



W.P. No. 2876 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE J. SATHYA NARAYANA PRASAD

W.P. No.2876 of 2021

and

W.M.P.No.3214 of 2021

P. Perumal

... Petitioner

Vs.

1 The Secretary to Government
Social Welfare & Nutritious Meal Programme
(SW 1) Department,
Secretariat, Chennai - 600 009.

2 The Commissioner of Social Welfare,
Chennai - 600 015.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus, calling for the records relating to the first respondent herein in Government G.O.(Pa) No.03, Social Welfare & Nutritious Meal Programme (SW1) Department, dated 04.01.2021 and quash the same.

For Petitioner : Mr. R.S. Anandan

For Respondents : Ms. P. Vijayadevi
Government Advocate



W.P. No. 2876 of 2021

ORDER

This present writ petition has been filed for a writ of Certiorarified Mandamus, calling for the records relating to the first respondent herein in Government G.O.(Pa) No.03, Social Welfare & Nutritious Meal Programme (SW1) Department, dated 04.01.2021 and quash the same and consequently confer all the benefits.

2. The case of the petitioner is that, he joined the service on 10.05.1993, in the Department of Social Welfare through Tamil Nadu Public Service Commission, Group-IV services in 1992 as Junior Assistant and he was promoted to the post of Assistant on 01.05.2003. Subsequently, he was promoted to Superintendent on 01.12.2006 and worked in different places in the department as Superintendent with unblemished service. When the petitioner was working as Superintendent, the first respondent has ordered to initiate a disciplinary action against the petitioner, based on the investigation report submitted by the appropriate authority. Based on the said direction, the second respondent initiated the disciplinary action against the petitioner by issuing a charge memo dated 25.06.2012 under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Subsequently, the second respondent appointed an enquiry officer to conduct enquiry in consultation



W.P. No. 2876 of 2021

with Deputy Superintendent of Police, Vigilance and Anti Corruption and in the presence of officials. The enquiry was conducted and the enquiry officer has submitted a report to the Disciplinary authority on 07.03.2013.

3. The petitioner was directed to submit his further representation on the enquiry report of the Disciplinary Authority and he submitted the same on the enquiry report and pointed out that he joined the post of Superintendent only in July 2009 and from 01.12.2006 to 01.06.2009, he was working in Admin Section-IV as Assistant and clearly refuted that on 24.02.2009 and 10.03.2009, he was not working as Superintendent and has not received alleged payments. While passing order in the disciplinary action, awarded punishment of stoppage of increment for a period of two years without cumulative effect. The punishment order was passed on 13.11.2017 and the punishment was given and he has also undergone the punishment. The petitioner has not preferred any appeal against the punishment and he attained the age of superannuation only in the month of May 2020.

4. The learned counsel appearing for the petitioner submitted that the punishment of stoppage of increment for a period of two years without



W.P. No. 2876 of 2021

cumulative effect was imposed on the petitioner on 13.11.2017. After lapse of two years three months and fourteen days from the date of issuance of order of punishment, dated 13.11.2017 by the second respondent herein, the first respondent vide letter bearing No.6696/sana1(2)2018-5, dated 27.02.2020 issued a show cause notice under Rule 36 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, directing the petitioner to submit his explanation as to why the punishment dated 13.11.2017 was imposed by the second respondent need not be converted as that of a major punishment.

5. The learned counsel for the petitioner further submitted that the petitioner has submitted his explanation to the show cause notice on 19.03.2020 and requested him to drop action over the said show cause notice on 27.02.2020, but the first respondent referred the matter to the Tamil Nadu Public Service Commission and sought for its advice. In fact, no punishment was proposed by the first respondent but the Tamil Nadu Public Service Commission advised the punishment of removal from service. Taking into consideration the Tamil Nadu Public Service Commission opinion and accepting the same, the first respondent herein awarded the punishment of removal from service as per the impugned order dated 04.01.2021. Aggrieved



W.P. No. 2876 of 2021

by the order passed by the first respondent, the petitioner has come forward with the present writ petition.

6. The learned counsel for the petitioner would further submit that a charge memo was issued to the petitioner on 25.06.2012, after a delay of three years for the occurrence which took place in the year 2006 to 2009. However, the first punishment of stoppage of increment for the period of two years without cumulative effect was imposed on the petitioner on 13.11.2017, after a delay of four years of the enquiry report dated 07.03.2013. Whereas, the second show cause notice was issued on 27.02.2020 and the explanation was given on 19.03.2020 and the order of removal from service was passed by the first respondent vide G.O.(Pa) No.03, Social Welfare & Nutritious Meal Programme (SW1) Department, dated 04.01.2021.

7. The learned counsel drew the attention of this Court to Rule No. 36 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 and the same is extracted hereunder:

“REVISION

(1) Notwithstanding anything contained in these rules:-

(i) the State Government; or



W.P. No. 2876 of 2021

WEB COPY

(ii) *the head of the department directly under the State Government, in the case of a Government servant serving in a department or office under the Ccontrol of such head of the department, or departments; or*

(iii) *the appellate authority, other than the State Government, within six months of the date of the order proposed to be revised; or*

(iv) *any other authority specified in this behalf by the State Government by a general or special order, and within such time as may be prescibed in such general or special ordrr, may at any time, either on their or its own motion or otherwise call for the records of any inquiry and after consultation with the Tamil Nadu Public Service Commission, where such consultation is necessary and revise any order made under these rules"*

8. The learned counsel for the petitioner relied on the Judgment of the Hon'ble Supreme Court of India in the case of ***Union of India and others vs. R.P. Singh*** in Civil appeal No.6717 of 2008, dated 22.05.2014 reported in (2014) 7 Supreme Court cases 340.

9. The second respondent has file a counter affidavit and the relevant paragraph is extracted hereunder:

"The Petitioner herein stated that the TNPSC is the third party



W.P. No. 2876 of 2021

WEB COPY

*and if any third party report is relied the delinquent should be given opportunity to defend the same effectively. The Government after perusal of the explanation submitted the petitioner, the opinion of the Tamil Nadu Public Service Commission was sought under **Rule 18(1)(b)(iv) of Tamil Nadu Public Service Commission Regulation 1954.***

18(1) It shall not be necessary for the Commission to be consulted on any disciplinary matter affecting a person serving a connection with the affairs of the State, except:-

(b) where the State Government propose to pass an original order imposing any of the following penalties namely:-

(iv) Removal from the civil service of the State Government; or''

The Tamil Nadu Public Service Commission in turn in Lr. No.2710/dcd 1/2020-1, dated 25.08.2020 has stated that the 2 charges framed against the Petitioner is proved beyond doubt and established the punishment of Removal from Service. The Government in G.O.(D) NO.03, Social Welfare and Nutritious Meal Programme (SW 1) Department, dated 04.01.2021, removed the Petitioner from service. The Tamil Nadu Public Service Commission is not a third party in this case. The Petitioner herein was appointed through Tamil Nadu Public Service Commission and joined duty as Junior Assistant on 10.05.1993.



W.P. No. 2876 of 2021

10. Heard both sides and perused the materials available on record.

11. In this case, a charge memo was issued to the petitioner on 25.06.2012, after a delay of three years for the occurrence which took place in the year 2006 to 2009. Wherein, the first punishment of stoppage of increment for the period of two years without cumulative effect was imposed on the petitioner on 13.11.2017, after a delay of four years of the enquiry report which is submitted on 07.03.2013. The petitioner attained the age of superannuation in May 2020. Meanwhile, the Government has sent a letter to TNPSC in No.6696/SW1(2)/2018-7, dated 06.05.2020 and the relevant portion is extracted:

"திரு.ப.பெருமாள், கண்காணிப்பாளர், சமீக நல இயக்கம் என்பவருக்கு பார்வை இரண்டில் காணும் செயல்முறை நடவடிக்கைகளில் தனியருக்கு சமீக நல இயக்குநரால் நிரூபணமான குற்றச்சாட்டுகளுக்கு வழங்கப்பட்ட தண்டனை போதுமானதாக இல்லை எனக்கருதி தமிழ்நாடு குடிமைப் பணிகள் (ஒழுங்கு மற்றும் மேல்முறையீடு) விதிகளில், விதி 36-இன்படி சீராய்வு செய்து, தமிழ்நாடு குடிமைப் பணிகள் (ஒழுங்கு மற்றும் மேல்முறையீடு) விதிகளில், விதி 8இன்படி 'பணி நீக்கம்' (Removal from the service) எனும் தண்டனை வழங்கலாம் என அரசால் உத்தேசிக்கப்பட்டுள்ளது."



W.P. No. 2876 of 2021

In respect of the Government letter dated 06.05.2020, the TNPSC views was sent to the Government vide letter No.2710/DCD-P1/2020-1, dated 25.08.2020 by which **the TNPSC has advised the Government to remove the petitioner from the service and in fact, no punishment was proposed by the first respondent. Since the TNPSC advised to award the punishment of removal of service and the first respondent accepted the same and imposed the punishment of removal of service on the petitioner by impugned order dated 04.01.2021.**

12. It is pertinent to note **that the petitioner joined the post of Superintendent only in July 2009 and the period of occurrence is between 01.12.2006 to 01.06.2009, where he was working in Admin Section-IV as Assistant and these aspects were not considered by the disciplinary authority while passing final order in the disciplinary action and awarded a punishment of stoppage of increment for the period of two years without cumulative effect. However, the petitioner did not prefer any appeal against this order and has undergone the same.**



W.P. No. 2876 of 2021

13. It is crystal clear and evident from the above facts that all the stages of proceedings initiated against the petitioner for the occurrence between the period 2006 to 2009 **is with inordinate delay and the first respondent vide letter No.6696/sa.na.1(2)/2018-5, dated 27.02.2020 issued a show cause notice under Rule 36 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules just three months before the superannuation of the petitioner and asked to submit his explanation as to why the punishment dated 13.11.2017 issued by the second respondent should not be converted as that of a major punishment.** In this case, based on the enquiry officer report dated 07.03.2013, the punishment of stoppage of increment for the period of two years without cumulative effect was already imposed on the petitioner on 13.11.2017. The first respondent issued a show cause notice under Rule 36 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, which is extracted hereunder for better appreciation:

“REVISION

(1) Notwithstanding anything contained in these rules:-

(i) the State Government; or

(ii) the head of the department directly under the State Government, in the case of a Government servant serving in a department or office under the control of such head of the department, or departments; or



W.P. No. 2876 of 2021

WEB COPY

(iii) the appellate authority, other than the State Government, within six months of the date of the order proposed to be revised; or

(iv) any other authority specified in this behalf by the State Government by a general or special order, and within such time as may be prescribed in such general or special order, may at any time, either on their or its own motion or otherwise call for the records of any inquiry and after consultation with the Tamil Nadu Public Service Commission, where such consultation is necessary and revise any order made under these rules"

14. **This Court is unable to understand for what reason the first respondent has issued a second show cause notice after delay of three years that too three months before the superannuation of the petitioner stating why the punishment should not be converted into a major punishment. Overall, there is a delay in each stage of disciplinary proceedings initiated by the respondents. The first respondent referred the matter to the Tamil Nadu Public Service Commission for its advice, and the Tamil Nadu Public Service Commission has advised to impose the punishment of removal of service, which is a major punishment on the petitioner and the first respondent without assigning any reason, has**



W.P. No. 2876 of 2021

imposed the same on the petitioner which is unsustainable in law. The

learned counsel for the petitioner as relied on the judgment of the Hon'ble Supreme Court of India in the case of ***Union of India and others vs. R.P. Singh*** in Civil Appeal No.6717 of 2008, dated 22.05.2014 and it is pertinent to extract the relevant portion of the said case and the same is extracted herein:

"24. We have been apprised by Mr Raghavan, learned counsel for the respondent, that after the decision in S.K.Kapoor case, the Government of India, Ministry of Personnel, PG & Pensions, Department of Personnel and Training vide Office Memorandum dated 6-1-2014 has issued the following directions:

"4.Accordingly, it has been decided that in all disciplinary cases where the commission is to be consulted, the following procedure may be adopted:

(i) On receipt of the inquiry report, the DA may examine the same and forward it to the Commission with his observations;

(ii) On receipt of the Commission's report, the DA will examine the same and forward the same to the charge officer along with the inquiry report and his tentative reasons for disagreement with the inquiry report and/or the advice of UPSC;

(iii) The charged officer shall be required to



WEB COPY



W.P. No. 2876 of 2021

submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the inquiry report/advice of UPSC is in his favour or not.

(iv) The disciplinary authority shall consider the representation of the charged officer and take further action as prescribed in sub-rules (2-A) to (4) of Rule 15 of the CCS (CCA) Rules, 1965."

25. After the said office memorandum, a further office memorandum has been issued on 5-3-2014, which pertains to supply of copy of UPSC advice to the charged officer. We think it appropriate to reproduce the same:

"The undersigned is directed to refer to this Department's OM of even number dated 6-1-2014 and to say that it has been decided, in partial modification of the above OM that a copy of the inquiry report may be given to the government servant as provided in Rule 15(2) of the Central Secretariat Services (Classification, Control and Appeal) Rules, 1965. The inquiry report together with the representation, if any, of the government servant may be forwarded to the Commission for advice. On receipt of the Commission's advice, a copy of the advice may be provided to the government servant who may be allowed to submit his representation, if any, on the Commission's advice within fifteen days. The disciplinary authority will consider the inquiry report, advice of the Commission and



WEB COPY



W.P. No. 2876 of 2021

the representation(s) of the government servant before arriving at a final decision."

26. In our considered opinion, both the office memoranda are not only in consonance with S.K. Kapoor case but also in accordance with the principles of natural justice which has been stated in B. Karunakar case.

27. In view of the aforesaid, we respectfully agree with the decision rendered in S.K. Kapoor case and resultantly decline to interfere with the judgement and order of the High Court. As a result, the appeal, being devoid of merit, is dismissed without any order as to costs."

15. The above procedures eventhough contained in the official memorandum dated 06.01.2014, Ministry of personnel, PG & Pensions, Department of Personnel and Training, the Government of India, the same analogy is applicable to the present case on hand. The first respondent ought to have followed the same procedure as contemplated in the office memorandum cited supra and failure on the part of the first respondent to follow the same, amounts to the violation of principles of natural justice.

16. In view of the above factual matrix of the case and the ratio laid down by the Hon'ble Supreme Court of India, this Court is of the



W.P. No. 2876 of 2021

considered view that the order passed by the first respondent in G.O.(Pa)No.3, Social Welfare and Nutritious Meal Programme (SW1) Department, dated 04.01.2021 is liable to be quashed and the same is hereby quashed.

17. The respondents are directed to confer all the benefits to the petitioner, in which the petitioner is entitled as per the Rules and Regulations in force within a period of eight weeks (8) from the date of receipt of a copy of this order.

18. In the result, the Writ Petition stands allowed with the above observations and directions. No costs. Consequently, the connected miscellaneous petition is closed.

29.09.2023

Index : Yes / No
Speaking order / Non speaking order
Neutral Citation Case : Yes / No
dpa/stn



W.P. No. 2876 of 2021

WEB COPY

To

- 1 The Secretary to Government
Social Welfare & Nutritious Meal Programme
(SW 1) Department,
Secretariat, Chennai - 600 009.
- 2 The Commissioner of Social Welfare,
Chennai - 600 015.



WEB COPY



W.P. No. 2876 of 2021

J. SATHYA NARAYANA PRASAD, J.

dpa/stn

W.P. No.2876 of 2021
and
W.M.P.No.3214 of 2021

29.09.2023