

(2011) 02 MAD CK 0094

In the Madras High Court

Case No : Writ Petition No. 45950 of 2006 (O.A. No. 7573 of 2000)

D. Ramanathan

APPELLANT

Vs

The District Collector, The Commissioner, Panchayat Union
and The Head Master, Adi Dravida Welfare Primary School

RESPONDENT

Date of Decision : 28-02-2011

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 162, 309

Citation : (2011) 02 MAD CK 0094

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : Shanmugapriya, for V. Raghavachari, for the Appellant; R. Murali, G.A. for R. 1 and S. Thangarajan, for R. 2, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—The Petitioner was working as Noon Meal Organiser in the Centre attached to the Adi Dravidar Welfare Primary School

at Chikkathambur, Thuraiyur Taluk. He filed O.A. No. 7573 of 2000 before the Tamil Nadu Administrative Tribunal, challenging the order dated

09.06.2000.

2. By the impugned order, the Petitioner's services were terminated by the first Respondent District Collector, Tiruchirapalli on account of certain misconduct.

3. The Tribunal ordered notice of motion on the Original Application on 17.10.2000. Pending the notice of motion, no interim relief was granted to the Petitioner.

4. In view of the abolition of the Tribunal, the matter stood transferred to this Court and was renumbered as W.P. No. 45950 of 2006.

5. The second Respondent has now filed a counter affidavit dated 14.02.2011.

6. The facts leading to the Petitioner's termination were as follows:

The Petitioner along with one Cook Marudhayee were suspended from service vide order dated 30.08.1999. In that order, it was stated that on

25.08.1999, while serving food for the children in the Centre, a six year old boy by name Kadiresan s/o Kannan studying in I Standard fell into the

vessel in which hot sambar was kept. He suffered severe burn injuries and was admitted at the Government Hospital, Thuraiyur. This fact was

brought to the notice of the officials only after six days. Therefore, the Extension Officer submitted a report, wherein, it was indicated that the

Petitioner being the Organiser of the Noon Meal Centre was not present in the Centre on 25.08.1999. In spite of an incident took place on

25.08.1999, he did not inform the incident to the officials thereby, trying to hide the truth. He also did not produce the visitors book as well as

issuance register on 25.08.1999. It was also stated that the Cook did not make the children to sit on the floor and serve the food and because of

that one boy fell into the vessel in which sambar was kept and got injured. On the basis of the said report, the Petitioner was suspended from

service. He was directed to entrust the work of the centre to some other person on an adhoc basis. The Petitioner entrusted the work of the

Centre to another person as directed.

7. Subsequently, the Petitioner was given a charge memo on 09.09.1999 repeating the earlier charges found in the suspension order. The

Petitioner sent a reply to the second Respondent dated Nil. In that reply, he had stated that he applied leave for two days on hearing the news of

the death of his maternal uncle at Thondamanthurai and the letter was given to the Headmaster. Even in the attendance register, those two days

were marked as Casual Leave. He came to know the incident on 26.08.1999 and he went to the house of that boy. He also contacted the

Municipal President and spent amounts towards his medical expenses. On 30.08.1999, he went to the second Respondent and informed him

about these facts. It was also stated that he is also maintaining the registers properly. Notwithstanding the same, the District Collector terminated

the service of the Petitioner as well as the Cook on the above said charges.

8. It was further noted that the school boy died despite medical attention. The

Petitioner also sent a representation of the village people of the

Thondamanthurai to prove that he had come to their village to attend the funeral of his maternal uncle. In the original application, he contended that

no enquiry was conducted against him and he was also not given the report of the Extension Officer allegedly obtained in his absence.

9. In the counter affidavit filed by the second Respondent, it was stated that the post of Noon Meal Organiser is only a part time Post and it cannot

be equated to a civil post. Only after following the principles of natural justice, he was removed from the said post.

10. In support of his contention, Mr. R. Murali, learned Government Advocate relied upon the judgment of the Supreme Court reported in (2007)

11 SCC 681 [State of Karnataka and Ors. v. Ameerbi and Ors.]. Reliance was placed on paragraphs 20, 28, 29 and 33, which is as follows:

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 a 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. Some

statements in this behalf have been made by the interveners but for the reasons stated hereinbefore, we cannot enter thereinto. A distinction must

be made about a post created by the Central Government or the State Governments in exercise of their power under Articles 77 or 162 of the

Constitution of India or under a statute vis-a-vis of this nature which are sui generis. Terms and conditions of services of an employee may be

referable to Acts of appropriate legislature. The matter may also come within the purview of Article 309 of the Constitution of India as proviso

appended thereto confers power upon the President or the Governor of a State or other authority, who may be delegated with such power, to

make rules during the interregnum.

33. The decision, therefore, is an authority for the proposition that those employees who come within the meaning of Article 12 of the Constitution

of India are not necessarily government servants. A fortiori the State in terms of a scheme may exercise control over a section of the persons

working but thereby only, they do not become entitled to protection under Article 311 of the Constitution of India.

11. No doubt, it is true that the post of Noon Meal Organiser is not a constituted service created by the Rules framed under Article 309 of the

Constitution. But yet it is a public employment. Therefore, when once a person appointed is to be sent out on grounds of misconduct which

expressly caused a stigma on an office holder, certainly, the Respondents cannot contend that such persons can be sent out without observing

minimum principles of natural justice.

12. In distinguishing the judgment of the Supreme Court in Ameerbi's case (cited supra), this Court vide judgment reported in D. Pothumallee Vs.

The District Collector, The Project Officer for Children Development and V. Thentral, in paragraphs 6.2 and 7.1 to 7.3 held as follows:

6.2. It must be noted that the post of noon meal organizer, Cook and Assistant Cook as well as Helper in the Anganwadi centres are not created

by any rule framed under Article 309 of the Constitution. It is not a constituted service. But, nevertheless since the Government took over to

maintain the scheme and had created a separate Ministry for administering the scheme and bearing the entire cost of the scheme, including

provisions, utensils and overhead expenditures, salaries of all employees, it is none the less a public employment. Any appointment to such posts

must be subjected to the touchstone of Articles 14 and 16 of the Constitution. Whatever may be the circumstances which prevailed earlier, the

Government has now directly started implementing mammoth the scheme at the level of a Secretary to the Government and the District Collector at

the District level. It is a public employment. In case of any public employment,

equality doctrine with exception for rule of reservation are available subjected to qualification prescribed therein.

7.1. It must also be noted that subsequent to the judgment of the Supreme Court in *State of Karnataka v. Ameerbi* case (cited supra), the

Supreme Court had an occasion to consider the status of Anganwadi workers relating to their recruitment in two subsequent decisions.

7.2. The Supreme Court in *Dipitimayee Parida Vs. State of Orissa and Others*, in paragraphs 11 and 14 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.

14. ...It is one thing to say that the criteria fixed by the State for the purpose of the recruitment of Anganwadi workers are illegal or ultra vires but it

is another thing to say that although they are valid, in their application some relaxation could be granted.

7.3. The Supreme Court vide its judgment in *State of West Bengal and Others Vs. Kaberi Khastagir and Others*, , (relating to the recruitment of

Angawandi workers under ICDS Scheme), had observed in paragraphs 31 and 36 as follows:

31. Having considered the submissions made on behalf of the respective parties, we find ourselves unable to agree with the reasoning either of the

learned Single Judge or the Division Bench of the High Court in holding that the writ Petitioners were project employees in respect of the ICDS

Project and not employees of the State Government and that their services were coterminous with the Project. Para 35 of the Scheme clearly

provides that though the same was a Centrally sponsored scheme, its implementation was left to the respective State Governments with 100%

financial assistance from the Central Government for inputs other than supplementary nutrition which was identified as the responsibility of the State

Government. In fact, Para 47 of the Scheme, which has been extracted

hereinabove, in no uncertain terms makes it very clear that even though funds for the Scheme would be provided by the Central Government, the staff would be borne on the appropriate cadres of the States which would sanction the posts in the appropriate corresponding State pay scale. In the face of such provision it is difficult to accept that the writ Petitioners were project workers and not employees of the State Government.

...

36. All the aforesaid Rules promulgated by the State Government under Para 47 of the Integrated Child Development Scheme leave little room for doubt that Respondents 1, 2 and 3 and others similarly situated, were, in fact, State Government employees. The learned Single Judge, as well as the Division Bench of the High Court, appear to have been swayed by the submissions made on behalf of Respondents 1, 2 and 3 (writ Petitioners before the High Court) that the State of West Bengal is merely a nodal agency to supervise the implementation of the Scheme which was in the nature of a project and that the employees thereunder were, therefore, project employees, overlooking the overall intention and object of the Scheme that in order to provide child care and nutrition for children and lactating mothers, the Central Government was willing to fund the entire project but left the implementation thereof to the State Governments who were authorised under the Scheme to appoint the staff of the Project, who were to be borne on the appropriate cadres of the States. Para 35 of the Scheme, which deals with the functional responsibilities, makes this position very clear.

(Emphasis added)

13. Therefore, it is too late in the day to contend that the Respondents need not observe even elementary principles of natural justice before terminating the service of a Noon Meal Organiser. Time and again in relation to such appointments, this Court had also held as to what constitute the elementary principles of natural justice to be observed before a valid order of termination is passed.

14. In this context, a reference may be 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.

15. In the present case, the Petitioner has put up a valid defence. If such defence is taken note of, the District Collector would have even changed his decision in terminating the services of the Petitioner. Therefore, in the absence of observing even minimum principles of natural justice, this Court is obliged to set aside the impugned order.

16. Accordingly, the impugned order stands set 13 aside. The writ petition stands allowed. The Respondents are directed to conduct fresh enquiry in the light of the observation made by this Court and in accordance with principles of natural justice and pass appropriate orders. This exercise shall be done within a period of three months from the date of receipt of a copy of this order. No costs.