
(1997) 02 MAD CK 0034
In the Madras High Court

D. Doraisamy

APPELLANT

Vs

The Commissioner, Thiruvannamalai Panchayat Union and
Another

RESPONDENT

Date of Decision : 21-02-1997

Acts Referred:

Penal Code, 1860 (IPC) — Section 380, 457

Citation : (1997) 2 MLJ 483

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Judgement

E. Padmanabhan, J.—The petitioner, a carpentry instructor in the first respondent Panchayat Union, has filed the present writ petition

seeking for the issue of a writ of certiorari to call for and quash the proceedings of the 1st respondent in R.C.A. No. 2/5099/94, dated 11.3.1996.

2. The petitioner states that the Thiruvannamalai Panchayat Union has established Carpentry and Blacksmith Production Centre at Samudram

under the TRYSEM Scheme within the limits of Nallavanpalayam Panchayat, that after the office hours night watchman used to take care of the

Unit, that the said Unit was broken open and theft had been committed on 2.7.1994, that a police complaint had been lodged by the petitioner at

the first itself and later by the 1st respondent, that the Thiruvannamalai Taluk Rural Station (Law and Order) had registered a crime, that the

petitioner was placed under suspension for certain alleged lapses on his part leading to theft, that on 26.7.1994 charges were framed against the

petitioner by the 1st respondent, that the petitioner submitted his explanation on 18.8.1994, that on 9.1.1996 the order of suspension was revoked

and the petitioner was reinstated, that the Extension Officer (Co-operation) in

the office of the 1st respondent recorded the statement of the petitioner and forwarded the same to the 1st respondent, that there has been no further proceedings such as show cause notice and communication of Enquiry Officer's report, that no final orders had been passed on the charges framed against the petitioner, as prescribed by Panchayat Establishment (Appointment and Punishment) Rules, 1965, that suddenly 11.3.1996, the 1st respondent ordered recovery of Rs. 27,000 from the petitioner and a sum of Rs. 27,000 from the night watchman Narasimhan to be recovered in monthly instalments of Rs. 500 each from their respective salary, and that being aggrieved the present writ petition has been preferred.

3. The 1st respondent has filed a counter. The 1st respondent had stated that the theft that had taken place on 2.7.1994 was brought to his notice on 4.7.1994 belatedly, that the 1st respondent had lodged a complaint to the police, that under the oral instruction of the 2nd respondent, the writ petitioner and the night watchman were suspended on 5.7.1994, that charges had been framed against the petitioner under Rule 17(b) of C.C.A. Rules, that the petitioner had confessed his negligence in duty and his irresponsibilities, that Narasimhan also confessed his sudden absence from duty without giving any information to his superior, that separate enquiry was conducted by the Extension Officer (Co-operation), that a report dated 21.2.1995 confirmed the irresponsibility in duty of the night watchman and the carpentry instructor, that based on the interim enquiry report reply of the Inspector of Police Thiruvannamalai Rural (L and O) dated 3.11.1995 and the letter dated 20.11.1995 of the Superintendent of Police, that the writ petitioner and the said Narasimhan Watchman are only the persons involved in the theft, that the order of suspension was revoked on 9.1.1996 and both the incumbents joined duty on 11.1.1996, that based on the interim report of the Superintendent of Police and on the basis of the Emergency instruction of the Divisional Development Officer, Thiruvannamalai, recovery order has been issued by the Panchayat Union Commissioner for Rs. 54,000 equally against the two i.e., Rs. 27,000 from each incumbent at Rs. 500 p.m. from their salary in 54 monthly instalments commencing from March, 1996, that the Extension Officer submitted enquiry report that was originally narrated by the petitioner and

counter-signed by the petitioner, that in the statement itself the petitioner confessed slackness and irresponsibility that the petitioner-in-charge of the Unit had not informed the theft in time and that shows that the petitioner is not duty conscious and for the same reasonings he is held responsible for the loss and on that basis recovery order has been passed and that the order of recovery is reasonable.

4. A perusal of the counter-affidavit as well as the impugned proceedings demonstrates the total non-application of mind, the arbitrary action and the total disregard of the rules on the part of the first respondent. The portion of the counter-affidavit which is extraction hereunder would show that the 1st respondent had flouted the statutory rules and had violated the principles of natural justice.

I state that the Panchayat Union. Commissioner lodged a complaint and F.I.R. was registered in the Thiruvannamalai Taluk Rural Station (Law and Order) in C.C. No. 408 of 1994 under Sections 457, 380, I.P.C. on 6.7.1994 by 11.00 a.m. Under the oral instruction of the Divisional

Development Officer, Thiruvannamalai and the available informations, the carpentry instructor one Thiru Duraiswamy and the Night watchman one

Thiru Narasimhalu were suspended by the separate suspension orders, by the Panchayat Union Commissioner in his proceedings R.C.A.

25099/94 dated 5.7.1994.

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I further state that separate enquiry has also been conducted by Extension Officer (Co-operation) of the Office and the report dated 21.2.1995

confirmed the irresponsibility in duty of the Night watchman and the carpentry instructor. Based on the interim investigation report reply of the

Inspector of Police, Thiruvannamalai Rural, 3.11.1995 and the letter No. 04/35093/1555/95, dated 20.11.1995 of the Superintendent of Police

that Thiru Duraiswamy and Thiru Narasimhalu were only the persons involved in the theft.

I submit that for want of final report from the police and also for administrative reasons both the suspected individuals were revoked from

suspension in the separate proceedings by the Panchayat Union Commissioner Thiruvannamalai dated 9.1.1996. Both incumbents were joined

duty on 11.1.1996. Based on the interim report of Superintendent of Police,

Thiruvannamalai Sambuvarayar District and on the basis of Emergency Instruction of the Divisional Development Officer, Thiruvannamalai, The Panchayat Union Commissioner, made the recovery order for Rs. 54,000 by equal share of the recovery amount of Rs. 27,000 from each incumbent Rs. 500 from their salary in 54 monthly instalment commencing from March, 1996 (in his proceedings R.C.A. 25099/94, dated 11.3.1996. I further submit that the Extension Officer (Co-operation) submitted the enquiry report that was originally narrated by the petitioner and counter signed by the petitioner. The statement itself confesses that the petitioner was showed much slackens and irresponsibility in his duties. It is also further submit that the petitioner cum the Incharge person the carpentry Unit premises was charged for reasonings, that he was not informed the theft incident in time, it shows that not at all duty conscious and for the same reason he was held responsible for loss. Hence, the recovery order was passed. Hence, the recovery order is not an imaginary one.

(The above passage is reproduced as found in the counter-affidavit).

5. The Tamil Nadu Panchayat Establishment (Appointment and Punishment) Rule 1965 alone applies to the petitioner and not the Tamil Nadu Civil Services Classification Control and Appeal Rules. In terms of the said Rule 23 of the Tamil Nadu Panchayat Establishment (Appointment and Punishment) Rules 1965, recovery of the whole or a portion of any pecuniary loss caused to the panchayat by negligence, fraud or breach of rules or orders, is one of the penalties.

6. Sub-rule 2(a) as well as (b) of Rule 23 provides for the elaborate procedure that has to be followed by the 1st respondent. This rule has not been followed. Admittedly, after primary of the charges against the petitioner, no enquiry has been conducted. Even according to the counter-affidavit, only the statement of the petitioner and the night watchman were recorded and no other witnesses have been examined. Further, the respondent had eloquently depended upon the interim reopen received from the Inspector of Police as well as the Superintendent of Police and based on that order of recovery had been passed. Being penalty, it is incumbent on the part of the 1st respondent to complete the enquiry as prescribed under Rule 23 furnish the copy of the report, call for objection and thereafter penalty should have been imposed. Thus, there is violation

not only to Rule 23 which is mandatory but also there has been violation of principles of natural justice. Merely based on the interim report of the Superintendent of Police or that matter from the Inspector of Police, the petitioner cannot be fastened with liability nor they could be called upon to make good loss nor such penalty could be imposed on the petitioner without holding an enquiry and affording sufficient opportunity for the petitioner to defend himself.

7. The 1st respondent had not realised his responsibility and had failed to act in the manner prescribed by the Rules. In terms of Rule 23(2)(a) and (b) it is incumbent on the part of the 1st respondent to reduce the imputation to the form of a definite charge or charges and communicate the statement of allegation on which charges are framed and the other circumstances which is being taken into consideration in passing the orders. The 1st respondent should have called upon the delinquent to submit his written statement of his defence and to state whether he wants to have an oral enquiry or only to be heard in person. At the enquiry oral evidence shall be let in and the person who is charged shall be entitled to cross examine witnesses. After enquiry referred to Clause (a) of Rule has been completed, the executive authority shall record his findings on which charge, he holds guilty and after issuing show cause notice about the conclusion reached by the Executive Officer and after considering the representation submitted by the delinquent, the Executive Officer shall pass final orders and impose such penalty. This procedure has not been followed and penalty has been imposed without following the procedure prescribed by the Rules.

8. As rightly contended by the learned Counsel for the petitioner that there has been violation of statutory rules and principles of natural justice. It is needless to state that the impugned order passed by the 1st respondent is arbitrary and illegal and suffers on the face of the record. The 1st respondent has passed the impugned orders without following the procedure and the order have been passed on the instructions given by the 2nd respondent and it vitiates the impugned proceedings. The 1st respondent passed the impugned proceedings based on the report of the Inspector of Police as well as the Superintendent of Police. Charges 1 to 3 would also disclose that the 1st respondent has framed the said charges without

applying his mind.

9. This Court would have normally directed the writ petitioner to prefer appeal before the 2nd respondents appellate authority. But in the present

case, the 1st respondent had failed to pass orders independently but he had passed the orders on the directions of the 2nd respondent as well. It is

not proper on the part of the 1st respondent to have simply passed orders on the direction of the 2nd respondent. Even the suspension order has

been passed on the direction of the 2nd respondent. The 1st respondent should act independently and not on the instruction of the 2nd respondent.

In the circumstances, this Court is inclined to interfere and quash the impugned proceedings.

10. For the foregoing reasons, the impugned proceeding of the 1st respondent is quashed and the writ petition is allowed with a cost of Rs. 1,000.

It is made clear that it is open to the 1st respondent to proceed afresh according to the procedure prescribed under the Rules and pass orders

according to law.