

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2020

CORAM

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

W.P. No. 20252 of 2019
and
W.M.P. No. 19652 of 2019

E.Nagarajan

... Petitioner

Vs

- 1.The Principal Secretary to Government,
School Education Department,
Fort St. George,
Chennai 600 009.
- 2.The Director of School Education,
College Road,
Chennai 600 006.
- 3.The Joint Director of School Education, (Personnel),
College Road,
Chennai 600 006.
- 4.The Chief Educational Officer,
Cuddalore.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records in pursuant to the impugned order issued by the fourth respondent in proceeding no Na.Ka.No.9788/A3/2018 dated 28.05.2019 and quash the same and consequently direct the respondents to permit the petitioner to retire from service with effect from 31.01.2015 i.e. the date of his superannuation with all consequential service and monetary benefits.

For Petitioner : Mrs. Swadhi Subramaniam

For Respondent : Mrs. V.Annalakshmi
Government Advocate

O R D E R

This Writ Petition has been filed challenging the impugned order passed by the fourth respondent based on proceedings dated 28.05.2019 imposing punishment of removal of service.

2. The case of the petitioner is that he was working as Junior Assistant in the office of the Assistant Elementary Education Officer at Cuddalore district. The petitioner was arrested in a trap case by the Vigilance and Anti Corruption Police on 07.10.2005 and a suspension order came to be passed against the petitioner. Ultimately, the criminal case was dropped and disciplinary proceedings were initiated against the petitioner.

3. A charge memo was issued to the petitioner on 16.07.2005 under Rule 17(b) of Tamil Nadu Civil Service (Discipline & Appeal) and the case was transferred to the Enquiry Tribunal. The Enquiry Tribunal conducted a thorough enquiry and report was submitted to the disciplinary authority who is the fourth respondent herein. The disciplinary authority, on receipt of the enquiry report from the Tribunal, proceeded to pass the impugned order, dated 28.05.2019 removing the petitioner from service. Aggrieved by the same, the present Writ Petition has been filed before this Court.

4. The learned counsel appearing on behalf of the petitioner submitted that the report of the Enquiry Tribunal was never furnished to the petitioner and the petitioner was not called to give his explanation on the findings of the Tribunal and straight away the fourth respondent had proceeded to pass the order imposing a major punishment of removal from service. Learned counsel submitted that the impugned order is liable to be quashed on this ground. Learned counsel further submitted that the petitioner was not permitted to retire from service and pension benefits of the petitioner was also not paid.

5. The fourth respondent has filed counter affidavit in this case. In the counter affidavit a very specific stand has been taken to the effect that the enquiry Tribunal had given sufficient opportunity to the petitioner and since such conclusion is arrived at by the Tribunal, there is no need to call for any explanation from the petitioner. In other words, the counter affidavit itself spells out the fact that no enquiry report was furnished to the petitioner. In fact, in the counter affidavit, it has been categorically stated that the enquiry report is between the department and the Tribunal and it need not be communicated to the petitioner.

6. Mrs. Annalakshmi, learned Special Government Pleader, submitted that the petitioner was given sufficient opportunity before the Enquiry Tribunal and petitioner has also examined the witnesses. A finding has been rendered by the Tribunal to the effect that all the charges against the petitioner has been proved. Based on this report, the fourth respondent has passed the final orders against the petitioner by removing him from service. Learned counsel states that there are absolutely no grounds to interfere with the order passed by the fourth respondent.

7. This Court has carefully considered the submissions made on either side and perused the entire materials available on record.

8. In the present case, the petitioner has been subjected to charges involving major penalty and the charge memo was given under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules. Admittedly, the Enquiry Tribunal was directed to conduct the enquiry and to furnish the report. The Enquiry Tribunal is only a fact finding authority which is supposed to render its findings on each charge based on the enquiry conducted by it. Ultimately, it is the fourth respondent who has to pass final orders in the departmental proceedings. It is well settled that the delinquent employee is entitled for a report of the Enquiry Officer / Tribunal and he is entitled to give a further explanation. This procedure becomes very important since the delinquent employee must know on what basis the enquiry officer / Tribunal has found that the charges have been proved against the delinquent employee. Only after further explanation is given, the disciplinary authority will have to apply his mind not only on the findings of the Tribunal but also on the further explanation given by the delinquent employee. This important procedure has not been followed in the present case and straight away the fourth respondent has proceeded to pass the impugned order removing the petitioner from service. This order passed by the fourth respondent is illegal and is opposed to principles of natural justice.

9. In view of the above discussion, the impugned order passed by the fourth respondent, dated 28.05.2019 is hereby quashed. The fourth respondent is directed to furnish the report of the Enquiry Tribunal to the petitioner and the petitioner should be given opportunity to give his further explanation to the enquiry report. Only on receipt of his explanation, the fourth respondent can proceed to deal with the enquiry report and the further explanation of the petitioner and pass final orders.

10. The fourth respondent shall furnish the enquiry report to the petitioner within a period of two weeks from the date of receipt of copy of this order. The petitioner, immediately on receipt of the enquiry report, shall give his further explanation within a period of two weeks thereafter. The fourth respondent shall, thereafter, consider the enquiry report as well as the further explanation given by the petitioner and shall pass final orders within a period of four weeks therefrom. However, it is made clear that the petitioner shall be paid subsistence allowance till the final orders are passed in the disciplinary proceedings.

11. This Writ Petition is allowed with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

- 1.The Principal Secretary to Government,
School Education Department,
Fort St. George,
Chennai 600 009.
 - 2.The Director of School Education,
College Road,
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 - 3.The Joint Director of School Education, (Personnel),
College Road,
Chennai 600 006.
 - 4.The Chief Educational Officer,
Cuddalore.
- +1cc to Mr.R.Premnarayan, Advocate SR.No.5657

W.P. No. 20252 of 2019
and
W.M.P. No. 19652 of 2019

AD(CO)
GMY(18/02/2020)