

V.Subramanian Vs The State of Tamil Nadu

Court: MADRAS HIGH COURT

Date of Decision: Feb. 2, 2018

Acts Referred: [Tamil Nadu Civil Services \(Discipline and Appeal\) Rules, 1955](#), Rule 17(b)

Hon'ble Judges: V.Parthiban

Bench: Single Bench

Advocate: K.Govindarajan, M.Kavi Veerappan, T.M.Pappiah

Final Decision: Disposed Off

Judgement

1. The petitioner has approached this Court seeking the following relief:

""To issue a Certiorarified Manadamus calling for the records relating to the proceedings of the 1st respondent impugned order, Government

Order (D).No.37, dated 12.05.2011 and quash the same and direct the respondents to reinstate the petitioner in the same service and also grant

all consequential benefits.

2. The petitioner was working as a Typist in the respondent Department. He was issued with a charge memo under 17(b) of the Tamil Nadu Civil

Services [D & A] Rules, alleging that he has forged the signature of Automobile Engineer on 26.03.2002 and obtained a loan from Valayamadevi

Melpathi Primary Agricultural Co-operative Bank Ltd., to the tune of Rs.25,000/-. He was also placed under suspension pending finalisation of the

disciplinary action. An enquiry was held and finally by an enquiry report dated 27.07.2004, the charges held proved. Thereafter, an enquiry report

was furnished to the petitioner. In response, the petitioner submitted a detailed explanation reporting certain defects in conducting the enquiry. In

response to the representation, the order was passed by the second respondent by cancelling the enquiry proceedings and ordering appointment of

fresh enquiry officer and directed to proceed with the enquiry.

3. While the matters stood thus, the petitioner has challenged the suspension order in W.P.No.41969 of 2006 and this Court is pleased to dispose

of the above writ petition with a direction to pass final orders on the charge memo within a period of four weeks. This order was passed by this

Court on 03.11.2006. However, in spite of the direction of this Court, no steps were taken in this regard. Therefore, a legal notice was also issued

on behalf of the petitioner.

4. The second respondent, however, without conducting the proceedings afresh, based on the enquiry conducted earlier on 03.11.2006, called for

explanation from the petitioner on 09.02.2007 in regard to the earlier enquiry report and passed final order on 13.03.2009 dismissing the petitioner

from service. Against which, the petitioner has preferred an appeal before the first respondent on 07.08.2008 and the first respondent vide

proceedings dated 12.05.2011, rejected the appeal.

5. Learned counsel for the petitioner would submit that the impugned orders of respondents 1 and 2, dated 12.05.2011 and 13.03.2007

respectively, cannot be countenanced both in law or on facts for the simple reason that once earlier enquiry proceedings stood cancelled by the

orders of the competent authority dated 04.12.2006 and a new enquiry officer came to be appointed, without proceeding with the enquiry afresh,

the impugned orders came to be passed on the basis of the erstwhile enquiry proceedings. Such action on the part of the second respondent and

the first respondent cannot be sustainable in law.

6. Upon notice, Mr.T.M.Pappaiah, the learned Special Government Pleader entered appearance for respondents and made his submissions.

7. The Special Government Pleader would submit in particular that the petitioner himself has admitted the misconduct in his representation and

therefore, the administration has rightly taken action and imposed impugned penalty and the charge being very serious in nature viz., forgery,

dismissal of the petitioner from service was a right penalty imposed on him and the same cannot be faulted with.

8. On over all consideration of the facts and circumstances of the case as stated above it has to be seen that the competent authority himself had

cancelled the earlier enquiry proceedings and by order dated 04.12.2006, by directing new enquiry officer to proceed with the enquiry afresh.

That being the case, the impugned action on the part of the second respondent and the first respondent in imposing the penalty on the basis of the

cancelled earlier enquiry proceedings and the enquiry report, cannot be justified in law. The authorities have completely misdirected themselves and

passed the impugned orders hurriedly in order to comply with the direction passed by this Court in W.P.No.41969 of 2006 dated 03.11.2006.

Such action on the part of the second respondent and the first respondent would amount to nonapplication of mind and therefore, the same cannot

stand the test of judicial review.

9. At the same time, it has to be noted that the charges against the petitioner is one of forgery and therefore, the same cannot be viewed very lightly

by this Court. In the said circumstances, the impugned proceedings viz., the order of the second respondent in Se.Mu.Order No.A1/208/04, dated

04.12.2006 and the order of the first respondent, Government Order (D) No.37, dated 12.05.2011, are set aside and the respondents 1 and 2

are directed to proceed with the enquiry afresh, in pursuance of the charge memo, dated 29.01.2004 and afford a reasonable and proper

opportunity to the petitioner. The respondents are also directed to complete the disciplinary action as early as possible and in case, the charges are

held to be proved, the respondents are directed to take a sympathetic view while imposing any penalty, in view of the passage of long time from

the date of issuance of charge memo, dated 29.01.2004, as the petitioner has already suffered from non-employment for more than 13 years. It is

also made clear that since the impugned orders being set aside, the petitioner may be directed to be placed under suspension from the date of

receipt of copy of this order till the outcome of the disciplinary action. It is also clarified that the authorities while proceeding with the departmental

action afresh, shall also take into consideration, the acquittal of the petitioner by the criminal Court for the same charge which invited departmental

action.

10. With the above direction, this writ petition is disposed of. No costs.