



W.P.No.24171 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2023

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.24171 of 2015

E.Nagarajan

... Petitioner

-Vs-

1. The Principal Secretary to Government,
Social Welfare and Nutritious Meal Programme,
(SW1) Department,
Secretariat, Chennai-600 009.
2. The Commissioner of Social Welfare,
Guindy, Chennai-600 032.
3. The Director cum Mission Director,
Integrated Child Development Services,
Chennai-600 113.
4. The Secretary,
Tamil Nadu Public Service Commission,
Chennai-600 003.
5. The District Social Welfare Officer,
Kancheepuram.

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India
for the issuance of Writ of Certiorarified Mandamus, calling for the



W.P.No.24171 of 2015

records of the first Respondent in connection with the Orders of removal from service passed in the Government Order in G.O.(3D) No.3, Social Welfare & Nutritious Meal Programme Department, dated 22.07.2015 and quash the same and further direct the Respondent to grant all the consequential service benefits including the reinstatement of the Petitioner in service with all monetary benefits and restoration of status quo ante position existing prior to the orders of removal from service impugned herein.

For Petitioner : Mr.R.S.Anandan

For Respondents

R1 : Mr.R.P.Murugan Raja
Government Advocate

R2 to R5 : No appearance

ORDER

This Writ Petition has been filed challenging the order passed by the first Respondent in Government Order in G.O.(3D) No.3, Social Welfare & Nutritious Meal Programme Department, dated 22.07.2015, thereby removed the petitioner from service.

2. The petitioner had entered into the service as Junior Assistant in the second respondent department on 23.08.1982. After his regulation of service in the post of Junior Assistant, he was promoted as Assistant



W.P.No.24171 of 2015

in the month of January 1987. Thereafter, he was appointed as Supervisor of Industrial Co-operatives on transfer of service basis and he had joined in the post on 24.03.1994. While being so, he was served with charge memo along with one V.S.Sampath Giri, Firka Surveyor for the following charges:-

“CHARGE:- 1

That actuated by corrupt motive and in abuse of your official position and authority, while you (A.O.1) were working as Assistant, Admin-3 Section, Office of the Director of Social Welfare, Chennai - 5 during the month of April 1993 you had demanded and accepted a sum of Rs.7000/- as illegal gratification at your office at Chennai from Thiru.A.Radhakrishnan (W1) H/o Tmt.Vatchala, No.19, Ramalinga Nagar III Street, Tiruvannamalai for the purpose of appointing Tmt. Vatchala (W3) as Junior Assistant cum - Typist in the Office of the Block Nutrition Officer, Tiruvannamalai on 10(a)(1) basis.

CHARGE:- 2

i) During the year 1993 while you (A.O.1) were working as Assistant, Office of the Director of Social Welfare, Chennai - 5 and while you (A.O.2) were working as Firka Surveyor, Taluk Office, Tiruvannamalai connived with each other and created bogus appointment order / proceedings No.E.11/10243/93(7), Dated 22.11.1993 of the Director of Social Welfare, Chennai containing false information to the effect that Thiru.N.L.Raja (W-25) S/o, Lakshmi Narashimma Iyyer, No.59, Ayyankulam Agraharam St., Tiruvannamalai and 14 others had been selected for appointment by the Director of Social Welfare, Chennai as Junior Assistant and Junior Assistant-cum-Typists in the various project Nutrition Offices in Tiruvannamalai and Dharmapuri Districts and you



WEB COPY



W.P.No.24171 of 2015

(A.O.1) and Sampathgiri (A.O.2) have demanded a sum of Rs.20,000/- (Rupees Twenty thousand only) as illegal gratification from the said Thiru.N.L.Raja (W-25) and accepted Rs.8,500/- (Rupees Eight thousand and five hundred only) being the advance amount as illegal gratification from him (W 25) for the purpose of issuing the above said bogus appointment order appointing him in the above said post.

ii) During the year 1993, both of you (A.O.1) and (A.O.2) connived with each other and created bogus appointment order proceedings No.E11/10243/93(7), dated 22.11.1993 of the Director of Social Welfare, Chennai containing false information to the effect that Thiru M.Divakaran (W.26) S/o, Manimozhi No.47, Old Karkana Street, Tiruvannamalai and 14 others had been selected and appointed by the Director of Social Welfare, Chennai as Junior Assistants and Junior Assistant-cum-Typists in the project nutrition office in Tiruvannamalai and Dharmapuri Districts. During the course of transaction you (A.O.1 and A.O.2) have demanded a sum of Rs.20,000/- (Rupees Twenty Thousand only) as illegal gratification and accepted Rs.5,000/- (Rupees Five Thousand only) as advance amount of the above illegal gratification from Thiru.Divakaran (W.26) for the purpose of issuing the above said bogus appointment order appointing the said Divakaran in the above said post.

iii) During the year 1993 both of you (A.O.1) and (A.O.2) connived with each other and created bogus appointment orders/proceedings No.E11/10243/93, Dated 18.08.1993, E11/10243/93(1) 29.09.1993 and E11/10243/93(7) dated 22.11.1993 of the Director of Social Welfare, Chennai and Proceedings B3/14283/1993, dated 11.10.1993 of the Collector of Tiruvannamalai, Sambuvarayar District containing false information to the effect that Thiru.S.Murali (W.28) S/o, Subbarayalu Naidu, Vazhathotta St, Tiruvannamalai and 23 others mentioned in these orders had been selected for appointment by the



WEB COPY



W.P.No.24171 of 2015

Director of Social Welfare, Chennai as Junior Assistants and Typists in the Project Nutrition Offices in Tiruvannamalai and Dharmapuri Districts and during the course of the same transaction you (A.O.1) and (A.O.2) have demanded a sum of Rs.25,000/- (Rupees Twenty five thousand only) as illegal gratification and accepted a sum of Rs.15,000/- (Rupees fifteen thousand only) as advance amount of the illegal gratification for the purpose of issuing the above said bogus proceedings / orders appointing him (S.Murali W-28) in the said post.

iv) During the year 1993 you (A.O.1) and (A.O.2) connived with each other and created bogus appointment order / proceedings No.E.11/10243/93(7), dated 22.11.1993 of the Director of Social Welfare, Chennai containing false information to the effect that Thiru N.Kuppusamy (W.29) S/o, Narayanasamy, No.15/2, New Karkana Street, Tiruvannamalai and 14 others mentioned in this appointment order have been selected for appointment by the Director of Social Welfare, Chennai as Junior Assistants and Typists in the Project Nutrition Offices in Tiruvannamalai and Dharmapuri Districts. During the course of the same transaction you (A.O.1 and A.I.2) have demanded and accepted a sum of Rs.10,000/- (Rupees Ten thousand only) as illegal gratification from the said Kuppusamy (W.29) for issuing the said bogus order to him appointing him in the post as aforesaid.

v) During the year 1993, A.O.2 Thiru.V.Sampath Giri created bogus appointment order / proceedings No E11/10243/93(3), Dated 22.10.1993 of the Director of Social Welfare, Chennai containing false information to the effect Selvi.S.Kalpana (W.32) D/o. Seethapathy, Kariamangalam Village, Chengam Taluk and another person by name Thiru R.Elangovan S/o, Rajagopalan, Aritharimangalam, Chengam Taluk had been selected for appointment as Junior Assistants in the Block Nutrition Office, Chengam. During the course of the same transaction you (A.O.2) had demanded and accepted a sum of Rs.10,000/- (Rupees Ten thousand only) as illegal



W.P.No.24171 of 2015

WEB COPY

gratification from Thiru. Seethapathy, (W.31) S/o, Ramachandra Naidu, Kariyamangalam Village, Chengam Taluk for issuing the said bogus order to him appointing his daughter Selvi. S.Kalpana (W.32) as Junior Assistant as aforesaid.

vi) During the year 1993, both of you (A.O.1 and A.O.2) connived with each other and created bogus appointment orders / proceedings No.E11/10243/1993(3), dated 15.10.1993 and No.E.11/10243/1993 (7) dated 22.11.1993 of the Director of Social Welfare, Chennai containing false information to the effect that Tmt.K.Shenbagavalli, (W-22) W/o, Annamalai (W.23) No.100, Kariakalan Street, Tiruvannamalai and 16 others mentioned in these orders had been selected for appointment by the Director of Social Welfare, Chennai as Junior Assistants in the Project Nutrition Offices in Tiruvannamalai District and you (A.O.1 and A.O.2) have issued these bogus appointment orders to Tmt.K.Shenbagavalli (W.22) with intent to cheat her. Thereby you (A.O.1 and A.O.2) have conducted yourself most unbecoming of Government Servants and failed to maintain absolute integrity and devotion to duty and violated Rule 20 of the TNGS Conduct Rules, 1973."

3. After calling upon the petitioner to explain for the show cause notice, an enquiry officer was appointed and conducted enquiry. During the enquiry, 47 witnesses were examined and found both the charges proved against the delinquents 1 and 2. On basis of the enquiry report, first respondent removed the petitioner from service by an order dated 22.07.2015.



W.P.No.24171 of 2015

WEB COPY

4. The learned counsel for the petitioner would submit that the enquiry officer, only on presumption submitted his report as if the charges were proved against the petitioner. The findings of the enquiry officer were not supported by any witness and all the witnesses categorically deposed that they do not know the petitioner and they never met the petitioner. All the witnesses had given money only to the second delinquent and not to the petitioner and the petitioner is no way connected to the second delinquent. The petitioner was working as Supervisor in the Industrial Co-operatives. Whereas, the second delinquent was working as Firka Surveyor, Taluk Office, Thiruvannamalai. The disciplinary proceeding was initiated with inordinate delay and as such the right from the inception till the culmination of the final orders, which prima facie had consumed nearly period from 1994, the alleged year of occurrence of the delinquency to till date of passing of final orders dated 22.07.2015. No legal evidence had been let in as recorded to prove that the petitioner had been involved in the delinquency and on the contrary all the witnesses had deposed that it was only the second delinquent involved in the delinquency. That apart, the Tamil Nadu Public Service Commission has no jurisdiction or



W.P.No.24171 of 2015

WEB COPY

say over the service matters concerning the personnel as that of the petitioner who had been regularized under the Special G.O.Ms.No.996. Therefore, it vitiates the whole disciplinary proceeding which deserves to be quashed.

5. In support of his contention, he relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2009 2 SCC 570** in the case of ***Roop Singh Negi Vs Punjab National Bank and others.***

6. The respondents 1 to 3 and 5 filed counter and it revealed that as per regulation 18(1)(b)(iv) of the Tamil Nadu Public Service Commission Regulations, 1954, it shall be necessary for the commission to be consulted on any disciplinary matter affecting a person serving in connection with affairs of the State, where the State Government propose to pass an original order imposing penalty of removal from the civil service of the State Government. Therefore, the petitioner herein being a Government Servant, has been covered under the above regulation and consulting Tamil Nadu Public Service Commission before passing order against the petitioner is a valid one. The first charge was that of the year



W.P.No.24171 of 2015

WEB COPY

1993. The petitioner demanded and accepted illegal gratification from the second delinquent for the purpose of appointing a person as Junior Assistant-cum-Typist in the office of the Block Nutrition Officer, Tiruvannamalai. He demanded a sum of Rs.7,000/- as illegal gratification from the brother-in-law of the second delinquent. Therefore, both the delinquency connived with each other and issued bogus appointment orders in the name of the Director of Social Welfare, Madras and in the name of the District Collector, Tiruvannamalai, appointing several persons as Junior Assistants/Typists under Tamil Nadu Integrated Nutrition Project Scheme and derived undue pecuniary benefits. There were sufficient oral and documentary evidence to prove this allegation against both the delinquents.

7. Based on the enquiry report, the petitioner was removed from service. Therefore, as per regulation 18(1)(b)(iv) of the Tamil Nadu Public Service Commission Regulations, 1954, the Government had sought for the views of the Tamil Nadu Public Service Commission Regulations, 1954 before imposing the proposed punishment of removal from Government Service against the petitioner herein. After perusing



W.P.No.24171 of 2015

WEB COPY

the relevant documents dealing with the disciplinary proceedings, further representation along with additional representation were submitted by the petitioner. The Tamil Nadu Public Service Commission has opined that the proposed decision of the Government to remove the name of the petitioner from Government service is fair and perfect. Therefore, it does not require any interference by this Court and prayed for dismissal of this petition.

8. Heard the learned counsel for the petitioner and the learned counsel for the first respondent and perused the materials available on record.

9. A perusal of the enquiry report dated 28.09.2000 revealed that the charge against the petitioner was that he assured to get job as Junior Assistant-cum-Typist in the office of Block Nutrition Officer, Thiruvannamalai and demanded and accepted a sum of Rs.7,000/- as illegal gratification from one A.Radhakrishnan, who is none other than the brother-in-law of the second delinquent. The said Radhakrishnan was examined as Witness No.37 before the enquiry. He deposed that he had



W.P.No.24171 of 2015

never met the petitioner and he did not know the petitioner. Therefore, the enquiry officer declared him as hostile witness and he was cross examined by the second delinquent. His wife namely the sister of the second delinquent was also examined as Witness No.38. She also turned hostile. Therefore, both the Witness Nos.37 and 38 did not support the case of the department against the petitioner. Even then the enquiry officer found both the charges proved against him. Except the Witness Nos.37 and 38, no one had spoken about the role played by the petitioner while issuance of fake appointments to all the persons who had approached and gave money to the second delinquent. The department also failed to produce any material as against the petitioner before the enquiry officer in order to prove the charges. Therefore, no legal evidence had been let in, in order to prove the charges framed against the petitioner. All the witnesses had deposed that they had given money on the demand made by the second delinquent officer and received fake appointment order from the second delinquent. However, the enquiry officer only on presumption found that the petitioner's charges were proved against him. In fact, the enquiry officer also concluded that though there was no direct evidence against the petitioner, without the



W.P.No.24171 of 2015

WEB COPY

assistants of the petitioner, the second delinquent could not have issued fake appointment order to the victims. Therefore, on presumption and assumption the petitioner cannot be punished that too with the capital punishment.

10. In this regard, the learned counsel for the petitioner relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2009 2 SCC 570** in the case of **Roop Singh Negi Vs Punjab National Bank and other**, wherein the Hon'ble Supreme Court of India held that in a departmental proceeding, the enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. Therefore, the enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof.



W.P.No.24171 of 2015

WEB COPY

11. In the case of hand also the investigating officer recorded the statement from the victims and framed charges against the petitioner. However, no witness had deposed before the enquiry officer in order to substantiate the said statement.

12. The Hon'ble Supreme Court of India in the case of **Roop Singh Negi Vs Punjab National Bank and other** reported in **2009 2 SCC 570** cited a Judgment of the Hon'ble Supreme Court of India reported in **2006 5 SCC 88** in the case of **M.V.Bijlani Vs Union of India** and held as follows:-

" 25.Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."



W.P.No.24171 of 2015

WEB COPY

15. Therefore, this Court is of the considered opinion that no charges proved before the enquiry officer against the petitioner. Therefore, the enquiry report itself is vitiated and consequential order of removal from service on the strength of the said enquiry report is also vitiated and liable to be quashed.

16. Accordingly, the Government Order in G.O.(3D) No.3, Social Welfare & Nutritious Meal Programme Department, dated 22.07.2015 is hereby quashed.

17. However, now the petitioner had attained super annuation and as such the reinstatement of the petitioner into service does not arise. However, the petitioner is entitled for all the back wages, terminal benefits in pursuant there to and other attendant benefits if any. The first respondent is directed to pay all the benefits which are entitled by the petitioner, within a period of twelve weeks from the date of receipt of a copy of this order.



W.P.No.24171 of 2015

WEB COPY

18. In the result, this writ petition stands allowed. Consequently, connected Miscellaneous petition is closed. There shall be no order as to costs.

07.07.2023

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order
mn



WEB COPY



W.P.No.24171 of 2015

To

1. The Principal Secretary to Government,
Social Welfare and Nutritious Meal Programme,
(SW1) Department,
Secretariat, Chennai-600 009.
2. The Commissioner of Social Welfare,
Guindy, Chennai-600 032.
3. The Director cum Mission Director,
Integrated Child Development Services,
Chennai-600 113.
4. The Secretary,
Tamil Nadu Public Service Commission,
Chennai-600 003.
5. The District Social Welfare Officer,
Kancheepuram.



WEB COPY



W.P.No.24171 of 2015

G.K.ILANTHIRAIYAN, J.

mn

W.P.No.24171 of 2015

07.07.2023