

(2011) 01 MAD CK 0466

In the Madras High Court

Case No : Writ Petition No. 45552 of 2006 (O.A. No. 8256 of 2000)

Dr. Surendranath

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 05-01-2011

Acts Referred:

Constitution of India, 1950 — Article 320

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

Citation : (2011) 01 MAD CK 0466

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : R. Singaravelan, for the Appellant; R. Murali, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner was working as a Deputy Director of Health Services, Thoothukudi. He has come forward to challenge the order of the State Government made in G.O.(D). No. 401, Health and Family Welfare Department dated 20.04.1999 seeking to set aside the same and for consequential benefits. Pending the O.A., he had also sought for interim order. The Tribunal admitted the O.A., on 17.11.2000. But the Petitioner did not have the benefit of any interim order.

2. On notice from the Tribunal, the first Respondent-State has filed a reply affidavit dated 22.03.2006. In view of the abolition of the Tribunal, the matter stood transferred to this Court and renumbered as W.P. No. 45552 of 2006.

3. At the time of filing of the O.A., the Petitioner was in the verge of his retirement as he was 57 years. He got retired on 31.03.2001. The Petitioner was initially charge sheeted on the allegation of demand and acceptance of bribe from the staff of various primary health centre at Periyakulam in passing their L.T.C., Bills, transfers and postings and an enquiry was conducted and in the enquiry, it was held that the allegations were not substantiated and it was found

that he committed certain malpractices and it was also found out by the enquiry officer that the Petitioner violated rules in the appointment and postings of R. Velmurugan, Cook-cum-Waterman and K. Padmavathi, Sweeper. Therefore, a further charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules was framed regarding the procedural irregularities committed by him. An enquiry was conducted and on the basis of enquiry, the Government agreeing with the report of the enquiry officer found that the charges were proved and imposed the penalty of stoppage of increment for two years with cumulative effect. The Petitioner subsequently sent a representation for reconsideration and there was no reply. Thereafter, he moved the Tribunal.

4. The contention raised by the counsel for the Petitioner are three fold. The first contention was that the charges were relating to incident which took place more than 10 years and therefore, they ought not to have proceeded with the enquiry. The second contention was that he being an appointee by the Tamil Nadu Public Service Commission, there was no consultation with the TNPSC on the question of penalty. The last contention was that the Petitioner was imposed with penalty by the impugned Government Order dated 20.04.1999 and he was to retire on 31.03.2001. Therefore, the imposition of penalty by way of increment cut for two years was not possible and therefore, there was non application of mind.

5. In the present case, on the question of delay in framing charges, this Court is not inclined to consider the same because in the course of enquiry relating to bribery charge, other irregularities came to light. Therefore, it cannot be said that there was a deliberate delay in conducting the enquiry. The question of consultation with the Public Service Commission flows from Article 320(3) of the Constitution. Though the said article directs a consultation by the State Government, the Supreme Court considered the scope of the article in several of its decisions. It was found that the term "shall" occurring in Article 320(3) is only directory and not mandatory.

See: 1. State of U.P. Vs. Manbodhan Lal Srivastava,

2. Ram Gopal Chaturvedi Vs. State of Madhya Pradesh,

Therefore, the said objection does not stand to reason.

6. The other objection that the impossibility of imposition of penalty, the said ground was not taken in the O.A., but by way of a passing reference in the M.P., filed for waiving the appellate remedy. The O.A., do not contain the details on the date on which the Petitioner was entitled to have his increments sanctioned. In any event, the factor that such penalty can never be fully imposed can't be a reason to hold that the authorities had passed an order without application of mind. On the other hand, in a matter of imposition of penalty like stoppage of increment or increment, the monetary equivalent of the penalty can always be received. Hence, it cannot be said that there was lack of application of mind.

7. On the question of the Respondents not considering his review application, it

is necessary to point out that before any decision could be taken, the Petitioner has moved the Tribunal and he did not wait for the Government to pass any order.

8. In view of the above, no case is made out to grant the relief sought for by the Petitioner. Accordingly, the writ petition is dismissed. No costs.