(2009) 12 MAD CK 0135

Madras High Court

Case No: Writ Petition No. 652 of 2008

Dr. D. Sundararajan	APPELLANT
Vs	
The State of Tamil Nadu	RESPONDENT

Date of Decision: Dec. 11, 2009

Acts Referred:

- House Building Advance Rules - Rule 5(3), 8
- Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 - Rule 17
- Tamil Nadu Government Servants Conduct Rules, 1973 - Rule 20B

Hon'ble Judges: P. Jyothimani, J

Bench: Single Bench

Advocate: G. Jeremiah, for the Appellant; Dakshayini Reddy, Government Advocate, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P. Jyothimani, J.
The writ petition is directed against the impugned order of the first respondent dated 12.10.2007, by which the first respondent has imposed the punishment of stoppage of increment for a period of two years with cumulative effect on the petitioner.

2.1. The brief facts leading to the passing of the impugned order are that the petitioner was originally serving as a Medical Officer in the Primary Health Center, Pudupet and he has applied to the department on 10.6.1994 seeking permission to purchase a ready built house. He has entered into an agreement on 18.4.1994 with the owner, Tmt. Indirani Ammal to purchase the ready built house for Rs. 4 Lakhs and paid an amount of Rs. 5000/- towards advance.

2.2. It is the case of the petitioner that the said Tmt. Indirani Ammal, who is well known to the petitioner, without receiving the sale consideration has agreed to execute the sale deed and accordingly, the sale deed was registered on 15.7.1994 in the name of the petitioner. It is stated that the second respondent by the proceeding dated 22.7.1996 has granted permission to purchase the property by obtaining a loan of Rs. 2 Lakhs from the Government and receiving Rs. 2 Lakhs from his father.

2.3. It is to mobilise funds for payment of consideration, the petitioner has applied on 30.12.1994 for house building loan of Rs. 2 Lakhs through the third respondent. Along with the application, the petitioner has also submitted the agreement, encumbrance certificate for a period of 15 years and other documents. He has also obtained a fresh agreement renewed from the vendor on 23.1.1997 and submitted the same. The fourth respondent has sanctioned the advance on 3.3.1997, after obtaining necessary documents, including mortgage deed, etc. and the advance amount was withdrawn on 13.3.1997 by the petitioner.

2.4. It was thereafter the fourth respondent has issued a show cause notice to the petitioner on 14.7.1997 calling upon the petitioner to show cause as to why the entire advance amount should not be recovered. After the petitioner submitted his explanation, the fourth respondent has passed an order on 11.12.1997 directing the Tahsildar, Walajah to recover the entire Rs. 2 Lakhs from him under the provision of the Revenue Recovery Act.

2.5. The said recovery proceedings of the fourth respondent was challenged by the petitioner by approaching the Tamil Nadu Administrative Tribunal and during the pendency of the case, the petitioner has repaid Rs. 1 Lakh and the remaining amount has been recovered as per the order of the Tribunal directing recovery at the rate of Rs. 3000/- per month from the salary and therefore, with interest the entire amount has been recovered.

2.6. In the meantime, the second respondent has issued a charge memo against the petitioner on 2.1.1998, framing two charges which are as follows:

Charge - I : That the said Dr. D. Sundararajan, Medical Officer, Primary Health Center, Pudupet had suppressed the fact of purchasing the house by him prior to the application made for the sanction of House Building Advance and thereby cheated the Government.

Charge - II : That the said Dr. D. Soundararajan has prepared a forgery document by extending the time limit from 23.1.1997 by affixing the signature of Tmt. Indirani Ammal.

2.7. The petitioner has submitted his explanation reiterating the stand that the vendor due to the intimate relationship has executed the sale deed even without receiving the sale consideration and therefore, there was no suppression and he has

never forged the signature of the vendor.

2.8. It is stated that the third respondent was appointed as Inquiry Officer to conduct enquiry and the petitioner has participated in the enquiry. The case of the petitioner is that during the enquiry the third respondent has not produced or marked any documents and no witnesses were examined and that the third respondent has acted as Inquiry Officer as well as Presenting Officer. Even though the petitioner has denied the charges that he has fabricated the documents, the third respondent has submitted a report holding that the charges are proved and thereafter, after nearly 8 years from the date of charge memo, the first respondent has passed the impugned order of punishment, which is challenged on the grounds that it is opposed to the principles of natural justice; that it is passed without application of mind; that the Inquiry Officer has not conducted enquiry in the manner known to law; that no documents were marked and witnesses were examined so as to enable the petitioner to defend himself; that the enquiry has been conducted totally in violation of the mandatory procedure contemplated under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules; and that the grave charges of forgery and suppression have been held proved against the petitioner without any evidence and on surmises.

3.1. In the counter affidavit filed by the first respondent, it is stated that the petitioner has applied to the fourth respondent on 30.12.1994 for an advance of Rs. 2 Lakhs for the proposed purchase of a ready built house in S. No. 668/B, Karai Village from one Tmt. Indirani Ammal by enclosing the agreement dated 18.4.1994, by which the said Tmt. Indirani Ammal has agreed to sell the house to the petitioner, apart from encumbrance certificate, plan, legal opinion, valuation report, etc. The petitioner was thereafter directed to produce the parent documents, which it is stated that the petitioner produced and subsequently, the fourth respondent issued order on 3.3.1997 sanctioning the advance amount of Rs. 2 Lakhs for purchase of the said house and the amount was released on 10.3.1997.

3.2. As per Rule 5(3) of the House Building Advance Rules, an agreement has to be entered in Form No. 5 and within two months from the date of receipt of advance amount, the ready built house must be acquired and the same should be mortgaged to the Government within six months time. It is stated that based on the said Rule, the petitioner has submitted the sale deed No. 2511 of 1994 along with the letter and the same was received by the fourth respondent on 14.5.1997. On scrutiny it was found that Tmt. Indirani Ammal has already sold the said house to the petitioner on 15.7.1994, which is before the date of application for advance, viz., 30.12.1994. It was found that in the encumbrance certificate produced by the petitioner there was no entry about the sale deed executed in favour of the petitioner on 15.7.1994 and the sale deed produced by the petitioner before the respondents was found to be with forged signature of Tmt. Indirani Ammal, while compared with the earlier agreement dated 18.4.1994 and therefore, the charges of

suppression as well as forgery were framed.

3.3. In respect of the nature of enquiry conducted by the third respondent, it is stated in paragraph (15) of the counter affidavit that the Inquiry Officer has conducted enquiry by recording oral statements in the presence of the petitioner and since personal hearing was opted by the petitioner, personal enquiry was conducted and the petitioner has given a written statement on 16.8.2005 stating that he was satisfied regarding the personal hearing and therefore, on the basis of the documentary evidence and oral deposition given by the petitioner, the Inquiry Officer has given his report concluding that charges are proved. The said paragraph in the counter affidavit in respect of the second charge is as follows: "Further, the petitioner has denied the second charge that he has produced forgery document, but he has not produced any valid points". It is further stated that on comparison of the signature of Tmt. Indirani Ammal in the original sale agreement dated 18.4.1994 and the sale deed produced by the petitioner on 15.7.1994 along with the subsequent agreement dated 23.1.1997 produced for the purpose of obtaining loan it was found that the signatures were different and therefore, presumed that the petitioner has forged the signature.

3.4. It is admitted that the third respondent has completed the oral enquiry in the year 2000 and thereafter, the second respondent has remitted the matter to the first respondent for passing final orders in February, 2002 and the first respondent has passed the impugned order in the year 2007. The reason given for the delay is that certain particulars of the present stage of the Original Application filed by the petitioner against the recovery order issued by the fourth respondent and the recovery details of the petitioner were called for and in that regard there was delay. It is also stated that the cause for the delay was due to administrative reasons and not willful intention of the respondents. It is further stated that full opportunity has been given to the petitioner.

4. The short point that is to be taken note of on the facts and circumstances of the present case is about the nature of enquiry stated to have been conducted by the third respondent/Inquiry Officer. The charges against the petitioner were under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, which is as follows:

Rule 17 (b) (i) Without prejudice to the provisions of the 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 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 inquiring 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 20B 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 as far as practicable in accordance with the procedure laid down in these Rules.

Provided also 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.

Explanation .- The Government servant shall not take the assistance of any retired Government servant who has two pending disciplinary cases on hand, in which he has to give assistance.

(ii) After the inquiry or personal hearing referred to in Clause (i) has been completed, the authority competent to impose the penalty specified in that clause, is of the opinion, on the basis of the evidence adduced during the inquiry, that any of the penalties specified in Rule 8 should be imposed on the person charged, it shall, before making an order imposing such penalty, furnish to him a copy of the report of the inquiry or personal hearing or both, as the case may be, and call upon him to submit his further representation, if any, within a reasonable time, not exceeding fifteen days. Any representation received in this behalf within the period shall be taken into consideration before making any order imposing the penalty, provided that such representation shall be based on the evidence adduced during the inquiry only. It shall not be necessary to give the person charged any opportunity of making representation on the penalty proposed to be imposed;

Provided that in every case where it is necessary to consult the Tamil Nadu Public Service Commission, the disciplinary authority shall consult the Tamil Nadu Public Service Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty:

Provided further that in the case of a person appointed to a post in a temporary department by transfer from any other class or by recruitment by transfer from any other service, the State Government may, at any time before the appointment of such person as a full member to the said post, revert him to such other class or service, either for want of vacancy or in the event of his becoming surplus to requirements or if the State Government are satisfied that he has not got the necessary aptitude for work in the said post, without observing the formalities prescribed in this sub-rule.

5. The said Rule contemplates the manner in which the enquiry is to be conducted. As per the said Rule, it is clear that the charges against the delinquent officer are to be proved by the department and that should be by way of producing documents and bringing in witnesses so as to enable the petitioner to cross-examine as a matter of substantial defence.

6. On the facts of the present case, it is clear that the third respondent during the enquiry has not examined any witnesses and not marked any documents, including the sale deed stated to have been obtained by the petitioner from Tmt. Indirani Ammal on 15.7.1994 produced by the petitioner at the instance of the respondents for scrutiny and the said document has also not been marked in the disciplinary proceedings and it is not the case of the third respondent that Tmt. Indirani Ammal has made any complaint about forgery of her signature. In the absence of any evidence, the third respondent/Inquiry Officer has concluded that both the charges are proved on the basis that as per the sale deed produced by the petitioner he has purchased the property on 15.7.1994, while he has made an application on 30.12.1994 for advance and observed that no further document or evidence is required, forgetting the fact that the petitioner has in fact offered explanation that

the purchase was effected on 15.7.1994 without paying the sale consideration to the vendor since she was closely associated with the petitioner and it was for the purpose of payment of the sale consideration the application for loan was made on 30.12.1994. This relevant point would have been taken into consideration by the Inquiry Officer only if proper enquiry was conducted. This is relevant to show the intention of the petitioner whether it amounts to suppression or not and that would be the basis to decide the delinquency on the part of the petitioner if any.

7. More curiously, with regard to the second charge which is grave, where there is an allegation of forgery, the finding has been arrived at by the Inquiry Officer on the basis of presumptions and assumptions on comparing the sale agreement dated 18.4.1994 with the sale deed dated 15.7.1994 and the subsequent sale agreement dated 23.1.1997. By such comparison of documents, the third respondent/Inquiry Officer acting himself as an expert has arrived at a conclusion that there is a difference in the signatures of Tmt. Indirani Ammal from the sale deed dated 15.7.1994 and 23.1.1997 and therefore, it is presumed that the petitioner has committed forgery. Such a grave charge is stated to have been proved by assumptions and presumptions without any evidence being placed before the Inquiry Officer, without even marking documents and putting the same to the petitioner as evidence. On the face of it, there is no difficulty to conclude that there is a gross violation of the procedure for conducting enquiry as enumerated under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and on this score itself the entire disciplinary proceedings is liable to be set aside.

8. In the latest judgment in State of Uttaranchal and Others Vs. Kharak Singh, , P. Sathasivam, J., while reiterating the nature of enquiry to be conducted in disciplinary proceedings, after discussing various judgments on the issue, has laid down the following principles:

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, give an opportunity to him to cross-examine the witnesses 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.

9. Under similar circumstances, a Division Bench of this Court consisting of D. Murugesan and K. Venkataraman, JJ. by judgment dated 1.7.2009 in W.A. No. 736 of 2008 (R. Padmaraj v. The Senior Regional Manager, TNCSC Ltd., Thanjavur Region, Thanjavur and 2 Ors.) has held as follows:

5. Rule 1 of Chapter V of the Tamil Nadu Civil Supplies Corporation Employees Service Regulations, 1989 relates to the imposition of major penalty and minor penalty. Rule 1(b)(i) relating to the withholding of increment with cumulative effect for a specific period is categorised as a major penalty. To this extent, there is no dispute on either side. When once the punishment of stoppage of increment for a period of two years with cumulative effect is a major penalty, certainly the appellant is entitled for an enquiry before such punishment is imposed. It is seen that though a charge memo was issued and an enquiry officer was appointed, no witnesses were examined and no documents were marked. The delinquent employee, viz., the appellant was questioned by the enquiry officer and the order of punishment was imposed on the basis of the finding. Such an enquiry cannot be considered to be in compliance with the procedures requiring for a detailed enquiry before the imposition of major penalty.

10. Applying the ratio laid down in the above said decisions to the facts of the present case, the enquiry conducted by the third respondent has to be held as totally opposed to principles of natural justice, all canons of law and more particularly, the procedure contemplated under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. It is unfortunate that the first respondent has not chosen to take note of such a serious illegality committed by the third respondent in conducting enquiry. It is to be remembered that when grave charges are made against the delinquent officer, especially in this case, a Government Doctor holding a responsible position, the respondents should have been careful in proving the case against the petitioner with proper evidence otherwise, the prejudice that may be caused to the delinquent is enormous which cannot be compensated. The lethargic way in which the third respondent has conducted enquiry is not only tainted with illegality, but is a gross injustice to the petitioner, especially when the petitioner has denied both the charges.

11. There is one another aspect to be considered in this case. Admittedly, the third respondent has completed enquiry in the year 2000 itself, but the first respondent has taken nearly 8 years for passing the impugned order of punishment. The delay has not been explained at all. The only reason adduced is administrative reasons, which cannot be a ground at all when such unexplained delay would result in gross prejudice to the delinquent officer, as it was held in P.V. Mahadevan Vs. M.D., Tamil

Nadu Housing Board, :

14. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.

12. In such circumstances, I am not inclined even to remand the matter to the respondents for fresh enquiry and this is not a case where such remand can serve any purpose, since the matter pertains to allegations made ten years back and it is admitted that the amount of advance has been repaid by the petitioner to the respondents. Thus, looking from any angle, I am of the considered view that the impugned order suffers from gross illegality and therefore, the impugned order of the first respondent stands set aside. The writ petition is allowed. No costs. Consequently, M.P. No. 1 of 2008 is closed.