

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P. No.27696 of 2008  
and M.P. No.1 of 2008

R.Swaminathan

.. Petitioner

-vs-

1.The Personal Assistant  
(Noon Meal) to the Collector,  
Kancheepuram,  
Kancheepuram District.

2.The Commissioner,  
St. Thomas Mount Panchayat Union,  
Chitlapakkam, Chennai-600 064.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the first respondent in Na.Ka.No.1442/07/Sa.U.Thi/Pa.O-1 dated 24.10.2008 and quash the same in so far as the punishment is concerned and direct the respondents to grant all consequential benefits to the petitioner.

For Petitioner : Mr.P.Mohanraj

For respondents : Mr.K.Ravikumar,  
Additional Government Pleader

ORDER

The writ has been filed challenging the correctness of the impugned order dated 24.10.2008 passed by the Personal Assistant (Noon Meal) to the Collector, the first respondent herein in Na.Ka.No.1442/07/Sa.U.Thi/Pa.O-1 and seeking a direction to the respondents to grant all consequential benefits to the petitioner.

2.Learned counsel appearing for the petitioner submitted that the petitioner was appointed as Noon Meal Organiser on 17.12.1991 and after rendering sixteen long years of service, he was placed under suspension by a Proceeding dated 07.03.2008 in

Na.Ka.No.1442/07/ Sa.U.Thi/Pa.O-1 issued by the Personal Assistant (Noon Meal) to the Collector, the first respondent herein. Thereafter, a charge memo containing eight charges, has been issued to him by the Commissioner, St. Thomas Mount Panchayat Union in Na.Ka.No.2168/2008/A7 dated 17.03.2008. Since the charges are vague and lacking in particulars, the petitioner submitted his detailed explanations on 27.03.2008 denying the charges, but the disciplinary authority, finding that the explanation offered by the petitioner was not satisfactory, conducted an enquiry. According to the learned counsel appearing for the petitioner, after completion of the enquiry, the petitioner was not furnished with a copy of the enquiry report and he was not given any opportunity to submit his explanation with regard to the findings of the enquiry officer.

3.Learned counsel appearing for the petitioner would further submit that when the petitioner was not aware of the findings of the enquiry officer, it is not open to the Personal Assistant (Noon Meal) to the Collector, Kancheepuram, the first respondent herein to pass the order dated 24.10.2008 imposing the punishment of stoppage of increment for two years, besides severely warning him. Learned counsel appearing for the petitioner would also submit that without furnishing copy of the enquiry officer, it is not open to the respondents to impose such a punishment of stoppage of increment for two years.

4.Placing reliance on the order passed by this Court in the case of Mr.K.Lourdusamy vs. the Collector, Thiruvannamalai District and another, submitted that when the petitioner therein working as Noon Meal Organiser at RC Middle School, Thiruvannamalai District, served with a charge memo containing eight charges by the Commissioner of Chetpet Panchayat Union, this Court, by order dated 21.06.2012 made in W.P. No.4506 of 2007, holding that the procedure adopted by competent authority could be followed only to impose minimum punishment and not major punishment, has allowed the writ petition stating that the impugned order is totally arbitrary and thus hit by Article 14 of the Constitution. Therefore, the learned counsel prays for allowing the writ petition.

5.In reply, learned Additional Government Pleader appearing for the respondents would submit that the petitioner was issued a charge memo calling upon him to submit his explanation and accordingly, the petitioner, denying all the eight charges, has submitted his explanation. Since the eight charges are very serious in nature, an Enquiry Officer was appointed. As the explanation offered by the petitioner was not convinced, the disciplinary authority, on the basis of the findings given by the enquiry officer, passed an order imposing punishment of stoppage of increment for two years.

6.Placing on record a judgment dated 07.12.2006 passed by the Hon'ble Apex Court in Appeal (Civil) 4953-4957 of 1998 in the case of State of Karnataka and others vs. Ameerbi and others, learned Additional Government Pleader appearing for the respondents would submit that the requirement on the part of the State to follow the principles and conditions mentioned in Articles 14 and 16 of the Constitution of India need not be complied with, for the persons, holding civil post. In the present case, when the charge memo issued and enquiry was held, it is not open to the petitioner to state that there is a violation of principles of natural justice and that too, the order of punishment of stoppage of increment was passed only after holding enquiry and therefore, the learned Additional Government prays for dismissing the petition.

7. In this context, it is pertinent to extract relevant portion of the judgment as under:

'Applying the said principles of law, it was held that a Mauzadar holds a civil post under the State as: (i) the State has the power and the right to select and appoint him; (ii) he is subordinate to public servant; (iii) he receives remuneration by way of a commission and sometimes a salary; (iv) there exists a relationship of a Master and a Servant; (v) he holds an office on the revenue side of the administration to which specific and onerous duties in connection with the affairs of the State are attached; (vi) the office falls vacant on the death or removal of the incumbent; (vii) he is a responsible officer exercising delegated powers of Government; (viii) he is appointed revenue officer.

Anganwadi workers, however, do not carry on any function of the State. They do not hold post under a statute. Their posts are not created. Recruitment rules ordinarily applicable to the employees of the State are not applicable in their case. The State is not required to comply with the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. No process of selection for the purpose of their appointment within the constitutional scheme existed. We do not think that the said decision has any application in the instant case.'

8.A perusal of the above judgment of the Hon'ble Apex Court would show that the recruitment rules, ordinarily applicable to the employees of the State, are not applicable in the case of Anganwadi workers and the State is not required to comply with the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India.

9. In the present case, the petitioner, having suffered a charge memo, containing eight charges which are serious in nature, submitted his explanation. Admittedly, not being satisfied with the same, an Enquiry Officer was appointed. On the basis of the findings given by the Enquiry Officer, the petitioner was imposed with the punishment of stoppage of increment for two years.

10. Moreover, the case law relied on by the learned counsel appearing for the petitioner is not applicable to the present case. As the Hon'ble Apex Court has held that the State is not required to comply with the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India, this Court, taking note of the fact that the petitioner was imposed with the punishment of stoppage of increment for two years for eight charges which are very serious in nature, is not inclined to interfere with the impugned order passed by the respondents. Accordingly, the writ petition fails and the same is dismissed. Consequently, M.P. is closed. No costs.

vga

Sd/-  
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Personal Assistant  
(Noon Meal) to the Collector,  
Kancheepuram,  
Kancheepuram District.

2. The Commissioner,  
St. Thomas Mount Panchayat Union,  
Chitlapakkam, Chennai-600 064.

+1cc to the Govt. Pleader, Vide Sr.No.26272

Kak(07/05/2019)

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