

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.19199 of 2011

Kuppammal

... Petitioner

Vs

1.The Director of Social Welfare,
Chepauk, Chennai-5.

2.The Secretary to Government,
Social Welfare &
Nutritious Meal Programme,
Fort St.George, Chennai-9.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the respondents 1 and 2 in connection with the impugned orders passed by them in Na.Ka.No.22473/ADMN5(3)/2007 dated 08.04.2009 and G.O (D). No.179, Social Welfare and Nutritious Meal Programme (SL1) Department dated 13.12.2010 and quash the same.

For Petitioner : Mr.K.Venkata Ramani (SC) for
Mr.M.Muthappan

For Respondents: Mr.T.M.Pappiah,
Special Government Pleader

O R D E R

Heard Mr.K.Venkata Ramani, learned senior counsel for the petitioner and Mr.T.M.Pappiah, learned Special Government Pleader appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorari, to call for the records of the respondents 1 and 2 in connection with the impugned orders passed by them in Na.Ka.No.22473/ADMN5(3)/2007 dated 08.04.2009 and G.O (D). No.179, Social Welfare and Nutritious Meal Programme (SL1) Department dated 13.12.2010 and quash the same. "

3. The case of the petitioner is as follows:-

The petitioner was appointed as Balasevika in the Social Welfare Department on 01.01.1971, on the basis of her

eligibility and qualification as the petitioner has passed 10th Standard in old pattern in the year 1964-65. After serving for about 23 years, she came to be appointed as Community Nutrition Supervisor Grade II by the orders of the first respondent dated 02.08.1993. She was due for superannuation on 30.05.2007. However, she was not allowed to retire as she was placed under suspension and pending disciplinary action.

4. As regards the appointment as Community Nutrition Supervisor Grade II is concerned, the educational qualification prescribed for such appointment was, pass in SSLC. According to the petitioner, she had passed 10th Standard in 1964-65 and on the advice she appeared for the examination of 10th Standard in the revised pattern in 1992, privately. According to her, she had come out successfully and obtained Secondary School Leaving Certificate. On being appointed as Community Nutrition Supervisor Grade II, the petitioner was also placed in the regular pay scale of Rs.95-1660.

5. After being placed under suspension, the petitioner was also issued with the charge memo under Rule 17(b) of the Tamil Nadu Civil Services (D & A) Rules. The following charges came to be framed against her:-

"1. The petitioner without possessing necessary educational qualification for appointment as Community Nutrition Supervisor, Grade II produced bogus educational qualification certificate and cheated the Government.

2. She has violated Rule 20(1) of the Government Servants Conduct Rules."

6. On receipt of the charge memo, the petitioner submitted her explanation on 04.07.2007, denying the charges. An enquiry was conducted into the charges, in which, no witnesses were examined and nor any documents marked by any witnesses. The enquiry was not conducted as per the procedure contemplated in the rules, as no documents were marked in terms of the procedure nor any witnesses were examined in order to establish the charges framed against the petitioner. The Enquiry Officer merely obtained statement from the petitioner and finally, held the charges proved by report dated 12.11.2007.

7. The petitioner was further directed to submit her explanation on the enquiry report without furnishing the copy of the same. However, without considering the fact that no enquiry report was submitted and the enquiry was not conducted in terms of the disciplinary rules, the first respondent vide his proceedings dated 08.04.2009, imposed a punishment of removal from service. On receipt of the order of removal from service, an appeal was preferred to the second respondent on 18.05.2009 and the same has not been disposed of by the appellate authority.

8. The learned senior counsel for the petitioner would submit that except producing the letter from the Board of Secondary Education, dated 29.05.2007, as a proof of bogus certificate produced by the petitioner, there was no other piece of evidence either oral or documentary was produced in the enquiry in order to sustain the charges. No proper opportunity was given to the petitioner to defend her case. The only document which was relied on also was not marked by the officials nor the petitioner was given any opportunity for cross examining any witnesses on that score. Moreover, whatever be the circumstances, the enquiry report was also not furnished to the petitioner.

9. The learned senior counsel would draw the attention of this Court to the enquiry report enclosed along with the covering letter dated 06.02.2008. From the enquiry report, it could be seen that there was absolutely no discussion in regard to the contents of the charges nor there was any evidence which was discussed or analyzed which was obvious from the enquiry report. It could be seen that no evidence was let in on behalf of the prosecution for establishing the charges framed against the petitioner. The report of the Enquiry Officer has been prepared on the basis of statement given by the petitioner. No effort has been made by the Enquiry Officer to ascertain the truth or otherwise of the explanation offered by the petitioner.

10. As rightly contended by the learned senior counsel for the petitioner, the enquiry has been conducted in utter violation of the mandatory procedure contemplated in service rules. Therefore, the report of the Enquiry Officer, under the said circumstances, cannot be sustained both in law and on facts.

11. Although initially the appeal was not disposed of, the petitioner approached this Court in W.P.No.10842 of 2009, this Court vide order dated 18.05.2009, disposed of the writ petition with the direction to the second respondent to consider the statutory appeal preferred by the petitioner. In pursuance of the direction passed by this Court, the second respondent passed the impugned G.O (D). No.179, Social Welfare and Nutritious Meal Programme (SW1) Department, dated 13.12.2010, rejecting the appeal.

12. The learned senior counsel for the petitioner would also submit that the first respondent's order is also a non-speaking order as well as the order passed by the appellate authority vide G.O (D). No.179, Social Welfare and Nutritious Meal Programme (SW1) Department, dated 13.12.2010. First of all, he would submit that the disciplinary authority had not considered the fact that no enquiry report was furnished to the petitioner, which by itself became fatal to the continuance of disciplinary action and further, the manner in which the enquiry was conducted ought to have been noticed by

the disciplinary authority, since such sham exercise on the part of the Enquiry Officer in conducting the enquiry, completely vitiated the entire disciplinary proceedings. Both the disciplinary authority as well as the appellate authority have abdicated their statutory responsibilities in not addressing the issue about the proper conduct of enquiry in violation of the disciplinary rules and have chosen to pass non-speaking orders which were also contrary to the disciplinary rules. In all, the entire disciplinary action has to be set aside as being illegal and unreasonable. Besides, the learned senior counsel would also submit that the petitioner was qualified for the earlier post held by her as Balasevika and that is not in dispute and only when the petitioner was appointed as Community Nutrition Supervisor Grade II, higher qualification was prescribed and the certificate produced by the petitioner in regard to the higher qualification was being questioned.

13. Upon notice, learned Special Government Pleader appearing for the respondents, entered appearance and made his submissions.

14. This Court after considering the arguments of the learned senior counsel and after perusing the relevant materials and pleadings placed on record, is in agreement with the submissions made by the learned senior counsel for the petitioner that the enquiry proceedings which was conducted against the petitioner, was not inconsonance with the mandatory procedure contemplated in the disciplinary rules. By no stretch of legal standard the procedure adopted by the Enquiry Officer cannot be appreciated and the findings by the Enquiry Officer is also unsupported by any piece of evidence. Such findings cannot be the basis for any further action, particularly, an extreme order of removal from service of the petitioner.

15. Moreover, the disciplinary authority has not appreciated the fact that the petitioner was not issued so called enquiry report, even assuming that such enquiry report can be treated as one existing in the eye of law. Non furnishing of the enquiry report vitiated the entire disciplinary action and on this ground alone the impugned penalty has to be interfered with. Even otherwise, this is the case where the finding was not supported by any evidence and this Court can safely come to the conclusion that this is a case of no evidence and as such the findings of the Enquiry Officer are ought to be interfered with as legally unacceptable.

16. Even otherwise, the orders passed by the disciplinary authority as well as the appellate authority are non-speaking orders and do not address the issues which culminated in issuance of impugned penalty against the petitioner, such non-speaking orders are contrary to the provisions of disciplinary

rules as the authorities are expected to pass reasoned orders while considering all aspects of the case both factually and legally, particularly, the order by the appellate authority is not in consonance with Rule 21 of the Disciplinary and Appeal Rules. The said rules contemplate consideration of appeal in detail and every point in issue has to be addressed by the appellate authority. It appears that the appellate authority was merely guided by the opinion expressed by the Tamil Nadu Public Service Commission and the order does not disclose any independent application of mind as per the provision of the Disciplinary and Appeal Rules, particularly, Rule 21. It is incumbent upon the authority to independently examine the appeal and come to the conclusion and cannot be solely guided by the opinion expressed by the Tamil Nadu Public Service Commission. In the instant case, the appellate authority has completely abdicated his statutory responsibility and has chosen to toe the line of the Tamil Nadu Public Service Commission. In the absence of such consideration, this Court has to necessarily take a strong view to hold that the entire disciplinary action right from the conduct of the enquiry and the findings rendered thereon and the punishment imposed by the disciplinary authority and confirmation of the same by the appellate authority, cannot be countenanced at all both in law and on facts.

17. For all the above said reasons, the petitioner has made out a clear case for grant of relief. In view of the same, the impugned orders in Na.Ka.No.22473/ADMN5(3)/2007 dated 08.04.2009 and G.O (D). No.179, Social Welfare and Nutritious Meal Programme (SL1) Department dated 13.12.2010 are set aside. Since the petitioner attained the age of superannuation on 30.05.2007, before imposing the impugned penalty on her, the respondents are directed to settle all the retirement benefits and grant pension and all other monetary benefits as admissible to the petitioner. The order shall be complied with by the respondents, within a period of eight weeks from the date of receipt of a copy of this order. It is made clear that the petitioner is not entitled to back wages for the period of non-employment on the principle of "no work no pay".

18. With the above direction, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1.The Director of Social Welfare,
Chepauk, Chennai-5.

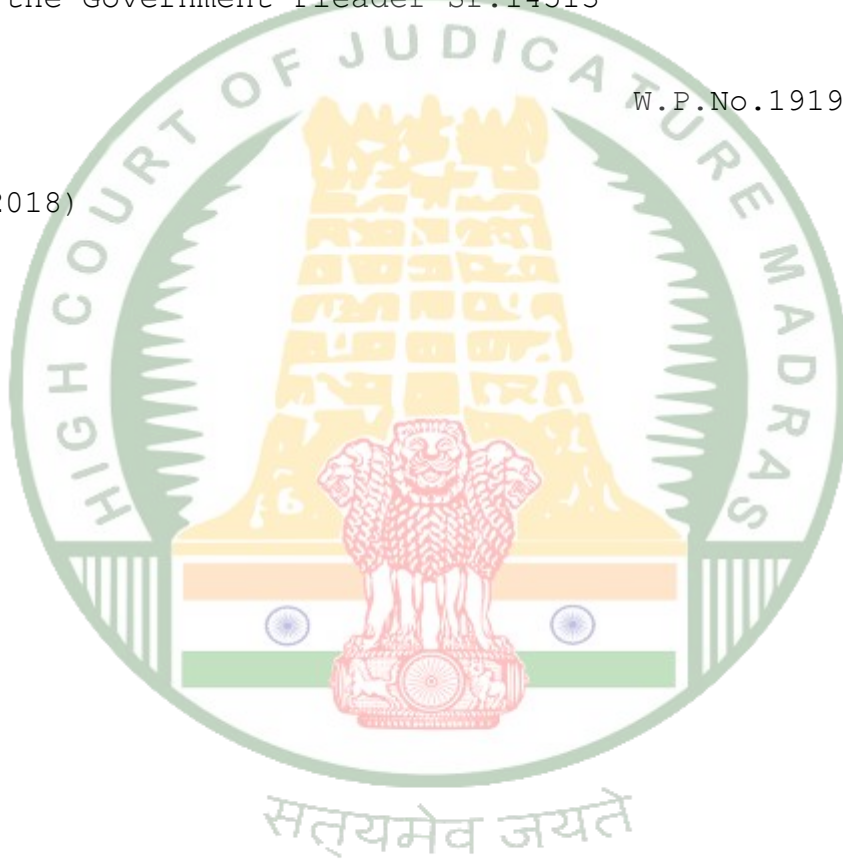
2.The Secretary to Government,
Social Welfare & Nutritious Meal Programme,
Fort St.George, Chennai-9.

+ 1 cc to Mr.M. Muthappan, Advocate Sr.14707

+ 1 cc to the Government Pleader Sr.14513

W.P.No.19199 of 2011

BR(CO)
EU(06/04/2018)



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