

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.12680 of 2006

P.Avoodaiammal

... Petitioner

Vs

1.The Secretary to Government,
School Education Department,
Secretariat, Chennai-600 009.

2.Director of School Education,
College Road,
Chennai-600 006.

... Respondents

Petition is filed under Article 226 of the Constitution of India for the issuance of writ of certiorari calling for the records relating to G.O.Ms.No.31 School Education (M2) Department dated 20.2.2006 issued by the 1st respondent and quash the same.

For Petitioner : Mr.M.Gnanasekar
For Respondents : Mrs.Raniselvam
Addl. Government Pleader

O R D E R

This writ petition has been filed by the petitioner seeking to quash the impugned G.O.Ms.No.31 School Education (M2) Department, dated 20.2.2006 issued by the 1st respondent.

2. The case of the petitioner is that while she was working as B.T. Assistant in Municipal Middle School, Alandur, Chennai, disciplinary proceedings were initiated on 7.11.1994 under Rule 7 of the Tamil Nadu Government Servants Conduct Rules. Challenging the same, the petitioner has filed O.A.No.2677 of 2003 to quash the same. The petitioner has also filed O.A.No.1429 of 2004 seeking to furnish copy of 17(b) proceedings said to have been initiated against her. The aforesaid two Original Applications came to be dismissed by the Tribunal by an order dated 20.04.2004.

3. According to the petitioner, the proceedings initiated under Rule 7 of the Tamil Nadu Government Servants Conduct Rules ended on 5.12.2002 by the 2nd respondent by imposing penalty of Censure and the petitioner was allowed to retire on 30.6.2002 even proceedings were pending. On 29.6.2002, the petitioner issued a lawyer notice calling upon the 2nd respondent to incorporate Rule 7 of the Government Servant Conduct Rules instead of Rule 17(b) of TNCS (DA) Rules. In this regard, the petitioner has also made a representation on 6.5.2003. While so, by a letter dated 14.3.2006, the 2nd respondent communicated the impugned Government Order dated 20.2.2006 issued by the 1st respondent cancelling the punishment of Censure and permitted the 2nd respondent to take proceedings under Rule 8 of the Tamil Nadu Pension Rules for making charges against the Vigilance Commissioner. Further, the 2nd respondent was directed to follow all procedures for taking disciplinary action and submit a final report to the Government for taking action.

4. The writ petition was admitted on 28.4.2006. At the time of admission, the learned Single Judge of this Court granted interim stay in respect of the impugned Government Order in WP.MP.No.14274 of 2006 and notice was issued to the respondents. By an order dated 07.3.2007, this Court ordered that the interim order to continue until further orders and also directed the respondents to file counter within four weeks.

5. Despite specific order, no counter-affidavit has been filed by the respondents till the matter was taken up for hearing by this Court.

6. I heard Mr.M.Gnanasekar, learned counsel for the petitioner and Mrs.M.E.Raniselvam, learned Additional Government Pleader for the respondents and perused the entire materials available on record.

7. Challenging the impugned Government Order, the learned counsel for the petitioner submitted that the proceedings initiated against the petitioner were under Rule 7 of the Tamil Nadu Government Servant Conduct Rules, which was not the disciplinary proceedings initiated under Rule 17(b) of TNCS (DA) Rules. He would submit that the disciplinary power conferred on the Government cannot be exercised arbitrarily that too after four years by the 1st respondent.

8. The learned counsel further submitted that there is no justification on the part of the 1st respondent in ordering continuing the disciplinary proceedings, which was ended on 05.12.2002. Further, the 1st respondent has failed to understand that Rule 8 of the Tamil Nadu Pension Rules operates in totally

different sphere and thus, prayed for setting aside the impugned Government Order.

9. Per contra, the learned Additional Government Pleader appearing for the respondents submitted that the 1st respondent after considering all aspects has issued the impugned Government Order and same warrants no interfere. Therefore, prayed for dismissal of the writ petition.

10. I have considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

11. It appears that while the petitioner was in service disciplinary proceedings were initiated on 7.11.1994 under Rule 7 of the Tamil Nadu Government Servants Conduct Rules. Challenging the same, the petitioner had filed O.A.No.2677 of 2003 before the Tamil Nadu Administrative Tribunal, Chennai. The petitioner also filed O.A.No.1429 of 2004 seeking direction on the respondents therein to furnish a copy of the charge memo issued under Section 17(b) of TNCS (DA) Rules. The Tribunal has taken both the Original Applications together and by the common order dated 20.4.2004, dismissed both the applications.

12. According to the petitioner, the proceedings initiated under Rule 7 of the Tamil Nadu Government Servants Conduct Rules ended on 05.12.2002 by imposing penalty of Censure by the 2nd respondent and pending proceedings, the petitioner was allowed to retire on 30.6.2002. The further plea of the petitioner is that with ulterior motive and also with malafide intention Rule 17(b) of TNCS (DA) Rules was pressed into service wrongly and wilfully, which was not found in the disciplinary proceedings dated 07.11.1994.

13. On a perusal of the common order dated 20.4.2004 passed in O.A.Nos.2677 of 2003 and 1429 of 2004, it is seen that while dismissing the Applications filed by the petitioner, the Tribunal observed as under:

"The second application has practically become infructuous because the respondents do not claim to have framed any charge memo under rule 17(b). It seems at the time when they refused re-employment, it has been stated that the applicant is facing a charge under rule 17(b) and therefore she could not be given re-employment. But the applicant was served with a charge memo dated 7.11.1994 and a copy of the same is found in pages 19 and 50 of the typed set of papers. The charge memo does not specifically state that it has been issued under 17 (b). But since the enquiry is held after the

retirement, naturally the enquiry must be held adopting the procedure for 17(b). Therefore, only on this meaning it has been stated that the applicant is facing enquiry under 17(b) and therefore, she has refused re-employment."

14. Thus, it is clear that the proceedings initiated against the petitioner were under Rule 7 of the Tamil Nadu Government Servants Conduct Rules, which is not the disciplinary proceedings under Rule 17(b) of TNCS (DA) Rules and it cannot be continued after the petitioner was allowed to retire.

15. By the impugned Government Order, the order imposing punishment of Censure was cancelled and further the 2nd respondent was permitted to take proceedings under Rule 8 of the Tamil Nadu Pension Rules for making charges against the Vigilance Commissioner and the 2nd respondent was directed to follow all procedures for taking disciplinary action and submit a final report to the Government.

16. It is pertinent to note, the 1st respondent ought to have seen that the disciplinary power conferred on the Government cannot be exercised arbitrarily that too after three years. Even assuming that the order of penalty dated 05.12.2002 was passed by the 2nd respondent without the knowledge of the 1st respondent, the petitioner should not be put to prejudice and hardship. The order of penalty was passed on 05.12.2002 by the 2nd respondent became final on 20.4.2004 when the Tribunal passed an order in the Original Applications.

17. It is also seen from the records that the petitioner issued a lawyer notice on 29.6.2002 calling upon the 2nd respondent to incorporate Rule 7 of the Tamil Nadu Government Servant Conduct Rules instead of Rule 17(b) of TNCS (DA) Rules and the petitioner had also submitted a representation on 6.5.2003 in this regard. After keeping silent for nearly three years, without any justification, the 1st respondent has passed the impugned Government Order ordering continuing the disciplinary proceedings by cancelling the order of Censure which was finally ended on 05.12.2002. The said act of the 1st respondent is unsustainable in law for the reason that after a delay of three years, all of a sudden, the 1st respondent has passed the impugned Government Order cancelling the order of Censure and permitted the 2nd respondent to take disciplinary proceedings against the petitioner. Further, the 1st respondent has failed to understand Rule 8 of the Tamil Nadu Pension Rules which operates in totally different sphere.

18. On a perusal of the impugned Government Order, it is seen that without affording opportunity of hearing, the 1st

respondent has passed the impugned Government Order.

19. In Rajasthan State Road Transport Corporation and another Vs. Bal Mukund Bairwa (2), reported in (2009) 4 SCC 299, the Hon'ble Supreme Court held:

"35. Any order passed in violation of the principles of natural justice save and except certain contingencies of cases, would be a nullity."

20. Time and again, the Hon'ble Supreme Court and this Court reiterates that the order passed without hearing the party concerned is nullity in law. Admittedly, in the case on hand, the petitioner was not heard by the 1st respondent before passing the impugned order. Therefore, the impugned order is liable to be quashed. Further, the 1st respondent has passed the order after a long delay of three years. No convincing reason was given by the 1st respondent for the delay in passing the impugned order.

21. In the result, the writ petition is allowed and the impugned Government Order in G.O.Ms.No.31 School Education (M2) Department, dated 20.2.2006 passed by the 1st respondent is quashed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government,
School Education Department,
Secretariat, Chennai-600 009.

2.The Director of School Education,
College Road,
Chennai-600 006.

+1 cc to Mr.M.Gnanasekar, Advocate SR.No.68978
+1 cc to The Government Pleader, SR.No.70846

W.P.No.12680 of 2006

CSL/04.01.2019