

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2018

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Writ Petition No.30049 of 2008
and
M.P.No.1 of 2008

K.A.Subramani

.. Petitioner

Vs.

1 The Director of Elementary Education
Chennai - 600 006.

2 The District Elementary Education Officer
Krishnagiri, Krishnagiri District. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a writ of Certiorarified Mandamus to call for the records from the first respondent relating to his order bearing Na.Ka.No.37989/A1/2002, dated 17.4.2008, confirming the order of the second respondent bearing Na.Ka.No.2999/A3/2003, dated 29.11.2007 dismissing the petitioner from service and quash the said order of the first respondent dated 17.4.2008, which confirms the said order of the second respondent dated 29.11.2007 and direct the respondents to reinstate the petitioner in service with continuity of service and backwages and other attendant benefits.

For Petitioner : Mr.S.Ayyathurai

For Respondents : Mr.K.Venkatramani
Additional Advocate General
assisted by Mr.R.Govindasamy
Spl. Government Pleader

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of Certiorarified Mandamus to call for the records from the first respondent relating to his order bearing Na.Ka.No.37989/A1/2002, dated 17.4.2008, confirming the order of

the second respondent bearing Na.Ka.No.2999/A3/2003, dated 29.11.2007 dismissing the petitioner from service and quash the said order of the first respondent dated 17.4.2008, which confirms the said order of the second respondent dated 29.11.2007 and direct the respondents to reinstate the petitioner in service with continuity of service and backwages and other attendant benefits.

2. The facts in a nutshell are as under: The petitioner joined as Assistant Teacher in Panchayat union Elementary School at Bellaramballi on 1.2.1982 and while he was working at Devarmukkulam Panchayat Union Elementary School, he was promoted as Headmaster and post at Bannihallibudur School, Kaveripattinam Union. It is stated that by order dated 12.9.2000 passed by the Assistant Elementary Education Officer, Kaveripattinam, the petitioner and one T.K.Viswanathan (Headmaster of Kurumbatti) were directed to work in his office to clear backlog of works qua provident fund payments and preparation of pay bills.

3. It is stated that the second respondent, by proceedings dated 21.12.2003, placed the petitioner under suspension along with five others with effect from 19.12.2003 on the ground that a criminal offence was under investigation and the petitioner was arrested on 19.12.2003 as per the report dated 20.12.2003 of the Crime Branch Inspector, Dharmapuri.

4. It is averred that the petitioner on coming out on bail came to know that a writ petition as public interest litigation was filed by Teachers Association complaining about misappropriation of provident fund amounts by persons working in Assistant Elementary Education Officer, Kaveripattinam. In the said writ petition, a counter affidavit was filed by the respondent to the effect that one Muthukumarasamy (Junior Assistant) and Kolandai (Record Clerk) have misappropriated the said amount.

5. It is the case of the petitioner that he had been falsely implicated in the criminal case. Assailing the suspension order, the petitioner filed O.A.No.1581 of 2004 before the Tamil Nadu State Administrative Tribunal, Chennai, which, by order dated 16.4.2004, directed the respondents to review the case of the petitioner by ascertaining the exact role played by the petitioner in the act of misappropriation. The Tribunal also noted that it is open to the respondents to consider transferring the petitioner to a far away place pending disposal of the criminal case and they can consider reinstating the petitioner in service after effecting transfer.

6. It is stated that even after obtaining such order from the Tribunal, the respondent authority did not pass any order

reinstating the petitioner, but the second respondent issued a charge memo dated 15.3.2006 alleging that the petitioner was helpful in the commission of misconduct of misappropriation of provident fund amounts to certain teachers. The petitioner is stated to have submitted explanation on 29.3.2006 refuting the charges and thereafter enquiry is stated to have been committed and report of the Enquiry Officer was submitted to the petitioner and based on the remarks, the petitioner submitted explanation on 27.11.2007. Thereafter, the second respondent passed an order dated 29.11.2007 dismissing the petitioner from service. The appeal preferred to the first respondent was dismissed by order dated 17.4.2008.

7. In this backdrop, the present writ petition is filed for the relief stated supra.

8. The learned counsel appearing on behalf of the petitioner, inter alia, contended as under:

- (a) The charge levelled against the petitioner is vague and no specific allegation has been levelled against the petitioner. In fact, the charge memo issued is common to all the delinquents, without any specific charge;
- (b) As per Rule 9(a) of the Tamil Nadu Civil Servants Conduct (Discipline and Appeal) Rules, if several persons are involved in the commission of an offence, there should be a common enquiry, but in the case on hand, though the charges are alike, enquiry was conducted individually, and, therefore, the enquiry is vitiated;
- (c) No opportunity was given to the petitioner to defend himself by way of oral enquiry, though personal hearing was given and the procedure adopted by the respondents is in violation of the elementary principles of natural justice;
- (d) The charge memo did not contain the list of witnesses and the documents which form the basis for the framing of charge, which ought to have been specified as per the guidelines/instructions issued by the Government and hence the procedure adopted by the second respondent is vitiated;
- (e) The Enquiry Officer has relied on the statements of M/s.Elayappan and Kulandai, who were also charge sheeted, to hold the petitioner guilty of the charge, without giving an opportunity to the petitioner to put forth his case in this regard and, therefore, violation of principles of natural justice is writ large; and

(f) Even though the petitioner vide explanation dated 13.6.2007 requested for copies of certain documents, the same were not furnished to the petitioner, thereby denying him an opportunity to defend his case in an effective manner.

9. Per contra, the learned Additional Advocate General appearing on behalf of the respondents while refuting the arguments advanced on behalf of the petitioner, inter alia, contended as under:

- a) The act of the petitioner has brought down the name of the department and its officers and that there is an abettor of the offence and the respondent authorities have strictly adhered to the procedure contemplated under law;
- b) Inasmuch as a common enquiry was conducted by the Enquiry Officer, there is no violation of Rule 9(a) of the Tamil Nadu Civil Servants Conduct (Discipline and Appeal) Rules; and
- c) The second respondent has followed the guidelines and instructions issued by the Government time and again and there is no violation whatsoever.

10. Heard the learned counsel on either side and perused the documents available on record.

11. The facts are not much in dispute and, therefore, this Court does not propose to traverse through the facts once again.

12. The entire basis for initiation of the disciplinary proceedings which ended in the dismissal of the petitioner is based on the allegation of misappropriation of provident fund amounts by the petitioner and some other persons qua which a criminal case has been registered and the same is pending before the learned Judicial Magistrate.

13. It is seen from the records that the first accused (N.Muthukumarasamy); second accused (K.Chandramohan); fourth accused (Thangavel) and seventh accused (M.Nagarajan) died pending the said criminal case. It is also seen that one N.Nalgopal (thirteenth accused) in the said criminal case, who was also dismissed from service, was reinstated into service pursuant to the order passed by this Court. One N.Ramachandran (fifteenth accused), who was found guilty, was awarded lesser punishment of imposition of Rs.500/- per month to be recovered from his pension. One other person - Manivannan (third accused), who was found guilty by the department, was granted provisional pension.

14. It is seen from the records that In the writ petition filed by Teachers Association complaining about misappropriation of provident fund amounts by persons working in Assistant Elementary Education Officer, Kaveripattinam, a counter affidavit was filed by the respondent authorities to the effect that one Muthukumarasamy (Junior Assistant) and Kolandai (Record Clerk) have misappropriated the said amount. However, the Enquiry Officer, without giving due credence to the said letter, relied on the statements of some other charge sheeted employees and found the petitioner guilty. It is also seen from the records that the evidence of the charge sheeted employees, on which reliance was placed by the Enquiry Officer, was not put to the notice of the petitioner.

15. In respect of an accused involved in the very same crime by name Nal Gopal, this Court in the writ petition filed by him, being W.P.No.13119 of 2010, by order dated 30.8.2013, held that there is not an iota of evidence available on record to substantiate the charges levelled against the petitioner even by preponderance of probabilities. This Court set aside the impugned order and allowed the writ petition.

16. The Hon'ble Supreme Court time and again held that even in a domestic enquiry, the charge must be clear, definite and specific as it would be difficult for any delinquent to meet the vague charges. In the case on hand, from the very inception of the disciplinary proceedings, it is the plea of the petitioner that no specific overt act has been attributed against him. Even from the counter affidavit filed by the respondents, it is seen that they have merely stated that the petitioner is an abettor of the crime. The act committed by the petitioner is not specifically stated, but for a perfunctory statement that he had abetted in the commission of the crime. Evidence adduced should not be perfunctory. No enquiry can be sustained on vague charges. Enquiry has to be conducted fairly, objectively and not subjectively. There is a distinction in proof and suspicion.

17. The proposition of law that a government employee facing a departmental enquiry is entitled to all the relevant statements, documents and other materials to enable him to have a reasonable opportunity to defend himself in the departmental enquiry against the charges is too well established to need any further reiteration. The department should ensure that the delinquent officer is given the opportunity to cross-examine the witnesses and during the cross-examination the delinquent had the opportunity of confronting the witnesses. The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded

a reasonable opportunity to defend himself against charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. In the case on hand, it is seen from the records that evidence of the co-delinquents was collected behind the back of the petitioner and on the basis of the same, a finding was rendered, without giving an opportunity to the petitioner to cross-examine the witnesses.

18. Serious charge of corruption / misappropriation requires to be proved to the hilt, as it brings civil and criminal consequences upon the employee concerned. He would be liable to be prosecuted and would also be liable to suffer severest penalty awardable in such cases. Therefore, such a grave charge of quasi-criminal nature is required to be proved beyond any shadow of doubt and to the hilt. It cannot be proved on mere probabilities.

19. For the foregoing reasons, the impugned orders passed by the respondents, imposing the punishment of dismissal from service on the petitioner, warrants interference and accordingly, the same are set aside and the respondents are directed to reinstate the petitioner into service with continuity of service with all backwages and other attendant benefits. The said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order.

20. In the result, the writ petition is allowed on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Deputy Registrar

//True copy//

Sub Assistant Registrar

vs

To:

1 The Director of Elementary Education
Chennai - 600 006.

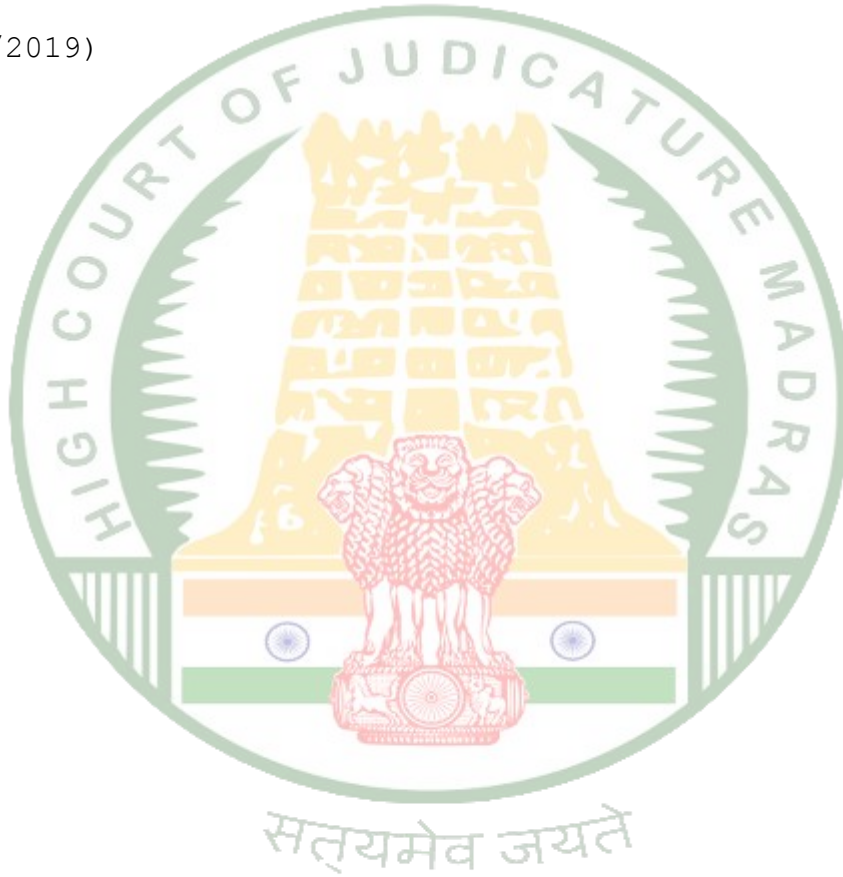
2 The District Elementary Education Officer
Krishnagiri, Krishnagiri District.

+1cc to Mr.S.Ayyathurai, Advocate SR.No.23831

+1cc to Government Pleader SR.No.24635

W.P.No.30049 of 2008 and
M.P.No.1 of 2008

GMY (31/01/2019)



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