

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.3243 of 2017

C.Masilamani

... Petitioner

-vs-

1.The Commissioner,
Social Welfare & Nutritious Meal Programme Department,
Guindy, Chennai-600 032.

2.The District Collector,
Villupuram District,
Villupuram.

3.The Commissioner,
Gingee Panchayat,
Gingee, Villupuram District.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records connected with the order dated 23.11.2015 passed by the 2nd respondent in proceedings Na.Ka.No.BE4/5797/2014 and order dated 04.01.2017 passed by the 1st respondent in Se.Mu.Na.Ka.No.2626/Sa.U.Thi.1/2016 and quash the both the orders and consequently direct the respondents to reinstate the petitioner into service in the same School with all consequential attendant benefits arising thereof.

For Petitioner : Mr.T.S.Kani

For Respondents: Mr.P.Siva Shanmuga Sundaram
Spl. Govt. Pleader

ORDER

This Writ Petition has been filed, challenging the order of the 2nd Respondent dated 23.11.2015 made in Na.Ka.No.BE4/5797/2014, by which the petitioner was dismissed from service and the consequential order of the 1st Respondent dated 04.01.2017 in Se.Mu.Na.Ka.No.2626/Sa.U.Thi.1/2016, confirming the order of dismissal passed by the 2nd Respondent.

2. The Petitioner was placed under suspension by the 2nd Respondent on 13.03.2015 with regard to certain deficiencies found during Audit inspection on 26.02.2015 and he was issued a charge memo dated 25.03.2015, levelling eight charges against him, out of which, seven charges have been held to be proved against the petitioner. The Petitioner has given a detailed reply, denying the charges and though sufficient time was granted to reply to the charge memo, instead of doing so, he has approached this Court by filing a Writ Petition in W.P.No.7976 of 2015 and this Court, on 08.06.2015, had directed the Respondents to pay salary to the petitioner for the suspension period and to pay subsistence allowance till the final orders are passed.

3. The Enquiry Officer had issued notice to the Petitioner and by communication dated 28.08.2015, the appointment of Enquiry Officer was informed to the Petitioner and the Petitioner has denied all the charges. There was a shortage of eggs to be supplied to students in Noon Meal Centre, apart from the fact that the petitioner had involved in misappropriation and mishandling of stock, thereby gained pecuniary advantage. It was also stated by the Respondents that there was a shortage of rice and other materials and due opportunity was given to the Petitioner to appear before the enquiry, in response to which, he had also participated in the enquiry.

4. The stand taken by the Petitioner that without appointment of any Enquiry Officer, he was called for enquiry, cannot be accepted in the light of the communication dated 04.11.2015, sent by the Petitioner, in which, he had merely stated that the enquiry was not properly conducted; the report of the Enquiry Officer was not given, etc. Thus, it is clear that there was an enquiry and there are two categorizations in respect of conduct of enquiry, namely, the enquiry proceedings conducted is completely vitiated, is one aspect and the non-conduct of enquiry, which is totally bad, is another aspect.

5. In this case, the enquiry has been duly conducted and the petitioner is not in a position to establish as to how the findings arrived at by the Enquiry Officer are perverse. Moreover, aggrieved by the order of the Disciplinary Authority, instead of preferring appeal, the petitioner had filed W.P.No.4391 of 2016, challenging the order of the Disciplinary Authority dated 23.11.2015 and thereafter, with the delay of 30 days, the petitioner had preferred an appeal.

6. It is seen that the Petitioner, being a Noon Meal Organizer, was held responsible for the shortfall of 205kgs of rice, 19.5kgs of dhall and 500 eggs out of 800, which are meant

for supply to students. Since the Petitioner did not defend his case effectively and had committed a serious misconduct, he was foisted with the order of dismissal, which has been confirmed by the Appellate Authority. As the petitioner had involved in misappropriation and malpractices with an intention to gain pecuniary advantage, the Disciplinary Authority and the Appellate Authority have rightly come to the conclusion that the charges are proved. The contention of the Petitioner, that the students have not been examined, itself is an ample proof that there was an enquiry and therefore, the defence taken herein by the petitioner, that there was no enquiry at all, cannot be accepted. When there is a prima facie case made out and the Authorities have rendered a finding of fact, in the considered opinion of this Court, the Writ Petition is liable to be dismissed and the Petitioner is not entitled to any relief.

7. In fine, the Writ Petition is dismissed. No costs.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To:

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Social Welfare & Nutritious Meal Programme Department,
Guindy, Chennai-600 032.
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Gingee Panchayat,
Gingee, Villupuram District.

+2 CCS to Mr.S. Danusu, Advocate sr 65408.

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SP(08/08/2019)