

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 13.02.2020

Order Pronounced on : 03.06.2020

CORAM

THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

W.P.No. 11679 of 2013

S.Prema

.. Petitioner

Vs

1.The Tribunal for Disciplinary Proceedings,
Coimbatore.

2.The District Collector,
Salem.

3.The Secretary to Government
Rural Development & Panchayat Raj
Fort St.George, Chennai - 9.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondents in connection with the impugned order passed by 1st respondent in TDP DE 17/2008 dt 29.5.09 and by the 2nd respondent in Na. Ka. No. N1/5697RD/2008 dt 22.9.10 and 2nd respondent in Na. Ka. No. N1/5697RD/ 2008 dt 25.3.2013 and quash the same and direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefits.

For Petitioner : Mr. K.Venkataramani (SC)
For Mr.M.Muthappan

For Respondents : Mr.J.Ramesh, AGP

O R D E R

The prayer sought for in the Writ Petition is to call for the records of the respondents in connection with the impugned order passed by 1st respondent in TDP DE 17/2008 dt 29.5.09 and by the 2nd respondent in Na. Ka. No. N1/5697RD/2008 dt 22.9.10 and 2nd respondent in Na. Ka. No. N1/5697RD/ 2008 dt 25.3.2013 and quash the same and direct the respondents to reinstate the petitioner into service and grant him all consequential service

and monetary benefits.

2. Brief facts leading to the writ petition is that the writ petitioner was appointed as Noon Meal Organiser in the Panchayat Union Elementary School, Salem Panchayat Union, Salem on 08.05.1988. The petitioner has put in more than 22 years of service. While serving as Noon Meal Organiser, charges were framed against the petitioner and the Block Development Officer, Salem Panchayat Union as per report of the V & AC Department, for the allegation that the writ petitioner had collected a sum of Rs. 200/- from the other Noon Meal Organisers on the instructions of the BDO, while disbursing the VI Pay Commission arrears as illegal gratification. After enquiry, the charges against the petitioner and the co-delinquent have been proved. Finally the Government in its proceedings dated 27.07.2010 recommended to remove the petitioner from service and communicated the same to the District Collector, who in turn issued order dated 22.09.2010, removing the petitioner from service in Ref.No. N1/5697RD/2008. Against the said order, the petitioner has preferred the appeal before the 3rd respondent. But the said appeal was rejected by the 2nd respondent, who is not a appellate authority as per directions of the 3rd respondent, which contains no valid reasons, except stating that there is no fresh points for consideration, which according to the petitioner is a non-speaking order. Challenging the same, the present writ petition is filed.

3. Heard the learned Senior Counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the documents available on record.

4. The learned Senior Counsel for the petitioner submitted that the said amount of Rs.200/- was collected from each of the Noon Meal Staff based on the Resolution passed by the Noon Meal Organisers Association, for payment to the family members of the deceased noon meal organisers who had no death or pensionary benefits. Further during the course of enquiry, out of 27 witnesses, 8 witnesses who have been cited to speak to the fact that the amount was collected as illegal gratification did not support the prosecution case and they have turned hostile and the witnesses were cross examined. It is further submitted that except 2 official witnesses who came for surprise inspection, none of them have supported the prosecution case.

5. The learned Senior Counsel further submitted that when there is no evidence available on record, the enquiry officer without considering any of the points raised in the defence statement, has accepted that the amount has been collected from the noon meal organisers in order to make payment to the

deceased members of the noon meal organisers family, who have no benefits, but the enquiry officer held that the petitioner and the co-delinquent have no authority to collect the amount, besides they have not issued any receipt for such amount and finally held that the charges against the petitioner and the co-delinquent have been proved and submitted report to the Disciplinary Authority. The petitioner has also submitted a further representation on the enquiry officer's report, but without considering the same, the Government had passed the impugned order dated 22.09.2010, removing the petitioner from service.

6. It is further submitted by the learned Senior Counsel for the petitioner that the petitioner has preferred an appeal to the 3rd respondent on 30.09.2010. The said appeal was forwarded to the 2nd respondent by the 3rd respondent. Since no action has been taken, the petitioner has preferred a writ petition before this Court in W.P. No. 16878 of 2011 and by order dated 24.01.2011, directed the 2nd respondent to pass orders on the appeal petition. Without considering the said order of this Court, the 3rd respondent, who is not the appellate authority had passed an order on 30.09.2010, rejecting the appeal preferred by the petitioner.

7. On the other hand, the learned Additional Government Pleader appearing for the respondents the Deputy Superintendent of Police, V&AC Department, Salem along with the District Inspection Cell Officials have conducted a surprise check on 01.03.2004 at Panchayat Union Office. At that time, they found that the petitioner was collecting money from the Noon Meal Organisers. They sent report against Thiru A.Pachagoundan, former Block Development Officer, Salem Panchayat Union and the writ petitioner herein on the allegations of collection of illegal gratification. Accordingly, a case was registered in TDP Case No. 06/2006 at Tribunal for Disciplinary Proceedings, Salem with the charge that the petitioner violated Rule 20(1) of Tamil Nadu Government Servant Conduct Rules 1973. Thereafter the above case was transferred to Commissioner of Disciplinary Proceedings, Coimbatore on administrative reasons in D.E. No. 17/2008 and the enquiry was concluded on 29.05.2009. After considering the prosecution witnesses and evidence, came to the conclusion that the charges framed against the petitioner are proved.

8. The learned Additional Government Pleader has brought to the notice of this Court the letter of the 3rd respondent in Lr. (D) No. 597 Rural Development and Panchayat (E2) Department dated 09.12.2011, wherein it is stated that as per G.O. Ms. No. 606, Social Welfare and Nutritious Meal Programme Department dated 18.12.1990, the second respondent herein is the ultimate

appointing authority/disciplinary authority in respect of the Nutritious Meal Organisers of the School Centers and that powers of dismissal/removal of such Nutritious Meal Organisers shall vest with the second respondent herein and shall lie no appeal against such orders. Further, it is also stated that the 2nd respondent is empowered to review and modify any orders passes, if deemed necessary. Hence, the impugned orders passed by the 2nd respondent are valid in law and does not require any interference by the Court.

9. On perusal of records, it is seen that the charge memo was issued by the Commissioner of Disciplinary Proceedings, Salem in Case No. 6 of 2006, dated 25.04.2007 for a specific charge under Tamil Nadu Civil Services (DPT) Rules against one A.Pachagoundan, Block Development Officer, Edapady Panchayat Union, Salem District and V. Nagaraja, Noon Meal Organizer, Salem and the petitioner herein for the allegation of collection of illegal gratification of sum of Rs.200/- from the Noon Meal Organisers for disbursing final installment of VI Pay Commission Arrears. On completion of enquiry, the charges framed against the above three persons were held proved as they violated the Rule 20 of the Tamil Nadu Government Servants' Conduct Rules, 1973. Subsequently, the petitioner and the co-delinquent V. Nagaraj were removed from service by the District Collector, Salem by order dated 22.09.2010, without considering the further representation submitted by the petitioner.

10. It is the contention of the learned senior counsel for the petitioner that it is an admitted case of prosecution that on the date of the surprise inspection, one Lalitha of Kamanaickenpatty was collecting money from the noon meal organisers while disbursing the VI Pay Commission arrears and after she collected the amount, she gave it to the writ petitioner, who in turn kept it in a rexine bag. The above said Lalitha was writing the names of the individuals who paid the amount after collecting the amounts. The writ petitioner herein neither demanded nor received or asked to pay the individual. Further, the witnesses viz., PW3 to PW14 have turned hostile and did not support to the prosecution case. Further no charges were framed against the said Lalitha.

11. In view of the above, this court has to decide whether in the absence of any evidence on record, the report of the enquiry officer, which subsequently results in removal of service of the petitioner by the appellate authority is valid or not.

12. It is also brought to the notice of this Court that while pending consideration of the further representation submitted by the said A.Pachagoundan, Block Development Officer,

Edapady Panchayat Union, Salem, he was permitted to retire from service on attaining the age of superannuation on 30.04.2005 by the District Collector, Salem District.

13. The Government/3rd respondent herein after considering the views obtained from the Tamil Nadu Public Service Commission, by its order dated 02.05.2013, modified the punishment of cut in pension of Rs.1000/- per month for a period of three years instead of withholding the entire pension permanently. The relevant of the said order is extracted below;

"5. In the letter seventh read above the Tamil Nadu Public Service Commission has referred as follows;

"Even though the charge was proved against the delinquent officer, there is no documentary proof for collection of money as orally instructed by delinquent officer and there is no other documentary evidence also. The delinquent officer had already retired in 2005 from Government service. The Commission is of the opinion that the punishment proposed to be imposed by the Government does not commensurate with the nature of the delinquency committed by the delinquent officer and as already all the pensionary benefits were given to the delinquent officer, the proposal of the Government to stop the entire pension of the delinquent officer permanently seems to be against natural justice. Hence the Commission is of the view, that considering his age, the punishment proposed by the Government may be modified as cut in pension of Rs.1000/- per month for a period of 3 years instead of withholding the entire pension permanently and advises the Government accordingly."

6. The Government have further examined the case carefully and independently with all connected records in the light of the view of the Tamil Nadu Public Service Commission against Thiru A.Pachgoundan, formerly Block development Officer, Edapady Panchayat Union, Salem District and decided to impose the punishment of cut in pension of Rs.1000/- per month for a period of three years instead of withholding the entire pension permanently. The Government accordingly do and hereby order that the punishment of cut in pension at the rate of Rs.1000/- (Rupees Thousand only) per month for a period of three years from the pension payable to Thiru A.Pachagoundan for the charge held proved against him."

14. In the aforesaid order, the punishment imposed on the said A.Pachagoundan, then Block Development Officer was modified

by the Government by taking into considering the views of the Tamil Nadu Public Service Commission that there are no documentary proof for collection of money as orally instructed by the said A.Pachagoundan and no documentary evidence to substantiate the allegation.

15. The learned Senior Counsel appearing for the petitioner has made a submission before this Court that since the writ petitioner had already crossed the age of superannuation, the punishment of removal from service imposed on the petitioner by the respondent may be modified to any other punishment, so as to enable the petitioner to get retirement benefits.

16. Considering the submissions made by either side and also considering the fact that the charges levelled against the above A.Pachagoundan and the writ petitioner herein (S.Prema) are one and the same and also the fact that the said A.Pachagoundan was permitted to retire from service and the punishment imposed on him was also subsequently modified, this Court finds it appropriate to modify the punishment imposed on the petitioner as 'Compulsory Retirement', enabling the petitioner to get retirement benefits as applicable to the Rules.

17. Accordingly, the impugned order passed by the second respondent in Ref. No. N1/5697RD/2008, dated 22.09.2010 is quashed and the second respondent is directed to modify the punishment awarded to the petitioner as 'Compulsory Retirement' and grant monetary/retirement benefits to the petitioner as expeditiously as possible, within a period of twelve (12) weeks from the date of receipt of a copy of this order. The Writ Petition is allowed to that extent. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Tribunal for Disciplinary Proceedings, Coimbatore.
2. The District Collector, Salem.
3. The Secretary to Government
Rural Development & Panchayat Raj
Fort St. George, Chennai - 9

+1cc to Mr.M.Muthappan , Advocate SR.No. 12059

W.P.No. 11679 of 2013

A.SK(20/07/2020)
CB(01/10/2020)



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