

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2015

CORAM :

THE HONOURABLE MR. JUSTICE T. RAJA

W.P.NO. 5242 OF 2007
(O.A.NO.5373 of 2002)

A. Meenakshi

...Petitioner

vs.

1. The Commissioner of Social Welfare
Social Welfare and Nutrition Scheme
Chennai - 600 005.
2. The District Social Welfare Officer
Villupuram (District)
3. The Commissioner
Kalrayanmalai Panchayat Union
Villupuram District.

...Respondents

PRAYER: This Writ petition came to be numbered under Article 226 of the Constitution of India by way of transfer of O.A.No.5373 of 2002 from the file of the Tamil Nadu Administrative Tribunal praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent in his proceedings Se.Mu.Aa. No. 67083/Admn.3(2)/97 dated 12.07.2002 and quash the same as illegal and direct the respondents to reinstate the applicant with all attendant benefits and pass further orders.

For Petitioner : Mr. A. Arulmozhi

For Respondents : Mrs. M.E. Rani Selvam,
Additional Government Pleader
for R1 and R2

No appearance for R3

O R D E R

The petitioner Mrs. A. Meenakshi, filed this Original Application before the Tamil Nadu Administrative Tribunal, Chennai, challenging the impugned order of dismissal from service dated 12.07.2002 passed by the Commissioner of Social Welfare in Se.Mu.Aa. No. 67083/Admn.3(2)/97. Subsequently, the matter got transferred as W.P. No. 5242 of 2007.

2. Learned counsel appearing for the petitioner submitted that she was issued with a charge memo by the District Social Welfare Officer, Villupuram District, the second respondent on 19.02.1998 for the allegation of having produced bogus certificate. Since the explanation submitted by the petitioner was not satisfactory, an enquiry was conducted by the enquiry officer on 10.06.1998. Learned counsel further submitted that the enquiry was not conducted in accordance with the provisions of Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules and the same is vitiated by the principles of natural justice, for the reason that the petitioner was not given proper opportunity to defend herself in the enquiry. It is also the further claim of the petitioner that the letter dated 13.01.1998 issued by the Secretary to Director of Government Examination, Chennai in Na.Ka. No. 054579/B1/97 stating that the statement of marks produced by the petitioner under Register No.574650 for March 1995 as bogus since it differed from the original records available in the office, is liable to be set aside as it was not served upon the petitioner.

3. Learned counsel appearing for the petitioner heavily contending against the reasonings and the conclusions reached by the first respondent while passing the impugned order, further submitted that the petitioner was appointed as a Child Welfare Officer on 17.08.1967 and got her name included in the panel of Child Welfare Officers eligible to be promoted as Rural Welfare Officers. The petitioner was posted as Rural Welfare Officer at Kalrayanmalai Panchayat Union, Villupuram. After joining the said post, the Joint Director (Administration PO), by his proceedings dated 02.02.1998 directed the petitioner to produce the originals of S.S.L.C mark sheets. Accordingly, the petitioner submitted her mark sheets duly complying with the directions issued by the Joint Director. But the second respondent, the District Social Welfare Officer issued a charge memo in Na.Ka. No. 67083/E2/97 dated 19.02.1998 alleging that the statement of marks submitted by the petitioner was false and that she had obtained promotion by submitting a bogus certificate. When a charge memo was issued under Rule 17(b) of the Tamil Nadu

Civil Services (Discipline and Appeal) Rules, the petitioner submitted a detailed explanation on 05.03.1998 strongly denying the charges. That apart, the petitioner also made a request to the respondents to issue a copy of the letter issued by the Secretary to the Director of Government Examinations based on which charges were framed. Thereafter, an enquiry was conducted by the enquiry officer on 10.06.1998 and on completion of the enquiry a report was submitted on 03.07.1998. The grievance of the petitioner, as contended by learned counsel for the petitioner is that the petitioner was not given a fair and reasonable opportunity in accordance with Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The reason is, neither the letter dated 13.01.1998 of the Director of Government Examinations as prayed by her was produced nor the officer who issued such a letter was examined as a proof of allegation. Thereafter, the petitioner submitted further representation on 15.09.1998. But, without considering that explanation also, the order of dismissal from service has been passed against the petitioner.

4. Learned counsel appearing for the petitioner further submitted that the only allegation against the petitioner was that she had produced a bogus SSLC Certificate as though she had obtained 38 marks instead of 10 marks in Mathematics. When it is alleged in the charge memo that the petitioner had corrected the 10 marks awarded to Mathematics as 38 marks, the petitioner explained before the respondents that in Std. X she appeared four times and she passed the subjects one by one. Therefore, the question of altering 10 marks into 38 marks in Mathematics subject does not arise in the case of the petitioner. But the respondents merely relying upon the proceedings dated 13.01.1998 issued by the Secretary to Director of Government Examinations, Chennai in Na.Ka. No. 054579/B1/97, which says that the statement of marks produced by the petitioner under Registration No.574650 during March 1995 was a bogus one because it differed from the original records available with the office, disbelieved the explanation offered by the petitioner. Therefore, when a copy of the letter dated 13.01.1998 issued by the Secretary to Director of Government Examinations, Chennai in Na.Ka. No. 054579/B1/97 was not furnished to the petitioner and when the author of the said letter was not allowed to be cross examined by the petitioner during cross examination, the enquiry can never be called as fair and reasonable.

5. It is further contended that the respondents also have not even produced the original mark sheets carrying 10 marks that was awarded to Mathematics to the petitioner A. Meenakshi. For all these

reasons, the petitioner who joined the services of the respondent as Child Welfare Officer on 17.08.1967 ought not to have been unceremoniously dismissed, when she was already promoted to the post of Rural Welfare Officer, he pleaded. In this context, learned counsel appearing for the petitioner relied on an order passed by this Court in the case of S. Rajamanickam vs. Secretary to Government, Rural Development and Panchayatraj Department & Ors. Reported in (2011) 8 MLJ 225, wherein it is stated that even for proving the charge by preponderance of probabilities, there should be sufficient evidence and materials available on record. It is further held in the said case that any document has to be proved by examining the author and without examining the author as a witness, the said document cannot be placed reliance, as the same was not proved in the manner known to law. On this basis, it was further argued that the impugned order is violative of the principles of natural justice, hence, the same is liable to be set aside.

6. A detailed counter affidavit has been filed by the respondents taking a stand that the petitioner was appointed as a Child Welfare Officer on 17.08.1967 and her name was included in the panel of Child Welfare officers eligible to be promoted as Rural Welfare Officers. A pass in SSLC is not necessary for appointment as Child Welfare Officer. However, when the panel of Child Welfare Officers fit for promotion to the post of Rural Welfare Officers was prepared a pass in SSLC is a must as per the Adhoc rules. Based on the SSLC Certificate produced by the petitioner showing that she had secured 38 marks in Mathematics subject, which indicates that she had passed SSLC examination, her name was included in the panel. Subsequently she was promoted and posted as Rural Welfare Officer at Kalrayanmalai Panchayat Union. After joining the post of Rural Welfare Officer, the petitioner was called by the Joint Director (Admn) by his proceedings dated 02.02.1998 to produce the original SSLC mark sheet. On verification it was found that the petitioner has produced a bogus certificate. However, in order to find out the genuineness of the mark sheet produced by the petitioner, the Commissioner of Social Welfare, the first respondent herein by his Letter in Na.Ka. No.12570/E3/1996 dated 12.06.1997 referred the matter to the Secretary, Directorate of Government Examination, Chennai. In reply to the said letter, the Secretary, Directorate of Government Examination, Chennai in Na.Ka. No. 054579/B1/97 dated 13.01.1998 certified that the statement of marks produced by Tmt. A. Meenakshi having Registered Number 574650 of March 1995 is a bogus one and it differs from the original records available in their office. Hence, the respondent came to the conclusion that the certificate produced by the petitioner showing her marks in

Mathematics subject as 38 instead of 10 is bogus. In view of that, she was issued with a charge memo in Na.Ka. No. 67083/E2/97 dated 19.02.1998 under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules for the charges that she had submitted a bogus SSLC mark sheet. Accepting the report of the enquiry officer which held that all the charges levelled against the petitioner were proved, as the SSLC mark sheet produced by the petitioner was a bogus one, the respondents thought it fit to impose the punishment of dismissal from service. Therefore, it is not open to the petitioner to say that there was no fair and proper opportunity given to her.

7. Mrs. M.E. Rani Selvam, learned Additional Government Pleader appearing for the respondents would submit that in response to the letter of the first respondent dated 12.06.1997, the original mark sheets maintained in the department were verified and it was found that the petitioner had secured only 10 marks in Mathematics subject. In support of her contention, the respondents also produced the original files of the Tabulated Mark Register of March 1995, Volume 156. At page No.1863, against A. Meenakshi of Register No.574650, the marks for Mathematics subject is shown as 10 only and not 38.

8. The explanation offered by learned Additional Government Pleader that in view of the fire accident that took place in the office of the first respondent on 16.01.2012 all the important files and records kept in the 'Ezhilagam Building', Chennai have been gutted and completely destroyed, appears to be reasonable. Further, the counter affidavit filed by the District Social Welfare Officer, Villupuram also shows that when the office of the first respondent was previously functioning in Ezhilagam building, Chepauk, Chennai, suffered a fire accident on 16.1.2012 along with other State Government offices functioning in the other floors. As a result, all the important files and connected records have been destroyed in the fire. However, one of the registers maintained by the first respondent has been produced, wherein it could be seen that in order to find out the genuineness of the SSLC mark sheet of the petitioner, when the first respondent referred the matter to the Secretary of the Tamil Nadu Government, Department of Government Examination, Chennai by letter in Na.Ka. No.12570/E3/96 dated 12.6.97, in reply to the letter of the first respondent, the Secretary of Government Examination, Chennai vide his letter in Na.Ka. No.054579/B1/97 dated 13.1.98 has certified that the statement of mark sheet produced by the petitioner having Registration No.574650/March 95 is found to be a bogus one and it differed from the original records available with their office. No doubt the petitioner should have been furnished with

the copy of the letter dated 13.1.1998, which says that the statement of mark sheet produced by the petitioner was a bogus one. However, in the present case, the non-furnishing of the above letter alone cannot be the basis for interference with the impugned order. The reason is that the official register maintained by the first respondent, on perusal, goes to show that verification of several certificates have been done in respect of several persons like the petitioner. When the mark sheet of the petitioner Tmt.A.Meenakshi with Registration No.574650/March 95 was also cross checked, the original marks of 10 obtained by the petitioner in Mathematics subject, was found corrected as 38. Therefore, this Court is of the considered view that the contention that she was not afforded with reasonable opportunity, is far from acceptance.

9. Accordingly, this Court finds no error in the impugned order. Hence the same is confirmed and the writ petition fails and it is dismissed. No order as to costs.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Social Welfare
Social Welfare and Nutrition Scheme
Chennai - 600 005.
2. The District Social Welfare Officer
Villupuram (District)
3. The Commissioner
Kalrayanmalai Panchayat Union
Villupuram District.

1 CC to Mr. A. Arulmozhi, Advocate SR.No. 7009

1 CC to the Government Pleader, SR.No. 6986

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KM (CO)

PSI (07.04.2015)