

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/12/2019

CORAM

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.43748 of 2016

and

WMP.Nos.37576 & 37577 of 2016

A.Bharathi

..Petitioner

Vs.

1. The Principal Secretary to Government,
Higher Education Department,
For.St.George, Chennai - 600 009.
2. The Director of Collegiate Education,
Chennai - 6.
3. The Principal,
Quaid - E- Millath Government Arts College (Women)
(Autonomous), Chennai - 600 002. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for the issuance of Certiorarified Mandamus, calling for the records relating to the third respondent herein Memo.No.1369/P/2016 dated 05.12.2016 and quash the same and consequently direct the first respondent herein to regularize the period of out of employment from 24.12.1988 to 29.10.2006 as per leave rules and Fundamental rules and confer all the benefits to the petitioner including re-fixation of pay scales, increments, seniority, promotions etc with due regards to the petitioner's seniority.

For petitioner ... Mr.R.S.Anandan

For respondents ... Mr.V.Kathirvelu, Spl.G.P (H.Edn)

for R1 to R3

O R D E R

The short issue raised by the writ petitioner is whether or not the second charge memo can be filed on the very same set of allegations levied against him.

2. The petitioner was appointed on compassionate ground as a junior assistant in the Government Arts College for Women, Pudukottai, on 16.08.1986. She completed her probation on 16.08.1984. The writ petitioner availed Maternity Leave from

01.06.1988 to 29.08.1988 and also leave on loss of pay from 30.08.1988 to 22.11.1988. After returning for duty, she was informed that her post in the college was filled up and she was thus reposted to Arignar Anna Government Arts College, Musiri. The writ petitioner rejoined duty at Musiri on 23.11.1988 and worked till 04.12.1988. The writ petitioner then applied for medical leave from 05.12.1988 till 23.12.1988 and left on loss of pay on several occasions for over one year from 24.12.1988 to 31.10.1990, due to her ill health.

3. A notice was then issued to the petitioner by the Principal of the Arignar Anna Government Arts College, Musiri, asking her to show-cause for her leave of over a year. On 26.11.1991, the writ petitioner was dismissed from service by the Principal, Arignar Anna Government Arts College, Musiri, with effect from 01.11.1990, without conducting any enquiry and without following the procedures given in Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955. On 08.03.1996, the writ petitioner submitted an appeal to the Director of Collegiate Education against the dismissal of service. The writ petitioner also submitted a petition before the Principal Secretary to the Government, Higher Education. The Director of Collegiate Education rejected the appeal filed by the writ petitioner claiming that the appeal was delayed. The Principal Secretary to the Government, Higher Education, considered the petitioner's appeal under Rule 36 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and also consulted the Tamil Nadu Public Service Commission for their opinion.

4. On 09.05.2001, the Tamil Nadu Public Service Commission issued a letter and pointed out that only a show-cause notice was issued. Neither was a charge memo been issued nor was any enquiry conducted. Thus holding that the disciplinary action was defective, the Tamil Nadu Public Service Commission advised the Government to set aside the dismissal order and proceed with the disciplinary action from the stage of issuing the charge memo under Rule 17 of Tamil Nadu Civil Services (Discipline and Appeal) Rules.

5. On 16.11.2001, vide G.O.Ms.No.314, the Higher Education Department, issued an order cancelling the dismissal order and the Director of Collegiate Education was directed to proceed with the disciplinary action from the stage of issuing charge memo. On 25.02.2005, the Principal, Arignar Anna Government Arts College, Musiri without reinstating the writ petitioner into the service issued a show-cause notice directing the writ petitioner to submit an explanation as to why she should not be dismissed from the services. The writ petitioner submitted her explanation

on 07.03.2005. On 16.03.2005, proceedings were issued directing the writ petitioner to appear before the enquiry committee constituted by the Principal, Arignar Anna Government Arts College, Musiri. The enquiry committee submitted its report recommending that the writ petitioner to be dismissed from the service with retrospective effect from 01.11.1990. The writ petitioner was called to submit her response to the report. This response was submitted by the writ petitioner on 28.04.2005. The explanation submitted by the writ petitioner was not accepted and on 27.01.2006, an order was passed by the Principal, Arignar Anna Government Arts College, Musiri, dismissing the writ petitioner from service with effect from 01.11.1990 by accepting the recommendation of the enquiry committee. The writ petitioner filed an appeal against this order to Director of Collegiate Education on 26.06.2006 and this dismissal order was cancelled on 26.10.2006 stating that the order of punishment should be passed separately.

6. In the mean time, the writ petitioner was reinstated on 30.10.2006 and she joined duty at the Presidency College, Chennai on 27.11.2006. Punishment order was passed. An order of stoppage of increment for three years without cumulative effect was passed. The Director of Collegiate Education on 20.08.2009, sent a proposal to the Secretary to the Government, Higher Education Department, for regularising the petitioner's absence period from 24.12.1988 to 29.10.2006. While examining this proposal, the Principal Secretary to the Government, noticed that the disciplinary action was done without issuing a charge memo, and the enquiry was conducted by an enquiry committee instead of an enquiry officer. Rule 36 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, was invoked cancelling the punishment and directing the Principal of Presidency college to pass final orders following the conduct of a proper disciplinary enquiry.

7. The Principal of Presidency College accordingly appointed an enquiry officer who conducted an enquiry submitted a report which was served on the petitioner to offer explanation on 24.09.2009. After considering the report of the enquiry officer and the explanation of the writ petitioner, the Principal issued final order on 29.09.2009, stating that the punishment to be met out to the petitioner of the merely be a severe warning. Following this final order, the writ petitioner submitted a representation to the Director of Collegiate Education on 16.10.2009, requesting a promotion to the post of Assistant. ON 30.11.2009, the writ petitioner was promoted to the post of temporary assistant under Rule 39(a)(i) of the Tamil Nadu State and Subordinate Rules. As per the proceedings of the second

respondent, the promotion panel for the post of assistant for the year 2010 and 2011 was released on 26.04.2010 and the writ petitioner was on serial no.1. On 28.08.2010, the writ petitioner was conferred with the promotion to the post of assistant but this was not ordered based on her initial seniority.

8. On 02.11.2010, the writ petitioner sent representations to the Director of Collegiate Education to regularise her period of absence from duty and to confer promotion to the post of assistant with due regard to the petitioner's seniority. The petitioner states that she has sent a number of representations, but there was no reply from the Director of Collegiate Education. On 11.02.2016, the Director of Collegiate Education issued the revised seniority list on which the writ petitioner was shown at sl.no.133 and while preparing the list for promotion to the post of Superintendent, the writ petitioner claims that her name was left out without any reason. Further representations were made by the writ petitioner to the Director of Collegiate Education and to the Principal of Quaid-E-Milat Government Arts College, where the petitioner was then working to include her name in the list of promotion to the post of superintendent. On 01.11.2016, the Principal, Quaid-E-Milat Government Arts College, issued a letter directing the writ petitioner to submit records relating to the disciplinary action initiated for her prior leave of more than one year. This letter further stated that the disciplinary action had been initiated against her by the Director of Collegiate Education. The writ petitioner filed WP.No.41696 of 2016, challenging the letter of the 3rd respondent. This writ petition is still pending. After receipt of notice in WP.No.41696 of 2016, the Principal, Quaid-E-Milat Government Arts College, issued a charge memo stating that while working in Arignar Anna Government Arts College, Musiri, the writ petitioner had not attended duty for more than a year and therefore violated Rule 18 of the Tamil Nadu Government Servants Conducts Rules 1973. The writ petitioner has thus filed the present writ petition calling for letters issued by the Director of Collegiate Education initiated disciplinary proceedings against the writ petitioner, quashing the same and to regularise the period of leave from employment from 24.12.1988 to 29.10.2006.

9. The writ petitioner claims that at this juncture, similar issue had been settled by the final order dated 29.09.2009, which reads as under:-

"2. After reviewing all the above and taking into consideration of the disciplinary action rules, it is evident that the female employees was on leave

fore more than one year only on account of the delivery of a baby by caesarian operation and other unforeseen family circumstances and her transfer from Pudukottai to Musiri. It is further evident that as the college administration did not follow the Government orders that reposting should be given, even if the disciplinary action is pending, which has resulted to this female employee who applied for leave on loss of pay for two years to be kept for more than 16 years under disciplinary action and put her to lot of hardships and lost her promotion due to her during these 18 years itself is construed as a great punishment to her. It is pointed out that she is discharging her duties efficiently without availing any leave except casual leave from the date of her joining on 30.11.2006 in Presidency College.

3. After carefully examining the above findings, as the College Principal is the appointing authority for the post of Junior Assistant borne in Tamil Nadu Ministerial Service Rules, 'Severe warning' is awarded to Tmt.A.Bharathi, Junior Assistant with instruction to follow the Government rules scrupulously in future."

10. The writ petitioner further claims that she has been charged for violation of the Rule 18 of the Tamil Nadu Government Servants Conducts Rules 1973 which deals with canvassing of non-official influence, which reads as under:-

"18. Canvassing of non-official or other outside influence - No Government servant shall bring or attempt to bring any political or other outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government. Explanation I - Government servant causing his own case to be made the subject of an interpellation in Parliament or the State Legislature shall be deemed to have contravened this rule. Explanation II - When M.L.As, M.L.Cs, M.Ps. and other non-officials make representations on behalf of individual Government servants to Ministers, Heads of Departments or other higher officers, it shall be presumed that the concerned Government servant was responsible for bringing political or outside influence to bear upon the superior authority to further his interest unless he proves to the contrary."

11. The writ petitioner claims that this Rule is completely irrelevant to the circumstance of her case and that the respondents are merely initiating frivolous proceedings. The writ petitioner further claims that her juniors have been given promotions to the post of superintendent, but the writ petitioner has been denied the same without any justification. The respondents claim that the writ petitioner has accepted the punishment 'severe warning', thus acknowledging that she is worthy of punishment. They further claim that the writ petitioner was appointed on compassionate grounds and thus should have worked honestly and to the fullest satisfaction of her superiors which she failed to do. Additionally the respondents claim that the writ petitioner cannot be promoted based on seniority till regularising of her leave takes place and that this cannot take place until the enquiry is conducted and the final order is passed in the proceedings initiated against her on 01.09.2016.

12. Heard the counsel for the parties.

13. In the present instance, reference must be placed on the charge memo issued to the writ petitioner on 05.12.2016. The relevant portion which is extracted here under:-

"Disciplinary action under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules is taken against Tmt.A.Bharathi, Assistant, Quaid E Millath Government Arts College (Women), (A), Chennai - 02, for having violated Rule 18 of Tamil Nadu Government Servants Conducts Rules 1973, as she did not attend duty for more than one year from 05.12.1998, when she was working as Junior Assistant, Arignar Anna Government Arts College, Musiri."

14. A basic perusal of this charge memo reveals that the writ petitioner was charged of violation Rule 18 of the Tamil Nadu Government Servants Conducts Rules 1973, which relates to canvassing of non-official or other outside influences. A perusal of Rule 18 reveals that it relates to situation where the Government servants attempt to bring political or other outside influences to further the interest of the Government servant in matters pertaining to their services under the Government.

15. It is prima facie clear that this provision has little relevance to the leave taken by the writ petitioner from 24.12.1988 to 29.10.2006 and justifications for this has been provided in the charge memo. Further the charge memo arises from the very same set of allegations which have already been

dealt with by the final order dated 20.09.2009. Reference may be placed on Union of India Vs. Kunisetty satyanarayana, para 18 which reads as under:-

18. We agree with the learned counsel for the respondent that if the charge which has been levelled under the memo dated 23-12-2003 had earlier been enquired into in a regular enquiry by a competent authority, and if the respondent had been exonerated on that very charge, a second enquiry would not be maintainable. However, in the present case, we are of the opinion that the charges levelled against the respondent under the charge memo dated 23-12-2003, had not been enquired into by any authority and he had not been exonerated on those charges. Hence we are of the opinion that it is not a case of double jeopardy."

16. This judgment was also referred by this Court in the case of R.Kannan Vs. The Director of Medical and Rural Health Service and Family Welfare, Chennai in WA (MD).No.1469 of 2011 dated 20.06.2013. On perusal of the above two judgments, it is clear that the second charge memo cannot be filed on the same set of allegations which have earlier been enquired into and further orders have been passed on the same. It is thus clear that the second charge memo issued by the respondents is frivolous and is therefore set aside. The respondents are thus directed to consider the petitioner's application for regularisation of leave and pass orders within a period of twelve weeks from the date of receipt of a copy of this order.

17. Writ petition is allowed. No Costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(C.O.)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
Higher Education Department, For.St.George,Chennai - 9.
2. The Director of Collegiate Education, Chennai - 6.
3. The Principal, Quaid - E- Millath Government Arts College
(Women) (Autonomous), Chennai - 600 002.

+1 cc to M/s.R.S.Anandan, Advocate Sr.No.106160

AKM/27.01.2020/7P- 5C/

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