

(2011) 11 MAD CK 0060

In the Madras High Court

Case No : Writ Petition No. 3721 of 2007

C. Raja Chandran

APPELLANT

Vs

The District Elementary Educational Officer, Sivagangai,
Sivagangai District

RESPONDENT

Date of Decision : 21-11-2011

Acts Referred:

Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 17, 2, 8, 9

Citation : (2011) 11 MAD CK 0060

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : Mohan Raj, for the Appellant; V. Subbiah Special Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice D. Hariparanthaman

1. The petitioner has prayed for issuance of a writ of certiorarified mandamus to call for the records of the impugned order of the respondent in Na.Ka.No. 403/A1/2001 dated 19.7.2001 and to quash the same.

2. The petitioner was working as Secondary Grade Teacher in Panchayat Union Middle School, Urathupatti, S.Pudur Block, Sivaganga District. He was issued with charge memo dated 17.1.2001 under Rule 17-A of the Tamil Nadu Civil Services (Discipline and Appeal) Rules making certain allegations. The petitioner submitted his explanation dated 25.1.2001 denying the same. Ultimately, the respondent issued the impugned order dated 19.7.2001 imposing the punishment of stoppage of increment for six months without cumulative effect and also withholding of promotion for one year. The petitioner filed O.A.No. 5035 of 2001 before the Tamil Nadu Administrative Tribunal questioning the aforesaid order dated 19.7.2001. On abolition of the Tribunal, the Original Application got transferred to this Court and re-numbered as W.P.No. 3721 of 2007.

3. Counter affidavit is filed refuting the allegations.

4. The impugned order is assailed on the ground that the same is in violation of Rule 8(iii) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules read with Rule 17-A of the Rules.

5. The petitioner has categorically raised the aforesaid ground in para 6(A) of the Original Application filed before the Tamil Nadu Administrative Tribunal. Paragraph No. 6(A) of the Original Application is extracted hereunder:

6 (A). Stoppage of Increment is one of the penalties enumerated under Rule 8 of the Tamil Nadu Civil Services (Discipline & Appeal) Rules. Similarly, withholding of promotion is also a penalty enumerated under the said Rule. In the impugned order it has been stated that the penalty of stoppage of increment for 6 months without cumulative effect and withholding of promotion for one year have been ordered by way of penalty. In other words, 2 punishments have been awarded for the same misconduct. This is not permissible in law. It amounts to double jeopardy. The impugned order by which 2 penalties have been awarded against the Applicant for the same misconduct is therefore illegal and cannot be sustained in law. The impugned order is therefore liable to be set aside.

But the same is not controverted by the respondent in the counter affidavit. In the counter affidavit, there is no para-wise remarks. Furthermore, at no place in the counter affidavit, the point raised in Ground 6(A) was dealt with.

6. In the circumstances, Rules 8 and 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules are extracted below:

8. The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon every person who is a member of the civil service of the State and every person holding a civil post under the State specified in rule 2, namely:

(i) Censure:

(ii) Fine (in the case of persons for whom such penalty is permissible under these rules)

(iii) Withholding of increments or promotion:

(iv).....

(v).....

(ix)....

Rule 17(a). Procedure to be followed while it is proposed to impose Minor penalties:

Rule - 17(a). In every case where it is proposed to impose on a member of a service or a person holding a civil post under the State any of the penalties

specified in items (i), (ii), (iii), (v) and

(ix) in rule 8 or in rule 9, he shall be given a reasonable opportunity of making any representation that he may desire to make and such representation if any shall be taken into consideration before the order imposing the penalty is passed.

Provided that the requirements of the sub-rule shall not apply where it is proposed to impose on a member of a service any of the penalties aforesaid on the basis of facts which have led to his conviction by a court martial or where the officer concerned has absconded or where it is for other reason impracticable to communicate with

him.

Provided further that in every case where it is proposed, after considering the representation, if any made by the Government servant to withhold increment of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay without cumulative effect for a period exceeding 3 years or to withhold increment of pay with cumulative effect for any period the procedure laid down in sub-rule (b) shall be followed before making any orders imposing on the Government servant any such penalty

7. When the respondent initiated proceedings under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, he could have imposed any of the punishments under Rule 8(i), (ii), (iii), (v) and (ix) of the Rules.

8. Therefore, the respondent could have either imposed withholding the increment or withholding the promotion. The respondent cannot do both, as there is a prohibition under Rule 8(iii) of the Rules. Hence, the impugned order of the respondent dated 19.7.2001 is liable to be quashed. Accordingly, the same is quashed.

9. The writ petition is allowed. No costs.