

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 2/1/2019

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Appeal No.2815 of 2018

1. The District Collector
Nagapattinam District
2. The Project Officer
District Project Office
Nagapattinam.
3. The Project Officer of Child Development
Child Development Project Office
Sirkazhi
Nagapattinam District. Appellants

vs

K.Vasuki

....

Respondent

Prayer Appeal filed under Clause 15 of the Letters Patent against the order dated 9/4/2018, passed in W.P.No.36790 of 2015.

WP.No. 36790 of 2015: Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of certiorari filed mandamus calling for records pertaining to impugned order of the 1st respondent passed in N.A.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 appellants ... Mr.R.Udayakumar
Additional Government Pleader

J U D G M E N T

(Judgment of the Court was delivered by S.Manikumar,J)

Instant writ appeal has been filed against the order, dated 9/4/2018, passed in W.P.No.36790 of 2015, by which the writ Court, set aside the order of dismissal of the writ petitioner.

2. Material on record discloses that the respondent herein was issued with a charge memorandum, dated 23/3/2015, by the District Planning Officer (Incharge), ICDS, Nagapattinam, containing eight articles of charges. Respondent submitted her explanation, on 1/4/2015. Reading of the impugned order discloses that earlier when the respondent filed W.P.No.21097 of 2015, challenging the order of suspension. The said writ petition was disposed of, on 14/7/2015, directing the authority concerned, to conclude the enquiry and pass final orders, within two months, from the date of receipt of the order copy made ready in the said writ petition. Thereafter, on 19/10/2015, the District Collector, Nagapattinam, first appellant, has passed final orders, in R.C.No.290/A3/2015, dated 19/10/2015, dismissing the respondent, Anganwadi from service, which came to be challenged, in W.P.No.36790 of 2015, to quash the order, dated 19/10/2015 and to direct the appellants to reinstate the respondent with all monetary benefits.

3. Though the said writ petition was opposed, on the grounds inter alia that Anganwadi posts are not statutory posts, and they are not governed by any rules framed by the Government, writ Court, after considering the same and by observing that principles of natural justice have not been followed, set aside the order, dated 19/10/2015, passed by the District Collector, Nagapattinam, first appellant and granted liberty to the appellants to proceed with the departmental action against the respondent by giving her an opportunity in the enquiry.

4. Considering the passage of time, from 2015, the date on which charges were framed, while disposing of the writ petition, in the year 2018, writ Court has also made it clear that authorities may proceed against the respondent, if circumstances necessitate and require continuance of the disciplinary action.

5. Being aggrieved, by an order, made in W.P.No.36790 of 2015, dated 9/4/2018, setting aside the order of dismissal, dated 19/10/2015, passed by the District Collector, Nagapattinam, first appellant, instant appeal is filed against the following grounds:-

(i). Writ Court has not taken into consideration that Anganwadi posts are not statutory posts and they are not governed by any rules framed by the government.

(ii). Anganwadi worker's 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 the employees of the Integrated Child Development Scheme and the respondent is not the employee of the State.

(iii). The respondent cannot claim remedy, under Article 311 (2) of the Constitution of India. Departmental proceedings

are applicable only to the holders of the Civil posts under the State. Therefore, the respondent can never claim benefit of any Supreme Court ruling, in her favour.

(iv). The District Programme Officer has made a proper inspection to Karaimedu (Thannalagudi) Anganwadi Centre, which was closed by the respondent voluntarily, and that irregularities and allegations were proved in the enquiry.

(v). Appointing authority and the District Collector has thoroughly enquired and verified about the respondent's activities and final orders were passed only after getting proper explanation from the respondent.

(vi). The respondent has caused huge loss by wasting the valuable food and materials at Rs.2,05,344/- has to be recovered from the writ petitioner, which will be paid to the government account.

6. Based on the above grounds, Mr.R.Udayakumar, learned Additional Government Pleader for the appellant made submissions.

7. Before adverting to the question as to whether the first respondent an Anganwadi is entitled to the protection, under Article 311 (2) of the Constitution of India; that an opportunity of hearing should be given before passing an adverse order of dismissal, we deem it fit to extract Article 311 of the Constitution of India.

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.-(1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Provided that where it is proposed after such inquiry, to imposed upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply -

a. where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on the criminal charge; or

b. where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

c. where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

8. This Court is not inclined to entertain the writ appeal for following reason, viz.,

Tamil Nadu Civil Services (Disciplinary & Appeal) Rules, 1955, is applicable to a person holding a civil post. He is entitled to the protection guaranteed under Article 311 (2) of the Constitution of India, Post of Noon Meal Organiser has been held as a civil post and entitled to the protection, under Article 311 (2) of the Constitution of India. An anganvadi is paid honorarium from the Government, similar to that of a Noon Meal Organiser and therefore, the respondent should be extended the same protection and guarantee under Article 311(2) of the Constitution of India. A Hon'ble Division Bench of this Court, has extended the Constitutional guarantee, under Article 311(2) of the Constitution of India to the employees of TASMAC Shops, supervisors and others. There is no reason, as to why, we should deviate from the decisions. Considering the Line of judgments, relating to the rights of a Noon Meal Organiser, employee in a TASMAC Shop, wherein this Court has held that the procedure under Article 311(2) be followed, we have no hesitation to hold that a Anganvadi is also a civil post, and entitled to similar treatment.

9. In the light of which we have discussed above, now let us consider Section 17 (b) (i) of the Tamil Nadu Civil Services (Disciplinary & Appeal) Rules, 1955. As per Rule 17 (b) procedure to be followed while it is proposed to impose major penalties, is as follows:-

17 (b) (i). Without prejudice to the

provisions of the Public Servants' Inquiries Act, 1850 (Central Act XXXVII of 1850), in every case where it is proposed to impose on a member of a service or on a person holding a Civil Post under the State any of the penalties specified in items (i), (vi) and (viii) in Rule 8 the grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged together with a statement of the allegation on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required, within a reasonable time to put in a return statement of his defence and to state whether he desires an oral inquiry or to be heard in person or both. An oral inquiry shall be held if such an inquiry is desired by the person charged or is directed by the authority concerned. Even if a person charged has waived an oral inquiry, such inquiry shall be held by the authority concerned in respect of charges which are not admitted by the person charged and which can be proved only through the evidence of witnesses. At that inquiry, oral evidence shall be heard as to such of the allegations as not not admitted, and the person charged shall be entitled to cross-examine the witness to give evidence in person and to have such witnesses called, as he may wish, provided that the officer conducting the inquiry may, for special and sufficient reason to be recorded in writing, refuse to call a witness. Whether or not the person charged desired for an oral inquiry, he shall be heard in person at any stage if he so desires before passing of final order."

10. Reading of 17 (b) indicates that if it is proposed to impose on a member of a service or on a person holding a Civil post under the State any of the penalties specified in items (iv), (vi) and (viii), he must be provided with an opportunity of an enquiry where oral evidence is adduced.

11. Admittedly, in the case on hand, the District Planning Officer, Nagapattinam, has only considered the explanation of the respondent, who has refuted the charges and without

conducting any enquiry held that the explanation submitted is not acceptable, and consequently, submitted a report. By accepting the above said report, the District Collector, Nagapattinam by its proceedings, in R.C.No.290/A3/2015, dated 19/10/2015, has straight away dismissed the respondent, without conducting an oral enquiry.

12. In the light of our discussion, on the Constitutional guarantee under Article 311(2) of the Constitution of India, to be extended to those who hold a civil post, we have to decide as to whether the decision taken, to terminate or dismiss the employees, in the case on hand, an anganvadi worker, requires intervention. Observing that principles of natural justice has not been followed. Writ Court has set aside the order of termination.

13. In the light of the above discussion, we are of the view that there is no manifest illegality in the order of the writ Court, in setting aside the order of dismissal, dated 19/10/2015 and granting liberty to the appellants, to proceed further, if they desire to do so. There are no merits in the appeal, warranting interference.

14. In the result, Writ Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

Mvs.

TO

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+1cc to the Government Pleader, S.R.No. 1045

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GP(CO)
GN(10/04/2019)