

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 02.11.2018

CORAM:
THE HONOURABLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

W.P.No.8534 of 2008

V. Murugaian

..Petitioner

Vs.

1. The Commissioner of Social Welfare,
Chepauk,
Chennai-600005.

2. The Collector, Villupuram,
Villupuram District.

..Respondents

Prayer:- Writ Petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the 1st respondent in Na.Ka.No.21739/NMP/2007 dated 06.07.2007 confirming the order of the 2nd respondent in Na.Ka.PE4/9185/2004 dated 23.01.2006 and quash the said orders and direct the respondents to reinstate the petitioner in service with all attendant benefits.

For Petitioner : Mr.P.Rajendran

For Respondents : Mr.R.S.Selvam
Government Advocate

ORDER

This Writ Petition is filed to issue a Writ of Certiorarified Mandamus to quash the impugned order of the 1st respondent in Na.Ka.No.21739/NMP/2007 dated 06.07.2007 confirming the order of the 2nd respondent in Na.Ka.PE4/9185/2004 dated 23.01.2006 and further direct the respondents to reinstate the petitioner in service with all attendant benefits.

2.The case of the petitioner is that he was working as a Noon Meal Organizer at Government High School, Alampadi, Mugaiyur Block, Villupuram District. A charge memo was issued by the Commissioner of Mugaiyur Panchayat Union in Na.Ka.A6/2683/05 dated 16.07.2005 framing five charges against the petitioner. The petitioner has submitted his explanation and an enquiry was conducted and statement was recorded from him and no witnesses were examined. The enquiry report was not furnished to him and

he was given an opportunity to submit his additional explanations. The Collector of Villupuram District has passed an order dated 23.01.2006 in Na.Ka.PE4/9185/2004, imposing a punishment of removal from service which is in violation of all Principles of Natural justice. The said order is highly arbitrary, illegal, unjust, unfair and un-sustainable in law.

3.The petitioner has preferred an appeal before the Director of Rural Development, Chennai and the said Director has sent the papers to the Commissioner of Social Welfare Department, Chennai, and the 1st respondent herein has passed the impugned order rejecting his appeal confirming the order of removal.

4.The petitioner would submit that the enquiry report was not furnished to him and the punishment of removal from service was imposed without an opportunity to defend himself. The said post is a civil post and he has been entitled to the protection given under Article 32 of the Constitution of India and they cannot simply dismiss or remove him from service without holding any valid enquiry and that only statements was recorded and the removal order was passed by the 2nd respondent which was confirmed by the 1st respondent has to be set aside and there was no evidence produced by the respondents to come to the conclusion that all the charges have been proved.

5.The statement of the 1st respondent that the petitioner was given a personal hearing by the 2nd respondent on 12.12.2005 is contrary to the fact. The 1st respondent has failed to appreciate the fact that personal hearing is different from giving an opportunity to submit an additional explanation with regard to the findings of the enquiry officer. The enquiry report was not furnished to him and the order has been mechanically issued by the authorities and as per the established principles, whether the penalty was excessive and as per Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the petitioner ought to have been given an opportunity.

6.The counter affidavit was filed by the 2nd respondent and the learned Government Advocate appearing for the respondent would contend that it was accepted that the petitioner was a Noon Meal Organizer working in Noon Meal Centre, Government High School at Alambadi. The District Collector went on surprise inspection on 13.07.2005, where the petitioner was working and had found that 71 eggs issued to the school for Noon Meal Programme was shortfall and that out of 358 eggs only 287 were available and he has cheated the children by not providing them the eggs for their noon meal. It was also found from the records that the petitioner has incurred material loss to the Government to the tune of Rs.1,66,527/-. Hence, he was immediately suspended from service on 14.07.2005 and charge memo

was issued on 27.05.2005. Based on the explanations offered by the petitioner, final orders were passed by removing him from service vide proceedings in Na.Ka.PE4/9185/2004. Before removal a chance of personal hearing was given to the petitioner but he did not furnish any additional evidence or explanation. All the procedures were followed while passing the orders on the charge memo issued against the petitioner. The appeal filed by the petitioner was rejected by the Secretary to Government, the 2nd respondent herein only based on the materials placed before it while confirming the order of the Collector. A show cause notice was issued on 25.07.2005 to offer his explanation and accordingly, the petitioner has submitted his explanation on the charges framed against him while passing the final orders. Based on the charges framed and explanation given by the petitioner, another chance of personal hearing was given to the petitioner on 12.12.2005. The 2nd respondent has passed final order holding that the charges are proved and then removed the petitioner from service. Hence, the averment that the order was passed in violation of Principles of Natural Justice is been negatived. The petitioner did not come under the civil services rules, those rules are not applicable to the petitioner as he was covered by adhoc rules.

7.The petitioner had shortfall of 71 eggs and the petitioner himself has accepted the charge in his explanation. He has given two contradictory statements during the enquiry that there was an accident while travelling by cycle due to which the eggs have broken while in the writ petition filed in W.P.No.29433, he has submitted that the eggs were rotten while checking the quality and hence, he has removed the rotten eggs. And also further the petitioner has incurred loss to government exchequer of Rs.1,66,527 worth commodities such as rice, dhall, oil, etc., which were meant for providing noon meal. The petitioner has cheated the innocent children and misappropriate criminal actions were taken against him separately. Earlier to these incidents the petitioner was suspended four times for the same charges. Hence, the District Collector has taken into consideration of all the materials and aspects of the prior charges and therefore passed the order of removal. The order of termination is proper and he would submit that accordingly the 1st respondent/Commissioner of Social Welfare Department has upheld the orders of the 2nd respondent/Collector. Since, the Tamil Nadu Civil Services Rules 23 is not applicable to the petitioner as he was a part time employee and governed by adhoc rules, personal hearing has been given and the petitioner has been removed from service.

8.Heard the learned counsel for the petitioner and respondents and on perusing the materials on record, the shortfall of food items during the period from 1991-1998 has been proved.

9.The petitioner was given a show cause notice in letter dated 15.11.2005 for an enquiry held on 28.11.2005 and the same was received by the petitioner on 24.11.2005. Again the 1st respondent has also sent him a notice dated 25.05.2007 calling the petitioner to appear before him on 04.06.2007 for personal enquiry to the petitioner and the same was received by the petitioner on 30.05.2007. The enquiry report has been given to the petitioner and the order of removal of service has been sent to him immediately on 23.01.2006, against which the petitioner filed an appeal. At the time of explanation he has not raised any such allegations that he has not given any personal opportunity which was only on notes given by the Collector's personal secretary regarding the said charges and based on the said notes and also on the Commissioner's notes questions were raised by the Collector to the petitioner herein. At that time he has not answered to the Collector and before the Collector he has not raised the question that he was not given personal opportunity and also at the time of giving another letter wherein he has stated that there is no such findings by the District Collector based on the notes and also based on the Commissioner's notes. The questions were raised and the petitioner has also at the time of personal hearing answered them hence need not be any separate enquiry report has been furnished by the Secretary. He has only taken the statements from the explanation of the petitioner and he has produced only notes regarding the said charge and explanation was given by the petitioner for the same. There is a note to be put up by the personal secretary to the collector and based on the Commissioner's report and the explanation given by the petitioner and based on the said notes of the personal secretary orders has been passed.

10.At the time of enquiry before the Commissioner of Social Welfare, the petitioner was directed to appear in person and at the time of enquiry also in the appeal, it has been found that on 16.07.2005 charges were framed and explanations were received on 23.08.2005. Based on the Commissioner's report and the explanation given by the petitioner and based on the said notes of the personal secretary, the District Collector has passed an order on 23.01.2006. On 12.12.2005, the Collector has directed the petitioner to appear before him in person and to place his explanations by hearing in personal and as per the same the petitioner has appeared before the District Collector on 12.12.2005 and gave his explanations.

11.From this it could be seen that the averments of the petitioner is not correct and the opportunity of personal hearing was given to the petitioner and it was left to the petitioner to raise those objections before the Collector but he has not done so and in the appeal he cannot raise the same. Only after hearing him and when there is no others materials produced

by the petitioner, the Collector has passed an order based on the records and materials available before him and explanations given by the petitioner. The petitioner who was working as a Noon Meal Organizer has not come out with the clean hands and it could be seen that he has already served with the five charges and he is under the habit of mis-appropriation and accordingly, the petitioner has been removed from service for shortfall of eggs to be given to the children in the Noon Meal Scheme.

12. Accordingly this Writ petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

nsd/vji

To

1. The Commissioner of Social Welfare,
Chepauk,
Chennai-600005.

2. The Collector,
Villupuram District.

+1cc to Mr.P.Rajendran, Advocate, S.R.No.76655
+1cc to the Government Pleader, S.R.No.76454

W.P.No.8534 of 2008

SSI(CO)

rrs 11/03/2019