

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2018

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.36790 of 2015

K.Vasuki

.. Petitioner

Vs.

1. The District Collector Nagapattinam,
Nagapattinam District,
Nagapattinam.
 2. The Project Officer,
District Project Office,
Nagapattinam.
 3. The Project Officer of Child Development,
Child Development Project Office,
Sirkazhi,
Nagapattinam District.
- .. Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to impugned order of the 1st respondent passed in Na.Ka.No.290/A3/2015 dated 19.10.2015 and quash the same and direct the respondents to reinstate the petitioner with all monetary benefits.

For Petitioner .. Mr.Ravi Shanmugam
for Mr.K.Govindaraj V.Jaishankar

For Respondent .. Mr.P.Rosekamalam,
Government Advocate

ORDER

The writ petitioner herein, has approached this Court, seeking the following relief:

"To issue a Writ of Certiorarified Mandamus calling for the records pertaining to impugned order of the 1st respondent passed in Na.Ka.No.290/A3/2015 dated 19.10.2015 and quash the same and direct the respondents to reinstate the petitioner with all monetary benefits."

2. The petitioner was appointed as Anganvadi Servant on 19.06.1995 at Semmankudi Centre, Sirkali Block and she had been working as Anganvadi Servant without any remarks for the past 20 years. The third respondent had directed the petitioner to take additional charge of Thennalakudi Anganwadi Centre and as per the direction, she took additional charge of the said Centre. While so, the first respondent issued a suspension order on 24.02.2015. Thereafter, a charge memo was issued by the second respondent on 23.03.2015 containing eight articles of charges. At this, the petitioner submitted her explanation on 01.04.2015 and the second respondent by communication dated 29.05.2015, intimating the petitioner to give further explanation and in response to the same, further explanation was offered by the petitioner vide representation dated 16.06.2015.

3. Thereafter, it appears that an enquiry was conducted behind the back of the petitioner since the petitioner was not given an opportunity to participate in the enquiry. In these circumstances, the petitioner has approached this Court in W.P.No.21097 of 2015 challenging the suspension order. The said writ petition was disposed of by this Court on 14.07.2015, by directing the authority concerned to conclude the enquiry and pass final orders, within a period of two months from the date of receipt of a copy of this order. However, as per the direction, the enquiry was not completed within the stipulated time and therefore, a legal notice was issued on behalf of the petitioner on 09.10.2015 to comply with the order passed by this Court in W.P.No.21097 of 2015 dated 14.07.2015. On receipt of the legal notice, straight away the first respondent passed an order dated 19.10.2015 dismissing the petitioner from service. The said order passed by the first respondent is put to challenge in the present writ petition.

4. Mr.Ravi Shanmugam, the learned counsel for the petitioner would submit that without conducting any enquiry, the impugned penalty of dismissing the petitioner from service was imposed by the first respondent and therefore, the same has to go in lock, stock and barrel. The impugned order would disclose that there was no enquiry conducted and the petitioner was not afforded an opportunity to participate in the enquiry. According to the learned counsel for the petitioner, the respondents have conducted the enquiry behind the back of the petitioner. In any event, the ultimate action of the first respondent in passing the impugned order on receipt of the legal notice issued on behalf of the petitioner appears to be hasty and vindictive. From the impugned order, nothing to be deduced into the factum of any proper enquiry conducted before such drastic action taken by the respondents.

5. Upon notice, Ms. P. Rosekalam, the learned Government Advocate entered appearance on behalf of the respondents and filed a counter affidavit.

6. In the counter in paragraph-5, it is stated as under:

"5. ... The Anganwadi posts are not statutory post and they are not governed by any rules framed by the Government. The Anganwadi workers' service conditions are governed by the executive instructions, orders issued by the Government of Tamil Nadu as per the guidelines/instructions by the Government of India, now and then as they are employees of the Integrated Child Development Scheme. The petitioner herein was appointed under the scheme and she is not the employee of the State. She cannot claim remedy under Article 311(2) of the Constitution of India. The Supreme Court rulings regarding departmental proceedings are only applicable to the holders of the civil posts under the State. The petitioner herein was appointed under the scheme. Therefore, she can never get a Supreme Court ruling on her favour.

According to the respondents, the principles of natural justice need not be followed in view of non-statutory status of the employee as he or she would not be considered as regular Government employee and he or she cannot claim any remedy as admissible to the other Government employees.

7. This Court is unable to appreciate such arguments being advanced at these times, since the Court repeatedly held that even in the absence of any statutory regulations, the principles of natural justice has to be followed before any adverse action is taken against the public servant. The very basic right of any Government or non Government employee, be it he or she is entitled to application of principles of natural justice before any adverse orders passed against him or her. Therefore, the contention put forth by the respondents in the counter affidavit cannot be appreciated as being a valid piece of submission or argument.

8. On the other hand, as rightly contended by the learned counsel for the petitioner that the petitioner was not afforded an opportunity to prove her case as against the charge memo issued against her. In these circumstances, the decision of the first respondent in the impugned proceedings dated 19.10.2015, has to go as being invalid and illegal.

9. For the above said reasons, the impugned proceedings in Na.Ka.No.290/A3/2015 dated 19.10.2015, passed by the first respondent is hereby set aside. It is open to the respondents to proceed with departmental action against the petitioner by giving her an opportunity in terms of well established principles of natural justice, by providing adequate opportunity of participation in the enquiry. Due to passage of time, it is made clear that the authorities may proceed against the petitioner if only circumstances necessitate and require for continuance of departmental action.

10. In view of the above, the authorities are directed to reinstate the petitioner forthwith and the order in the writ petition shall be complied with by the respondents within a period of four weeks from the date of receipt of a copy of this order.

11. With the above direction, this Writ petition is allowed. No costs.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

kal
To

1. The District Collector Nagapattinam,
Nagapattinam District,
Nagapattinam.
2. The Project Officer,
District Project Office,
Nagapattinam.

WEB COPY

3. The Project Officer of Child Development,
Child Development Project Office,
Sirkazhi,
Nagapattinam District.

+1cc to Mr.K.GOVINDARAJ, Advocate, S.R.No. 26466
+1cc to the Government Pleader, S.R.No. 26286

W.P.No.36790 of 2015

NRL (CO)
TR(12/04/2018)



WEB COPY