But before the 42nd Amendment

of the Constitution, the point of time at which it was to be exercised had stood deferred till the second stage viz., the stage of considering the penalty. Till that time, the conclusions that the disciplinary authority might have arrived at both with regard to the guilt of the employee and the penalty to be imposed were only tentative. All that has happened after the 42nd Amendment of the Constitution is to advance the point of time at which the representation of the employee against the Inquiry Officer''s report would be considered. Now, the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence of the charges.

9. In the latest decision of the Honourable Supreme Court in State of Uttaranchal and Others Vs. Kharak Singh, , while reiterating the concept of natural justice and the procedures to be followed in Departmental Enquiry, the Honourable Mr. Justice P. Sathasivam while speaking for the Bench, after referring to the various decisions, including that of B. Karunakar''s case (referred to above), apart from the decisions in Radhey Shyam Gupta Vs. U.P State Agro Industries Corporation Ltd. and Another, and Syndicate Bank and Others Vs. Venkatesh Gururao Kurati, has enunciated various principles to be followed in the Departmental Proceedings in paragraph No. 15, which reads as follows:

15. From the above decisions, the following principles would emerge:

(i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.

(ii) If an officer is a witness to any of the incidents which is the subject-matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the enquiry officer. If the said position becomes known after the appointment of the enquiry officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.

(iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged and give an opportunity to him to cross-examine the witness of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.

(iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any.

The said principles have been re-affirmed by the Honourable Supreme Court in the decision in Roop Singh Negi Vs. Punjab National Bank and Others, . That was a case where in spite of the confession statement made by the delinquent officer, which was relied upon as per Section 25 of the Indian Evidence Act, the Honourable

Supreme Court has held that the so-called confession statement of the delinquent itself is Court has further held that the departmental proceeding is equivalent to a quasi-judicial proceeding and the enquiry officer performs a quasi-judicial function and any statement obtained from the delinquent cannot be taken as evidence as against him, which in fact is in violation of fundamental right guaranteed under Article 22 - 20(3) of the Constitution of India and further held that in that case no witness was examined to prove the documents and the management witnesses have merely appeared and tendered documents and they did not prove the contents thereof and the relevant portion of said decision in this regard is in paragraph No. 14, which is extracted as under:

14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

10. Law is well settled that mere production of document in evidence does not amount to its proof unless the truthfulness of the document is established through witnesses and the said principle as contemplated under CPC is made applicable as laid down in the decision of the Honourable Supreme Court in L.I.C. of India and Anr. v. Ram Pal Singh Bisen (2010) 3 MLJ 1370. In that case, while referring to some of the documents which were submitted before the Enquiry Officer, who has given an exparte finding and it was held that in the absence of any oral evidence substantiating the documents produced before the Enquiry Officer, reliance placed by the Enquiry Officer upon the said documents, are not acceptable to impose punishment on the delinquent.

11. In the light of the categorically established judicial principles, applying the said concept to the facts of the present case, I have no hesitation to come to a conclusion that the enquiry conducted by the Enquiry Officer is totally a farce. It is unfortunate that in the enquiry the Department has chosen to only submit documents and no witness has been produced and the Enquiry Officer has arrived at the finding based on the explanation submitted by the delinquent. When charges are so many and are denied, the Enquiry Officer must be careful in reaching the conclusion and the enquiry conducted by the Enquiry Officer has revealed that reliance has been placed upon the documents which are not proved by letting in evidence and based on the said finding the impugned order has been passed dismissing the Petitioner from service. In the absence of proper recording of evidence of witnesses by the Enquiry

Officer, the enquiry report cannot be treated as one given in the manner known to law.

12. As stated above, the Petitioner in the meantime attained the age of superannuation on 31.7.2006. Even though the order has been passed against the Petitioner in not allowing the Petitioner to retire from her service and placed her under suspension on the last day of her service, I do not see any reason to hold that the impugned order passed against the Petitioner is a valid one and the enquiry conducted by the Enquiry Officer with regard to the charges framed against the Petitioner is proper. Mere remitting of the matter to the disciplinary authority is of no use in this case, especially when the Petitioner has already attained the age of superannuation.

13. In such a view of the matter, the Writ Petition is allowed and the impugned order stands quashed. It is needless to state that the Petitioner is eligible to get all the retirement benefits from the date of her superannuation and all the monetary benefits should be paid to her by the respondents, within a period of eight weeks from the date of receipt of copy of this Order. No costs.