



WEB COPY

W.P.(MD)No.19230/2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.11.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) No.19230 of 2017

and

W.M.P (MD) .Nos.15589 and 15590 of 2017

M.Kamaraj

... Petitioner

-Vs-

1.The Principal Secretary to Government
Social Welfare and Nutritious Meal Programme
Department
St.George Fort, Chennai

2.The Commissioner
Social Welfare Department
Chennai 600 002

3.The District Project Nutrition Officer
Integrated Child Development Scheme
Cantonment Tiruchirappalli

4.The Secretary
Tamil Nadu Public Service Commission
Chennai

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the proceedings of the impugned G.O(D).No.174 dated 11.08.2017 on the file of the 1st respondent and quash the same.

For Petitioner	: Mr.Kannan for M/s.D.Rukmani
For R1 to R3	:Mr.S.Dhayalan Government Advocate
For R4	:Mr.K.K.Senthil

ORDER

This Writ petition has been filed to call for the records relating to the proceedings of the impugned G.O(D).No.174, dated 11.08.2017, on the file of the 1st respondent and quash the same.

2.The petitioner while working as Industrial Co-operative Officer in Annai Indira Energy Food Manufacturing Womens Industrial Co-operative Society Ltd., Manachanallur, Trichirapalli District,

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was suspended from service on 09.12.2013. A charge memo dated 23.12.2013, containing 7 charges, was issued. The petitioner submitted his explanation on 20.01.2014. Not being satisfied with the explanation submitted by the petitioner, domestic enquiry was ordered. The Enquiry Officer conducted an enquiry and submitted her report holding that charges 1, 2, 4, 5 and 7 are proved and charges 3 and 6 are partly proved. The second respondent issued second show cause notice dated 24.02.2014 including copy of the report of Enquiry Officer. The petitioner submitted his explanation. The second respondent, by impugned order, removed the petitioner from service. The first respondent rejected the appeal filed by the petitioner. Hence, the petitioner has come up with the present Writ petition, challenging the orders of the respondents 1 and 2.

3.The learned counsel appearing for the petitioner submitted that all the charges are vague and the same relate to not maintaining the Registers. The petitioner was suspended from service on 09.12.2013 and was paid subsistence allowance only for three months and subsequently, no subsistence allowance was paid. The Enquiry Officer did not furnish the copy of the documents relied on by her to the petitioner. The petitioner summoned once by the Enquiry Officer and he is not even permitted to pursue the documents. The Enquiry Officer did not examine any witness and without examining the author of the documents and relied on by the said document, gave the report. The petitioner was not given any opportunity to cross examine the author of the document. The second respondent did not furnish the copy of the preliminary report relied on by her in respect of Enquiry conducted by the second respondent. The second respondent mechanically accepted the report of the Enquiry Officer and without giving any reason, merely recording charges, explanation, findings of the Enquiry Officer and explanation of the petitioner to the second show cause notice, held that the charges are proved and removed the petitioner from service. The first respondent has not properly appreciated the materials on record and for erroneous reason, had deviated the opinion of the fourth respondent. The reason given by the first respondent that the proven charges against the petitioner are grave in nature, is erroneous. The Enquiry was not conducted as per the procedure in a fair and proper manner and conducted in violation of principles of nature justice and prayed for allowing this Writ petition.

4.The respondents filed a counter affidavit. Mr.S.Dhayalan, learned Government Advocate appearing for the respondents 1 to 3, contended that during the inspection conducted in the year 2012, it was found that the records are not maintained. The Enquiry was conducted as per the procedure. The Enquiry Officer has given findings based on the documents produced at the time of enquiry. Non-payment of subsistence allowance is a separate issue, the petitioner has to raise the said issue before the second respondent. The second respondent has considered the report of the Enquiry



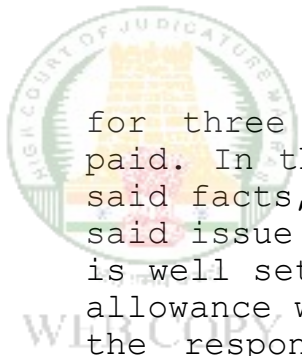
Officer and passed the impugned order by giving valid reason. Further, the punishment imposed is proportionate to the proven charges. The misconduct committed by the petitioner is grave in nature. The first respondent also considered the materials and opinion of the fourth respondent, deviated the opinion of the fourth respondent by giving valid reason, confirmed the order of the second respondent and rejected the appeal and hence, prayed for dismissal of this Writ petition.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents 1 to 3 and the learned counsel appearing for the fourth respondent.

6. From the materials on record, it is seen that the contention of the learned counsel appearing for the petitioner that the documents relied on by the respondents were not furnished to him and that in the enquiry, no witness was examined and the Enquiry Officer without examining the author of the said documents and without giving opportunity to the petitioner to cross examine the said persons, concluded the enquiry proceedings are not denied by the respondents in the counter affidavit. The respondents except stating that the enquiry was conducted in a fair and proper manner and has not stated that the documents relied on by the respondents were proved as per law by examining the witnesses. The contents of the documents can be proved only by author of the documents and the petitioner must be given opportunity to cross examine the said witnesses. The failure on the part of the Enquiry Office to follow the said procedure, vitiated the entire enquiry and the same is in violation of natural justice. From the impugned order of the second respondent, it is seen that the second respondent has extracted the charge memo, explanation, findings of enquiry officer, explanation of the petitioner to the second show cause notice and concluded that the charges levelled against the petitioner are proved. The second respondent has not given any reason for accepting the report of the Enquiry Officer. In the appeal filed by the petitioner, the first respondent referred the matter to the fourth respondent. Considering the materials, the fourth respondent has given opinion that the punishment of removal, disproportionate to the charges and gave opinion that the punishment of stoppage of increment without cumulative effect for three years, excluding the leave periods will be proportionate to the charges levelled against the petitioner. The first respondent deviated the opinion of the fourth respondent on the ground that the charges levelled against the petitioner are grave in nature and punishment of removal is proportionate to the charges. A reading of the charges levelled against the petitioner shows that the petitioner has not maintained the registers properly. There is no charge for misappropriation of funds.

7. The petitioner was suspended from service on 09.12.2013. According to the petitioner, he was paid subsistence allowance only

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for three months and subsequently, no subsistence allowance was paid. In the counter affidavit, the respondents have not denied the said facts, but stated that it is for the petitioner to take up the said issue for non-payment of subsistence allowance, separately. It is well settled in certain cases that the non-payment of subsistence allowance would vitiate the entire proceedings. In the present case, the respondents have not given any reason for non-payment of subsistence allowance, after three months of suspension. This non-payment of subsistence allowance vitiated the enquiry.

8. Considering the above materials, nature of charges and that enquiry was not conducted in a fair and proper manner, the impugned orders of the respondents 1 and 2 are set aside. The respondents 1 to 3 are directed to reinstate the petitioner into service within a period of two weeks from the date of receipt of a copy of this order and pay all the monetary benefits. Accordingly, this Writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

Sub Assistant Registrar(CS)

msa

To

1.The Principal Secretary to Government
Social Welfare and Nutritious Meal Programme
Department
St.George Fort, Chennai

2.The Commissioner
Social Welfare Department
Chennai 600 002

3.The District Project Nutrition Officer
Integrated Child Development Scheme
Cantonment Tiruchirappalli

+1 CC to SPL GP (SR-100550[F] dated 22/11/2019)

+1 CC to Mr.D.RUKMANI, Advocate (SR-100677[F] dated 22/11/2019)

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