

(2011) 07 MAD CK 0306
In the Madras High Court
Case No : Writ Petition No. 11162 of 2009

A.K. Madhavan

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 14-07-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 162, 309, 311(2)

Citation : (2011) 07 MAD CK 0306

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : V. Selvaraj, for the Appellant; V. Subbiah, Spl G.P. for R1 and R2 and K.R. Tamilmani, for R3, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner has come forward to file the present writ petition seeking to challenge the order dated 31.08.2004 passed by the second Respondent District Collector, Vellore. By the impugned order, the Petitioner, who was working as Noon Meal Organiser was dismissed from service on the basis of proved charges. The Petitioner also filed an appeal to the State Government dated 08.09.2004.

2. The writ petition was admitted on 03.11.2009. Pending the writ petition, this Court declined to grant any interim relief and the stay application was dismissed on 05.07.2011. On notice from this Court, the third Respondent has filed a counter affidavit dated 07.01.2010.

3. It is seen from the records that the third Respondent was entrusted with the running of 42 Noon Meal Centres attached to various schools under the Corporation. The Petitioner was appointed as a Noon Meal Organiser in the Centre at Municipal Elementary School, Thandavaraya Gounder Street, Vellore. He was placed under suspension pending enquiry into charges by an order dated 30.01.2004. Despite his suspension and direction to entrust the post to another

organiser to take additional charge, the Petitioner refused to hand over the stocks and records and went away by locking the room. In order to see that the students were not affected by the act of the Petitioner, the lock was broken in the presence of Headmistress of the School and a member of the Municipal Council and the list of food materials and vessels were taken in the presence of those persons. It was found that the Petitioner did not maintain any records and there was also shortage of food materials and vessels.

4. In the mean while, the Petitioner moved the Tamil Nadu Administrative Tribunal with O.A. No. 1728 of 2004, challenging the order of suspension. The Tribunal by an order dated 23.04.2004 directed the Petitioner to appear before the third Respondent and the third Respondent was directed to inform the date of enquiry. On the Petitioner appearing before the Commissioner of the Municipality, the Commissioner was directed to revoke the suspension but without prejudice to enquiry.

5. The said order of the Tribunal was challenged in a writ petition before this Court by the Respondents being W.P. No. 14832 of 2004. That writ petition was admitted by this Court on 01.06.2004 and initially an interim stay was granted. However, the said writ petition came to be dismissed by a Division Bench of this Court on 04.08.2008 for want of prosecution.

6. Since that writ petition was dismissed, the Petitioner contended that the order of the Tribunal will come into force. Since that order was not obeyed, the Petitioner filed a Contempt Petition No. 276 of 2009 before this Court. But however, a Division Bench by an order dated 16.04.2009 found that subsequent to the suspension, he had been dismissed from service and hence, the question of any contempt will not arise. The Petitioner was at liberty to challenge the said order of dismissal. Accordingly, he has filed the present writ petition, challenging the order of dismissal passed by the District Collector.

7. It is seen from the records that as against the charges levelled against the Petitioner, the Corporation Accountant cum Manager was appointed as Enquiry Officer. He conducted enquiry on 16.06.2004, 30.06.2004, 06.07.2004 and 15.07.2004. The statements of additional Noon Meal Organiser having additional charge, Municipal Council (Ward Number 36), Assistant of the Noon Meal Centre, the School Headmistress and the Town Inspector were all examined and recorded.

8. The first charge against the Petitioner was that since he was absent for duty on 30.01.2004, food was not provided to the school children on that day and thereby causing bad name for the Municipality. The Petitioner's explanation that since he had to go for an eye test, he had entrusted the work to his daughter-in-law was not accepted. It was held by the Enquiry Officer that on that day, the said daughter-in-law Vijaya was present in the Centre up to 11.30 am and went to her house. On that day, no food was supplied to the children was proved.

9. The second charge was that he had failed to submit the records for audit inspection on 23.01.2004 inspite of specific instructions and he had also

absented for duty for months together, thereby disobeying the order of the superior. Though the Petitioner contended that he was not informed about the audit by the Accountant General office, the Enquiry Officer found that the said information was given to all the Noon Meal Centre and therefore, the Petitioner cannot feign ignorance and also held that he was irregular in attending the centre.

10. The third charge against the Petitioner was that he was a member of Congress party as well as AIADMK party and having ID cards and membership cards, he was sending false complaints against his superiors and other employees. The Petitioner claimed that after he joined duty in the 1994, he was not a member of any political party. But that claim was disproved by producing the copies of the letter sent by him wherein, he had described himself as Branch Secretary of AIADMK, Sankaranpalayam and his membership card for the year 1993 was also produced.

11. The fourth charge against the Petitioner was that he refused to receive the suspension order, thereby making them to affix the notice and he had also failed to hand over the Stocks Register and Post Office pass book. Though the Petitioner claimed that he had worked in the centre till 04.02.2004, he received the order of suspension through registered post only 04.02.2004 and on 05.02.2004, he waited in the centre till 9.00 am to entrust the records but no one came to receive the records, it was found that he was not found in the centre as claimed by him and after entrusting 3 days food materials for preparation, he locked the centre and went away, which necessitated the authorities to broke open the lock on 06.02.2004.

12. With reference to the 5th charge regarding the shortage of materials, the Petitioner claimed that he was willing to pay for the shortage but he denied the charge of shortage. The explanation offered by the Petitioner was not accepted in this regard.

13. The 6th charge was that he had failed to maintain the balance of Rs. 18,335.41 in the savings bank account. The Petitioner gave an explanation that he was willing to pay the balance amount after the audit.

14. Considering the findings rendered by the Enquiry Officer and accepting the same and on the basis of the proved charges, the District Collector had imposed the penalty of dismissal.

15. It is not clear as to how the said order can be assailed by the Petitioner. It must be noted that the Noon Meal Organiser is not a service created either by the State Government or by the Corporation and they ere appointed on the basis of various Government Orders in force. They do not hold any civil post in terms of Article 309 of the Constitution.

16. It was held by one of the learned Judge of this Court in *G. Periannan v. Government of Tamil Nadu* rep. By the Secretary to Government reported in

(2007) 5 MLJ 291, that a noon meal organiser was held to be holding a civil post in terms of Article 309 of the Constitution and therefore, such appointees are entitled for protection under Article 311(2) of the Constitution. The learned Judge also held that since Noon Meal Organiser was appointed in terms of the Government order and the posting and transfers are also given by the officials of the State and the salaries are met out of the funds allocated under the budget allocation, he was of the opinion that a Noon Meal Organiser will have protection under Article 311(2) of the Constitution. Even in the absence of any service Rules framed for the said Service, the post of Noon Meal Organiser was created under the Government Order, which was issued in exercise of powers conferred under Article 162 of the Constitution, such persons must be held to be holding a substantive post.

17. However, the said judgment has been disagreed by this Court in W.P. No. 48448 of 2006 dated 05.07.2011 C. Muniammal v. District Collector Vellore after referring to the following judgments of the Supreme Court:

i) Dipitimayee Parida Vs. State of Orissa and Others, , wherein the Supreme Court dealt with the nature of employment of the Anganwadi Workers. In Paragraph 11, it was held as follows:

11. The matter relating to recruitment of Anganwadi workers is not governed by any statute. Recruitments are made pursuant to a scheme framed by the Central Government. The State, therefore, while making recruitments in such projects in exercise of its jurisdiction under Article 162 of the Constitution of India, may issue such guidelines and/or circulars as it may deem fit and proper. The said guidelines are ordinarily binding on all the functionaries working in terms of the "scheme" including the Selection Committees constituted for the recruitment of Anganwadi workers.

ii) The Supreme Court in State of Karnataka and Ors. v. Ameerbi and Ors. reported in (2007) 11 SCC 681, held that Anganwadi workers are not holders of civil post. In paragraphs 13,14,20,28,29,31 and 38, the Supreme Court held as follows:

13. The posts of anganwadi workers are not statutory posts. They have been created in terms of the scheme. It is one thing to say that there exists a relationship of employer and employee by and between the State and anganwadi workers but it is another thing to say that they are holders of civil post.

14. We are not oblivious to the fact that their presence in their respective villages is extremely important. They are supposed to make significant contribution to the society. They, we understand, are required to carry out a large number of activities, primary amongst them being the welfare of the children.

....

20. Anganwadi workers, however, do not carry on any function of the State. They

do not hold post under a statute. Their posts are not created. Recruitment rules ordinarily applicable to the employees of the State are not applicable in their case. The State is not required to comply with the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. No process of selection for the purpose of their appointment within the constitutional scheme exists. We do not think that the said decision has any application in the instant case

...

28. However, rules framed under proviso to Article 309 of the Constitution of India are not attracted in the case of the Respondents. They are appointed under a scheme which is not of a permanent nature, although might have continued for a long time.

29. Appointments made under a scheme and recruitment process being carried out through committee, in our opinion, would not render the incumbents thereof holders of civil post. Our attention has not been drawn to any rule or regulation governing the mode of their recruitment....

...

31. One of the questions which was raised before us was in regard to the right of an anganwadi worker to contest an election. They are indisputably free to do so. A holder of a civil post may not be entitled there to.

...

38... We are concerned herein with only one question viz. whether the Respondents are holders of any civil post. We are, having regard to the materials on record, of the view that they are not.

18. Obviously, the learned Judge who rendered the judgment in G. Periannan's case (cited supra) did not have the benefit of these two rulings of the Supreme Court. Therefore, this Court is not inclined to accept the reasoning found in the said judgment.

19. Further, in all the cases relating to disciplinary action against the employees of the Noon Meal Centre leading to their termination, this Court had only observed that minimum principles of natural justice should be followed before imposing the penalty and in that respect a reference was made to the judgment of the Supreme Court in Meenglas Tea Estate Vs. Its Workmen, . In paragraph 4 of the judgment, the Supreme Court has set out the minimum requirements of the enquiry and it is as follows:

It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross-examination as he desires. Then he must be given a chance to rebut the

evidence led against him. This is the barest requirement of an enquiry of this character and this requirement must be substantially fulfilled before the result of the enquiry can be accepted. A departure from this requirement in effect throws the burden upon the person charged to repel the charge without first making it out against him. In the present case neither was any witness examined nor was any statements made by any witness tendered in evidence. The enquiry, such as it was, made by Mr. Marshall or Mr. Nichols who were not only in the position of judges but also of prosecutors and witnesses. There was no opportunity to the persons charged to cross-examine them and indeed they drew upon their own knowledge of the incident and instead cross-examined the persons charged. This was such a travesty of the principles of natural justice that the Tribunal was justified in rejecting the findings and asking the Company to prove the allegation against each workman de novo before it.

20. In the present case, the charges levelled against the Petitioner are very serious and on the basis of the proved charges, the Petitioner's service was terminated. Hence, it is not a fit case where any relief can be given to the Petitioner. Hence, the writ petition stands dismissed. However, there will be no order as to costs.