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(2010) 09 MAD CK 0327

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 7106 and M.P. (MD) No. 1 of 2008

J. Meerabai	APPELLANT
Vs	
The Director of Social Welfare Department and The District Social Welfare Officer	RESPONDENT

Date of Decision: Sept. 29, 2010

Acts Referred:

- Tamil Nadu Government Servants Conduct Rules, 1973 - Rule 20

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: S.T. Balamurugan, for the Appellant; R. Janakiramalu, S.G.P., for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.
The Petitioner has come forward to challenge the order dated 31.01.2008, wherein and by which, she was removed from the Government Service. Though it was indicated in the said order that she has got the right of appeal to the Secretary to Government, Social Welfare Department, she did not file any appeal.

2. Notice of motion was ordered in this Writ Petition on 05.08.2008. Pending the notice, no interim order was granted in favor of the Petitioner. Even after notice, no counter-affidavit has been filed by the Respondents.

3. The facts leading to the filing of the present Writ Petition were as follows:

The Petitioner was appointed as a Balasevika under the department of Social Welfare on 21.08.1972. She had passed 10th standard and while studying 11th standard (then

SSLC), she had discontinued her studies. Thereafter, privately, she passed her SSLC after writing the examination through a Tutorial College in the year 1993. It is claimed that the Principal of the said College issued a mark statement which was received from the Director of School Education, Chennai. Thereafter, the Petitioner''s name was included in the panel drawn on 08.04.1994 for appointment to the post of Rural Welfare Officer (women) by promotion. She was also appointed as the Rural Social Welfare Officer (Women) and transferred from Theni to Kollimalai Panchayat Union in Salem District. She was again re-transferred to Kadamalaigundu in Theni District. The Petitioner was to have reached the age of superannuation on 28.02.2007. Just before her retirement, an order dated 28.02.2007 was passed suspending her from service, in view of the fact that charge memo was pending against her. But this statement of the Respondents is contrary to the letter received from the District Social Welfare Officer, dated 05.02.2007, wherein it was indicated that there is no case pending against her and there is no deficiency in service regarding finance and there was no complaint also pending against her. Notwithstanding the same, it was stated that the charge sheet is pending and by another order of the very same date, she was not permitted to retire from service.

4. Thereafter, an enquiry was held against the Petitioner and the Enquiry Officer sent his report dated 20.07.2007. On the basis of the said report, the first Respondent, by order dated 31.01.2008, removed the Petitioner from Government service. The charge against the Petitioner was that when she joined the service, she did not possess the educational qualification attached to the post as prescribed by the Government in G.O.1330, Rural Development and Local Administration Department, dated 09.06.1965 and that she produced a bogus mark sheet belonging to some other person and joined the post of Rural Welfare Officer. The Petitioner denied the same and claimed that though she was discontinued her studies, subsequently, through private college, she has passed SSLC and whatever the mark sheet given by the Director was given to the department and she only produced the original mark sheet belongs to her. She stated that during the year 1972, she did not submit such certificate and in 1993 she submitted her SSLC marks and not during 1972. Therefore, there was no justification to take up the issue after 15 years in holding the post and after 35 years of service in the department.

5. The second charge was violation of Rule 20 of the Tamil Nadu Government Servant Conduct Rules. The said charge was also denied on the ground stating that she has not violated any of the Conduct Rules. The Enquiry Officer stated that she has only passed as a private candidate and the certificate was not proper. On the basis of the report, the first Respondent stated that the certificate produced by the Petitioner in 1993, was verified with the Government examination directory and it found that the marks were different and that information was furnished to the department on 26.02.2007. Therefore, the charges were proved. Since the Petitioner has secured employment with the bogus certificate, she is not fit to be in service. The Petitioner has challenged the said action of the Respondents stating that while she got appointment from the post of Balasevika to the Rural Welfare Officer (women) by promotion in the year 1994, there was an

opportunity of verifying such certificate. She had appointed as Balasevika in 1972. Her not passing 11th standard was not an obstacle. Even on 05.02.2007, a No Objection Certificate was given to her for getting retired and an enquiry was held against him. It was not commensurate with the statutory rules prescribed and her explanation was not considered properly.

6. The stand taken by the Petitioner that at the time when she got promoted, there was an opportunity for them to verify such certificate in the year 1994 and there is no reason for the Respondents to wait for another 13 years and to suspend her first on the day of retirement and to conduct an enquiry without affording reasonable opportunity, is well found. The letter dated 26.02.2007 sent by the Director of Government Examinations, has found only in the order of the first Respondent as an office note, which does not find reflect in the enquiry report. Further, there was no evidence let in the enquiry to prove that the statement obtained from the Directory was genuine and there was no opportunity for the Petitioner to record her statement in the enquiry.

7. In this context, it was necessary to refer to a judgment of the Supreme Court in Satwati Deswal Vs. State of Haryana and Others, , wherein in paragraph No. 8, it was observed as follows:

8. Apart from that, on a cursory look of the statutory provision of the constitution of the Parishad Working Committees, it would be clear that before imposing any major penalty against an employee, namely, an order of termination of service, an inquiry must be held in the manner specified in the statutory rules by which the disciplinary authority shall frame definite charges on the basis of allegations on which an inquiry shall be proposed and opportunity must be given to the employee to submit a written statement stating therein whether he/she desires to be heard in person and no order of termination also can be passed without the approval of the Managing Committee. On this count alone, therefore, the High Court was, in our view, in grave error in dismissing the writ petition of the writ Petitioner.

8. In the present case, the Petitioner has the protection of Article 311(2) of the Constitution of India before any punishment of removal is imposed on her. Since the basic principles of natural justice are violated, the impugned order is hereby set aside and it is observed that the Government cannot wake up to the situation after 13 years after the promotion of the Petitioner at the end of her service. Therefore, there is no further direction to conduct enquiry ordered against the Petitioner. She is eligible for all terminal benefits due to her retirement, as if she had retired from service on 28.02.2007 and the Respondents are directed to settle her terminal benefits, within a period of three months from the date of receipt of a copy of this order.

9. The Writ Petition stands allowed to the extend indicated above. Consequently, the connected Miscellaneous Petition is closed. No costs.