(2007) 04 MAD CK 0069

In the Madras High Court

Case No : Writ Petition No. 16839 of 2006

A. Yesoda APPELLANT

Vs

The Collector and The Divisional Development Officer RESPONDENT

Date of Decision : 09-04-2007

Acts Referred:

Tamil Nadu Civil Services (Classification, Control and Appeal) Rules, 1953 — Rule 8
Tamil Nadu Civil Services (Discipline and Appeal) Act — Section 17
Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 17
Tamil Nadu Financial Code — Article 144

Citation : (2007) 04 MAD CK 0069

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : P. Rajendran, for the Appellant; C. Kalaichelvan, Addl. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

N. Paul Vasanthakumar, J.—In this writ petition, Petitioner seeks to quash the order of the first Respondent dated 30.1.1995 ordering recovery of Rs. 1,04,992/-.

2. The brief facts necessary for disposal of the writ petition are as follows.

(a) Petitioner was working as Manager (Noon-Meal Programme), Van-davasi Block, Vandavasi Taluk, Tiruvannamalai District. On 14.4.1987, the Block Development Officer, Vembak-kam, passed an order stating that the Petitioner while working as Manager, Rural Landless Employment Guarantee Programme, Vembakkam, from 8.11.1985 to 11.8.1986, was transferred from Vembakkam to Vandavasi, and she joined duty at Vandavasi on 18.8.1986 without handing over charge to A. Kannan, Manager at Vembakkam and she handed over the charge only on 10.11.1986 and that shortages were found in the stock of rice, wheat and cement. The Petitioner was issued with a charge memo. She has not submitted any explanation and therefore charges were held proved and a sum of

Rs. 2,00,374.00 being double the cost of the materials found short, had to be recovered from the Petitioner.

(b) The Divisional Development Officer, Cheyyar, also framed charges against the Petitioner under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, in respect of the same set of facts and passed an order on 19.8.1987 and imposed a penalty of stoppage of increments for three years without cumulative effect.

(c) Petitioner filed appeal before the District Collector, North Arcot District and on 26.2.1989, the District Collector set aside the order passed by the Block Development Officer dated 14.4.1987 and of the Divisional Development Officer, Cheyyar, dated 19.8.1987 and directed the Divisional Development Officer, Cheyyar, to go through all the records and registers and conduct enquiry with the Petitioner and the witnesses and initiate fresh disciplinary action under the CCA Rules for the shortage of stocks and other irregularities and send his findings with connected records to the District Collector for passing final orders within two months.

(d) The Divisional Development Officer thereafter framed charges u/s 17(b) of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules and issued a charge memo on 13.6.1991. Petitioner submitted her explanation on 19.8.1993 and denied the charges. The Personal Assistant (SS) to the District Collector, Thiruvannamalai District, was appointed as Enquiry Officer to conduct enquiry, who obtained written stateemnt from the Petitioner and the witnesses. It is the case of the Petitioner that no witness was examiend in the presence of the Petitioner and no opportunity to cross-examine the witness were given to the Petitioner. The Enquiry Officer submitted his report on 22.12.1993 holding that eight out of nine charges were proved. The Enquiry Officer again conducted an enquiry on 25.3.1994 and obtained written statement from the witnesses, whose names were mentioned in the questionaire form. Petitioner was not given opportunity to cross examine the said statements said to have been given by the said witnesses and the Enquiry Officer submitted his second report on 11.5.1994.

(e) Based on the enquiry reports, the District Collector, Tiruvannamalai, passed an order on 30.1.1995 and imposed punishment of stoppage of increment for five years without cumulative effect and ordered recovery of Rs. 2,05,179.15. The said order of punishment and imposing double the cost of pecuniary loss is challenged on the ground that there is no provision to recover double the pecuniary loss under Rule 8(v)(a) of the Rules and only the actual loss could be ordered to be recovered. It is also challenged on the ground that stoppage of increment cannot be ordered while ordering recovery from pay and the same is in violation of Rule 8(v)(iii) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, and the action of the District Collector in ordering recovery from pay as well as withholding increments is double jeopardy which is prohibited in law.

(f) It is also stated in the affidavit that the enquiry conducted for the charges framed under Rule 17(b) is not valid as the witnesses were examined not in the prsence of the Petitioner and they have been directed to give statements and the Petitioner was not given opportunity to cross examine to test the verasity of the statements. It is also stated that during the enquiry one A. Kannan, former manager admitted that at the time of handing over charge to the Petitioner on his transfer from Vembakkam, he did not weigh the rice and other stocks and therefore liability cannot be fixed on the Petitioner, particularly when it is admitted that while handing over the charge to the Petitioner the articles were not weighed and it is the responsibility of the former manager to weigh the articles and hand over the charge.

(g) It is further stated that the District Collector, Vellore, through his proceedings dated 13.5.1995 instructed the Commissioner of Panchayat Unions in his district to store the food grains in the Warehousing Corporation immeditely and if any loss or deterioration occur in the stock, they will be held fully responsible for the loss and the said direction was given pursuant to the directions issued by the Government and the first Respondent also informed the said directions to the Block Development Officers of his District. The then Panchayat Union Commissioner having not followed the instructions, is liable for the loss as per the above circular, but no action was taken against the then Panchayat Union Commissioner. The Petitioner having been issued charge memo under Rule 17(a) for the very same allegations, after remand the Divisional Development Officer cannot alter the charge to that of 17(b) and no reason is also given for conversion of the charge from 17(a) to 17(b). On the said grounds the impugned order is sought to be quashed.

3. The Respondents filed counter affidavit wherein it is stated as follows.

(i) As per Article 144 of the Tamil Nadu Financial Code, Volume-I, whenever a Government servant, who is entrusted with the custody of stores is transferred, the relieving Government Servant should verify the stock and accounts taken over and report the result of the verification to his immediate superior. The relieving Officer viz., A. Kan-nan, verified the stock by physically weighing and he found the stock deficiency and the same was also found by the Local Fund Audit party while auditing and a direction was made to recover double the cost of the stock.

(ii) The Divisional Development Officer, Cheyyar submitted his report along with charge memo and explanation of the Petitioner to the District Collector to pass final orders since the District Collector is the appointing authority. The District Collector imposed punishment of stoppage of increments for five years without cumulative effect and ordered recovery based on the report of the enquiry officer. The recovery was due to the pecuniary loss to the Government.

(iii) The Government of India allotted food grains through the Food Corporation of India to the Panchayat Unions at subsidised rates for distribution to the labourers, who are employed in the works taken under NREP/RLEGP schemes. The cost of the same quality of food grains is more in the open market and hence it was ordered to recover double the cost of the stock i.e., the cost prevailing in the open market. Therefore the Respondents justified the recovery of double the cost.

(iv) With regard to stoppage of increments it is stated in the counter affidavit that the Petitioner failed to maintain correct balance sheet with reference to stock books, which resulted in gross negligence of duty and she failed to hand over stocks before joining in the new station and failed to bring information about the shortage of food grains and cements to the head office in writing, when she was working in Vembakkam Block from 8.11.1985 to 12.8.1986 i.e., 9 months and 4 days. The averment of the Petitioner that the said Kannan, former Manager handed over the stock to the Petitioner on 20.11.1985 without weighing cannot be accepted on the ground that the Petitioner failed to insist for weighing while taking over the charge including the stocks and Petitioner also failed to bring to the notice of the Block Development Officer. Petitioner''s conduct in not insisting to weigh the stock before taking over the charge is failure on her responsibility.

(v) It is further stated in the counter affidvit that the Manager of the Scheme is the custodian and second head of the scheme and the Manager could have submitted a detailed note to the Block Development Officer, obtained his orders to move the stocks from the private godown to the nearest Warehousing Corporation Godown as per the District Collector''s communication dated 13.5.1986. Petitioner failed to act according to the said instructions and if the same was intimated to the Block Development Officer, the food grains could have been stored in the nearest Warehousing Corporation Godwon and the loss could have been avoided.

(vi) Petitioner held the post upto 12.8.1986 and therefore she was aware of the circular of the District Collector dated 13.5.1986 ordering shifting of stocks to the Warehousing Corporation Godown and the shortages having occurred during the period when the Petitioner was the Manager, Petitioner is solely responsible for the loss and therefore the punishment was imposed and the Respondent prayed for dismissal of the above writ petition.

4. The learned Counsel for the Petitioner submitted that the circular of the District Collector dated 13.5.1986 clearly fixed responsibility of storing the foodgrains in the nearby Warehousing Corporation Godown to the Block Development Offices and directed to report compliance within four weeks. It is also specifically stated therein that the Panchayat Union Commissioners are fully responsible for storing the foodgrains in good condition and were requested to inform the action taken within a week and if they do not take action to store the foodgrains in the Warehousing Corporation Godown and if any loss or deterioration occur, they will be held fully responsible for the loss. Relying on the said circular the learned Counsel argued that the Petitioner cannot be held

responsible for the spoiled stocks. Similarly, Petitioner having been given the charge without actually weighing the foodgrains and cements by the then Manager, the deficiency in stock also could not be claimed as against the Petitioner. The learned Counsel also submitted that the recovery order and the withholding of increment cannot be passed for the same allegations and it amounts to double jeopardy.

5. The learned Additional Government Pleader, relying upon the statements made in the counter affidavit argued that it is the duty of the Petitioner to get the foodgrains and cements weighed while taking charge and the Petitioner cannot now contend that the then Manager has not weighed the foodgrains and cements and handed over the stocks to her and the same amounts to dereliction of duty on the part of the Petitioner. The learned Additional Government Pleader also stated that recovery and withholding of increments are two different aspects and for dereliction of duty, the Petitioner was imposed the punishment of withholding of increment and for shortage of stocks recovery was ordered.

6. I have considered the rival submissions made by the learned Counsel for the Petitioner as well as learned Additional Government Pleader.

7. The point in issue is whether the initiation of disciplinary proceedings against the Petitioner is right and whether recovery can be ordered against the Petitioner for the shortage of some stock of foodgrains and cements and whether the Petitioner can be proceeded for the loss sustained due to spoiling of certain quantity of foodgrains and cements and whether while ordering recovery, punishment of withholding of increment for five years without cumulative effect can be ordered.

8. Petitioner was the Manager of the above said Scheme in Vembakkam Panchayat Union from 8.11.1985 to 12.8.1986, that is for 9 months and four days, is admitted. The shortage of certain quantity of foodgrains and cements in the stock and spoiling of certain quanity of foodgrains and cements are admitted. In the counter affidavit it is stated that the shortage of stocks are rice 36.986 MT; wheat 21.09 MT; and cement two bags. The stocks found spoiled are rice 1.253 MT; wheat 0.536 MT; and cement 29 bags. The explanation of the Petitioner for the deficiency of the stock is that the then Manager Kannan, without weighing the stocks available, handed over the charge to the Petitioner, and therefore she cannot be held responsible.

9. As regards the foodgrains and cements, which were found spoiled, the explanation of the Petitioner is that the Block Development Officer alone can be held responsible as per the circular issued by the District Collector dated 13.5.1986, based on the letter issued by the Commissioner and Secretary to Government, Rural Development Department, Madras-9, in letter Rc. No. l6309/RLEG-86-2 dated 28.4.1986. As regards the charge for the spoiling of stocks as stated above, the Petitioner cannot be held responsible and as per the circular referred, the Block Development Officer concerned alone can be held responsible.

The Commissioner and Secretary gave clear instructions to store the foodgrains and rice allotted in the nearby Warehouses as they are well maintained in a scientific manner and free from any menace, pest attack, etc., and are handled by the qualified trained hands and the rates charged are also cheaper than the rates quoted by the private agencies. Taking note of the same, the Government directed the Block Development Officers to store stocks intended to be used for the scheme in the Warehousing Corporation Godown by specifically stating that if the said instruction is not followed they will be held personally responsible for the loss. Hence for the spoiled items, the Petitioner cannot be held responsible in view of the spe-cific instructions issued by the Government communicated to the Panchayat Union Commissioner by the second Respondent.

l0. Sofar as the contention that the shortage of stock is due to the lack of weighing by the then Manager while handing over the stock to the Petitioner, the contention of the Petitioner cannot be accepted. As per Article 144 of the Tamil Nadu Financial Code Volume-I, the relieving Government Servant should verify the stock and accounts taken over and report the result of verification to his immediate superior. Petitioenr being the Manager of the Scheme, is bound to take the charge after properly weighing the materials available in the godown. However, the charge having been framed under Rule 17(b), a fulfledged enquiry by examining the witnesses in the presence of the delinquent officer giving an opportunity to cross-examine the witnesses who deposed against her is mandatorily to be given as required under the procedures to be followed as per Rule 17(b) of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules. Even according to the counter affidavit it is not stated that the enquiry was conducted only after giving opportunity to the Petitioner to cross-examine the witnesses. A mere bald statement is given that the Enquiry Officer after conducting the enquiry and perusing the records submitted his report. A perusal of the enquiry report clearly demonstrates that the Petitioner was not given opportunity to cross-examine the witnesses and the witnesses were not examined in the presence of the Petitioner and the enquiry having not been conducted in a fair and proper manner, the principles of natural justice is violated by the enquiry officer. The enquiry officer''s report is the basis for im-posing punishment. Hence the impugned order is bound to be set aside for not following the procedures prescribed in conducting enquiry by the Enquiry Officer.

11. It is to be noted that the Petitioner retired from service in the year 1997. The earlier punishment imposed was set aside as procedures were not duly followed. During the second time also the mandatory procedures were not followed while dealing with the charges framed under Rule 17(b) of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules. Hence, I am unable to remand the matter to the District Collector for conducting fresh enquiry, due to the passage of time i.e., the charges relate to 1987. Petitioner retired in the year 1997 and now she is aged 68 years and if the matter is remitted to conduct enquiry the Petitioner will be greatly prejudiced as she may not be able to remember the matters, the witnesses may not be available and they may not

recollect as to what has happened twenty years back. In view of the order being set aside for the above reasons, I need not go into the question as to whether while dering recovery, punishment of.-holding of increments can also be imposed.

12. Therefore, the impugned order is set aside. The District Collector is directed to pay the withheld increments and other benefits within three months from the date of receipt of copy of this order.

The writ petition is allowed with the above directions. No costs.

