

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on: 17.06.2019

Orders Pronounced on : 08.07.2019

ORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.29988 of 2012

C.Rajendra Prasad ... Petitioner

Vs.

1. The Tamil Nadu State Legal Services Authority,
Rep. by its Member Secretary,
North Fort Road,
High Court Campus,
Chennai-600 104.
 2. The President,
District Legal Services Committee,
Tirunelveli.
 3. The Chairman,
Taluk Legal Services Committee,
Ambasamudram,
Tirunelveli District.
 4. The Chairman,
Taluk Legal Services Committee,
Eraniel,
Kanyakumari District.
- सत्यमेव जयते.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records pertaining to the order dated 20.07.2012 bearing TNSLSA.No.7748/E/2002 of the first respondent and quash the same.

For petitioner : Mr.V.Sudhakar for M/s.N.Ananda Kavitha

For respondents : Mr.S.Arockia Maniraj for R-1

ORDER

R.SUBBIAH, J

The petitioner has come forward with the present Writ Petition praying for issuance of a Writ of Certiorari to call for the records pertaining to the order dated 20.07.2012 bearing TNSLSA.No.7748/E/2002 of the first respondent and quash the same.

2. It is the case of the petitioner that he joined the fourth respondent-Taluk Legal Services Committee, Eraniel, Kanyakumari District, as Administrative Assistant on 19.06.1981. He was transferred from Cheranmadevi Taluk Legal Services Committee to Ambasamudram Taluk Legal Services Committee in 1984. He was promoted as Senior Administrative Assistant with effect from 12.11.1985. Prior to his joining at Ambasamudram Taluk Legal Services Committee, one Raja, who was working as Assistant in the third respondent- Ambasamudram Taluk Legal Services Committee between 23.02.1993 and 02.05.1994, failed to maintain the records properly and hence, the petitioner was seriously handicapped to find out the exact data/datas relating to the number of pending legal aid petitions, number of disposed cases, etc. This fact is more evident from the proceedings of the second respondent, dated 06.06.1994, in which he had clearly mentioned that the records for the year 1992-93 and 1993-94 at the third respondent-Committee, were not properly maintained when he made inspection on 20.08.1993. Pending legal aid petitions were mixed up with the disposed case bundles and consequently, it had become difficult to trace the papers, as he is the only staff available in the third respondent-Committee. As per the available records, the petitioner had furnished the statement of the pending and disposed applications for April 1994 and May 1994 to the second respondent-Committee. On receipt of the statement, the second respondent-Committee found that the statement furnished by the petitioner was not correct, as he had shown the disposal of 313 cases in May 1994, which included 157 civil cases. The second respondent came to a prima-facie conclusion that the statement is not correct on the ground that all the Civil Courts were on summer vacation during May 1994, and thereby, there cannot be disposal of 157 Civil Cases during May 1994 and consequently, the second respondent instructed the Secretary of the District Committee to carry out the inspection in the third respondent-Committee and on inspection, it was found that several applications were missing and action was not initiated on several applications, and pending applications were mixed up with the disposed case bundles.

3. Hence, on 14.02.1995, the second respondent issued a charge memo to the petitioner under Enquiry No.1/1995, alleging

that the petitioner had furnished false statements regarding pending and disposed cases for April 1994 and May 1994. The charge memo contains six set of charges which mainly deal with maintenance of records, inaction on the part of the petitioner in not taking action against legal aid petitions, mixing up of the pending applications along with the disposed bundles and also about non-entry of payments made to the Advocates through cheques in the register of Cheque issue and receipt.

4. To the abovesaid charge memo dated 14.02.1995, the petitioner gave his explanation on 18.04.1995 refuting all the allegations contained in the charge memo stating that he had given the statement based on the available records, as he took charge on 03.05.1994. It is the further stand of the petitioner that his predecessor-Raja had not maintained the records properly and hence, the petitioner requested the second respondent to drop the charges.

5. Not being satisfied with the above explanation, enquiry was ordered to be conducted and the President of Ambasamudram Taluk Legal Aid Committee was appointed as Enquiry Officer. On 22.03.1996, the Enquiry Officer submitted his findings to the second respondent-President of District Legal Services Committee, Tirunelveli, and in his findings, except Charge No.6, all the other charges were held 'not proved'. On 12.09.1997, the third respondent passed an order dropping the disciplinary proceedings against the petitioner, and thus, the petitioner was exonerated from the charges which were initiated by charge memo, dated 14.02.1995.

6. While so, to the shock and surprise of the petitioner, on 01.09.1998, a memo was issued by the third respondent-Chairman, Taluk Legal Aid Committee, Ambasamudram, stating as if the petitioner prepared the findings against the charges levelled against him and obtained the signature of the Chairman without his knowledge, along with the other papers and submitted the same to the District Legal Aid Committee, Tirunelveli for final orders and thereby created false documents. Thus, the petitioner was directed to submit his explanation within a week from the date of receipt of the said Memo. On 07.09.1998, the petitioner gave his explanation refuting the allegations levelled against him, stating that he has not obtained the signature from the third respondent-Chairman of the Taluk Legal Services Committee, Ambasamudram, Tirunelveli District without his knowledge in the final orders passed in the disciplinary proceedings initiated against him. In the meantime, Departmental Enquiry in D.E.No.1/1995, dated 14.02.1995 was once again enquired and on 28.08.2000, the third respondent gave a finding stating that the charges levelled against the petitioner in Charge Nos.1 to 6 are held to be proved.

7. In the meanwhile, the third respondent issued another charge memo on 19.01.2001 in D.E.No.1/2000, alleging that on 12.09.1997, the petitioner obtained the signature of his superior officer in D.E.No.1/1995, without disclosing the facts, and thereby, misguided the officer. In respect of the said charge, on 05.03.2001, the petitioner gave his explanation stating that he has neither misguided the superior officer, nor misused the official position and obtained the signature without his knowledge. With regard to the said charge, an enquiry was conducted by the third respondent, and on 29.04.2002, findings were given holding the petitioner guilty of the charge(s).

8. Thereafter, on 23.07.2007, the first respondent-Member Secretary of the Tamil Nadu State Legal Services Authority issued a show cause notice enclosing the findings of D.E.No.1/1995, calling for explanation from the petitioner within a period of 15 days as to award of punishment. On 13.08.2007, the petitioner gave his further representation requesting the first respondent to view the matter leniently, as the mistake had been committed by him due to pressure of work and he has got a family consisting of his wife, aged parents and two children to maintain. Thus, he prayed for taking lenient view and to consider his plight sympathetically.

9. It is the grievance of the petitioner that after lapse of five years, on 20.07.2012, the first respondent, by the impugned order dated 20.07.2012, imposed the punishment of dismissal from service with immediate effect. On 30.07.2012, the petitioner gave a mercy petition requesting the first respondent to reconsider the abovesaid dismissal order and the said mercy petition was rejected by the first respondent. Hence, the petitioner has filed the present Writ Petition for the relief stated supra.

10. When the Writ Petition is taken up for consideration, the learned counsel representing the learned counsel on record for the petitioner submitted that the first respondent held the petitioner guilty of the charge(s) on the ground that the petitioner himself has admitted the guilt in his explanation, dated 07.09.1998, whereas, the petitioner, immediately after issuance of charges both under DE.1/1995 and DE.1/2000, had given his explanation on 18.04.1995 and 05.03.2001, refuting the charges contained in the charge memo, but the first respondent has solely relied on the letter/explanation, dated 07.09.1998 stating as if the petitioner had admitted his guilt. But on a perusal of the letter dated 07.09.1998, it can easily be inferred that the petitioner being a subordinate and in order to give a quietus to the proceedings, had simply stated that he has obtained the signature on 29.07.1998 without the knowledge of

the third respondent. Such a letter cannot be taken in isolation to hold the petitioner guilty of the charge(s), especially when the petitioner has given his explanation refuting the allegations levelled against him in the charge memo(s). Above all, the person who signed the earlier report of the Enquiry Officer, was never examined and he is the best person to say as to whether he has signed the document after going through the same or the petitioner has obtained the signature fraudulently. Hence, the findings of the disciplinary authority holding the petitioner guilty of the charge(s), are incorrect.

11. That apart, the learned counsel for the petitioner submitted that the impugned order/disciplinary proceedings is/are vitiated by the principles of natural justice, inasmuch as the disciplinary authority ought to have kept an open mind when he furnished the findings of the Enquiry Officer to the petitioner, but on 23.07.2007, the first respondent gave a show cause notice enclosing the Enquiry Officer's report only for the purpose of awarding punishment, thereby accepting the findings of the Enquiry Officer, which is in violation of the principles of natural justice.

12. Further, by relying upon the decision of the Supreme Court reported in 2005 (6) SCC 636 (P.V.Mahadevan Vs.MD.T.N.Housing Board), the learned counsel appearing for the petitioner submitted that there is inordinate delay in respect of the conclusion of the departmental proceedings. For the second round of innings, by initiating departmental proceedings, the findings dated 29.04.2002, were given by the Enquiry Officer holding the petitioner guilty of the charges. Thereafter, after lapse of five years, on 23.07.2007, the first respondent issued show cause notice enclosing the copy of the findings on D.E.No.1/1995 initiated against the petitioner and directed the petitioner/delinquent to submit his explanation as to the award of punishment. The petitioner gave his further representation on 13.08.2007 and again after lapse of five years, on 20.07.2012, the first respondent imposed punishment of dismissal from service and thus, according to the learned counsel appearing for the petitioner, there is an inordinate delay in respect of the conclusion of departmental proceedings. Thus, according to the learned counsel appearing for the petitioner, the protracted disciplinary proceedings against a Government employee would vitiate the entire proceedings. Hence, for the above reasons, learned counsel appearing for the petitioner prayed for quashing the impugned order and to allow the Writ Petition.

13. Countering the above submissions, by filing counter affidavit, learned counsel appearing for the first respondent/Tamil Nadu State Legal Services Authority submitted that the petitioner joined the Taluk Legal Services Committee on

19.06.1981 at Cheranmadevi. It is the duty of the petitioner to maintain records in proper manner and to prepare the statement of pending and disposed cases. After preparing the statement, he has to send the same periodically every month to the higher officials. The petitioner used to prepare false statement of cases according to his whims and fancies. He used to disclose as if more cases are registered and disposed of in accordance with law. However, in reality, the figure shown by the petitioner is totally false. Since he failed to maintain the records, he was issued charge memo for: (i) furnishing of wrong disposals, (ii) not maintaining B-Register; (iii) missing of 89 applications; (iv) failure to take action on 49 applications; (v) for not submitting correct statements and (vi) not properly maintaining the Cheque Register and F-Register. It is further contended by the learned counsel appearing for the first respondent that the Subordinate Judge, Ambasamudram, was appointed as Enquiry Officer and after due enquiry, all these six charges were held to be proved against the petitioner. The petitioner who anticipated that he would be given punishment for the above said proved charges and in order to overcome the issue, he himself prepared the findings of the Enquiry Officer as if he is exonerated from all the charges. Thereafter, without the knowledge and consent of the Enquiry Officer/Subordinate Judge/Chairman, Taluk Legal Aid Committee, Ambasamudram, the petitioner inserted the fabricated drop report along with the other files and obtained the signature of the Enquiry Officer and submitted the same to the District Legal Aid Committee for final orders. When this fraudulent act committed by the petitioner came to be known, another set of charge(s) was/were framed and enquiry was initiated in D.E.No.1 of 2000 and enquiry was properly conducted and the guilt of the petitioner was proved. Thereafter, the petitioner was issued show cause notice, for which he replied that the mistake committed by him had occurred only inadvertently due to pressure of work. The petitioner was due to retire after attaining superannuation on 31.07.2012. On 20.07.2012, the petitioner was dismissed from service taking into account the gravity of the proved charges.

14. It is further contended by the learned counsel appearing for the first respondent that the punishment was imposed in time and due to administrative reasons, there is delay in approving the award of punishment by the first respondent. The reason for the delay is that the first respondent is holding honorary and additional charge, apart from his regular work. Therefore, the delay is caused only due to administrative reasons and such a ground would not excuse the grave charge(s) committed by the petitioner. Thus, the learned counsel appearing for the first respondent prayed for dismissal of the Writ Petition.

15. Keeping in mind the above submissions made by the learned counsel appearing on either side, we have carefully gone through the entire materials available on record.

16. The sum and substance of the submissions made by the learned counsel for the petitioner is that the petitioner has given his letter/explanation dated 07.09.1998 to the charge memo dated 01.09.1998, stating that, " ... I prepared the findings and I have obtained the signature on 29.07.98 in the findings without the knowledge of the Chairman, Taluk Legal Services Committee, Ambasamudram as innocent and not wantonly. ..." Only to give a quietus to the matter, he had simply stated that he has obtained the signature on 29.07.1998 without the knowledge of the third respondent, but that cannot be taken as admission of the petitioner/delinquent as if the petitioner had admitted his guilt, but based on the letter dated 07.09.1998, he was found guilty of the charge(s), which is patently illegal. It is yet another submission of the learned counsel for the petitioner that the Tamil Nadu State Legal Services Authority, represented by its Member-Secretary, ought to have kept open mind while issuing the show cause notice enclosing the report of the Enquiry Officer. But in the instant case, while issuing the show cause notice, the first respondent expressed his mind with regard to the punishment to be awarded by accepting the findings of the Enquiry Officer, which is in violation of the principles of natural justice. The learned counsel appearing for the petitioner further contended that the disciplinary proceedings in this case are being protracted for a period of ten years, which would be much more than the imposition of punishment, and therefore, on the said ground of delay in conclusion of departmental proceedings, the impugned order is liable to be quashed.

17. On a perusal of records and oral and documentary evidence, it is seen that the petitioner was given due opportunity of cross-examination of the witnesses and the petitioner-delinquent himself was also examined, and only thereafter, the Enquiry Report was furnished. In respect of both the enquiry proceedings, explanation was called for from the petitioner and not being satisfied with the same, the impugned order of punishment of dismissal from service was imposed.

18. It is the contention of the petitioner that while the first respondent issued show cause notice dated 23.07.2007 stating that he is enclosing the copy of the findings on D.E.No.1/95 initiated against the petitioner only for the purpose of award of punishment, and thereby, the first respondent has accepted the Enquiry Report even before receiving the explanation from the petitioner, which shows that the first respondent had adopted pre-determined notion in imposing the punishment of dismissal from service. But we find on a perusal of the records

that while passing the said order dated 23.07.2007, a mere reference was made with regard to the award of punishment, but that cannot be taken as if he has pre-determined in his mind in awarding the punishment. Moreover, this is a case of admission of guilt by the petitioner himself, which is evident from his explanation, dated 07.09.1998. He had categorically admitted in his letter/explanation, dated 07.09.1998 addressed to the third respondent as follows:

"I submit that the D.E.1/97 against me is pending for enquiry without conduct of enquiry and without the knowledge of the Chairman I prepared the findings and I have obtained the signature on 29.07.98 in the findings without the knowledge of the Chairman, Taluk Legal Services Committee, Ambasamudram as innocent and not wantonly. I may kindly be excused this time as first and last. Such mistake will not arise in future. I will be more careful in future."

19. We find that considering the gravity of the proved charge(s), the petitioner was imposed with punishment of dismissal from service, which is not disproportionate to the guilt of the petitioner. Hence, we are not inclined to accept the submissions made by the learned counsel appearing for the petitioner.

20. With regard to the contention of the learned counsel appearing for the petitioner on the aspect of delay in conclusion of departmental proceedings, that there is protraction of disciplinary proceedings for more than ten years, which had caused mental agony and sufferings, which is much more than the punishment, the learned counsel appearing for the petitioner relied on the decision of the Supreme Court reported in 2005 (6) SCC 636 (cited supra), from which it is clear that there is delay in initiation of departmental enquiry itself, but it is not the state of affairs in this case. In this case, absolutely there is no delay in initiating the departmental enquiry and only due to administrative exigency/reasons, there is delay in awarding the punishment. From the records, it could be seen that the first respondent is holding honorary and additional charge, apart from his regular work, due to which, the alleged delay had been caused in awarding punishment. Therefore, this Court is of the view that the delay in this case would not vitiate the departmental proceedings, and on this score, we are of the view that the said decision of the Supreme Court cannot be made applicable to the facts of the present case.

21. Moreover, with regard to the submissions made by the learned counsel appearing for the petitioner alleging violation of principles of natural justice, it is to be noted that the petitioner was given due opportunity in each and every stage of the departmental proceedings. Further, explanation was sought for from the petitioner before awarding the punishment, which is clear from the proceedings dated 23.07.2007 of the first respondent, and thus, it cannot be said that there is violation of principles of natural justice.

22. For all the above reasons, absolutely, we do not find any valid reason to interfere with the impugned order passed by the first respondent. The Writ Petition is liable to be dismissed. Accordingly, the same is dismissed. No Costs.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

1. The Member Secretary,
Tamil Nadu State Legal Services Authority,
North Fort Road,
High Court Campus,
Chennai-600 104.
2. The President,
District Legal Services Committee,
Tirunelveli.
3. The Chairman,
Taluk Legal Services Committee,
Ambasamudram, Tirunelveli District.
4. The Chairman,
Taluk Legal Services Committee,
Eraniel, Kanyakumari District.

+1cc to Mr.S.Arockia Maniraj, Advocate SR.No.57162

W.P.No.29988 of 2012

BR(CO)
GMY(14/08/2019)