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(2016) 05 MAD CK 0008

In the Madras High Court

Case No : W.P. No. (MD) . 1696 of 2008

I. Pandi APPELLANT

Vs

Secretary to Government Social Welfare RESPONDENT

Date of Decision : 11-05-2016

Acts Referred:

Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 7(b)

Citation : (2016) 6 MLJ 179

Hon'ble Judges : Mr. P.R. Shivakumar, J.

Bench : Single Bench

Advocate : Mr. R. Rengaramanujam, Advocate, for the Appellant; Mr. M. Murugan, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mr. P.R. Shivakumar, J.—This writ petition has been filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari calling for the records connected with the order passed by the second respondent, namely the State Commissioner for the Disabled, in his proceedings R.O.C No. 1541/ Admin.5/06 dated 23.01.2008 and quash the same and to pass such further or other orders as this Court may deem fit.

2. The petitioner I. Pandi was appointed as Warden/Secondary Grade Teacher by the orders of the second respondent dated 24.08.1981 and was posted as Deputy Warden, Government School for the Deaf, Thanjavur and he joined the said post on 19.09.1981. Thereafter, he served at various places, namely Thanjavur, Virudhunagar, Cuddalore, Dharmapuri and Erode and lastly he was posted at Ramanathapuram with effect from 09.06.1997 and he worked there as Special Educator-cum-Speech Therapist, Government Pre-School for Deaf, Ramanathapuram till he attained superannuation on 31.05.2006. Since at the time of his initial appointment he had crossed the age of 30 years, by G.O.No.126, Social Welfare and Nutritious Meal Department, dated 21.07.2003, orders were issued granting relaxation in respect of the age and his services

were regularised from 14.09.1981 when he joined the Department as Deputy Warden. At the verge of retirement on superannuation, charges were framed by the second respondent on 17.03.2006 under 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and an Enquiry Officer was appointed. As he attained the age of superannuation on 31.05.2006, the writ petitioner was permitted to retire without prejudice to the Disciplinary Proceedings pending against him and he was relieved from service on 31.05.2006 afternoon. Though certain retirement benefits were sanctioned and order of the Accountant General was obtained, payment was not made as the third respondent, namely the District Disabled Rehabilitation Officer, Ramanathapuram had not furnished "No Due Certificate" to the Treasury for claiming the said retirement benefits, namley GPF, Gratuity, Pension and Commutation of Pension.

3. The charge framed against the writ petitioner was that while he was in the Government Service as Deputy Warden/Secondary Grade Teacher/Special Educator-cum-Speech Therapist, he was doing private job in the name of Amudhu Arts, which was in violation of Rule 8 of the Government Servants Conduct Rules. In view of the initiation of the Disciplinary Proceeding by the framing of the said charge, the writ petitioner was permitted to retire without prejudice to the Disciplinary Proceeding. Even then GPF, Gratuity, Pension and Commutation of Pension as ordered by the Accountant General in his Sanction letter dated 05.07.2006, were not claimed and paid to him since the third respondent, namely the District Disabled Rehabilitation Officer had not produced No Due Certificate, based on which the bill was audited by the Treasury. After several attempts made by the writ petitioner for about two years to know what was the impediment for claiming the amount sanctioned by the Accountant General and paying it to him, he was given to understand that the absence of clearance by the Director of Vigilance and Anti-corruption was the reason for non-settlement of his retirement benefits. Hence, the writ petitioner wrote a letter dated 30.10.2007 to the Director of Vigilance and Anti-corruption (4th respondent) requesting that he might be furnished with the information regarding the stage of the action taken by the Director of Vigilance and Anti-Corruption based on the report of the second respondent.

4. Thereafter, the fourth respondent, by his letter dated 27.11.2007, directed a fresh enquiry to be conducted and as per the instructions of the fourth respondent, a fresh enquiry was ordered by the second respondent in his order dated 23.01.2008. Aggrieved by the same, the writ petitioner has come forward with the present writ petition for quashing the above said order of the second respondent made in R.O.C. No. 1541/Admn.5/06 dated 23.01.2008.

5. According to the writ petitioner there is no truth in the allegation made in the charge and he had no connection, whatsoever, with "Amudhu Arts" that he was not running the said concern "Amudhu Arts" nor was he an employee of the said concern and that he did not work anywhere else either as an Artist or in any other capacity. It is his further contention that one S. Nagarajan, a staff member

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of the Office of the District Disabled Rehabilitation Officer, Ramanathapuram, was pestering him for money for each and every thing; that without giving money demanded by the said Nagarajan, even his monthly salary was not drawn and paid to him regularly; that the said Nagarajan even went to the extent of forging the signature of the writ petitioner and swindling the money due to him and that hence the writ petitioner was constrained to make a complaint to the District Rehabilitation Officer. According to the petitioner, in stead of taking action against the said Nagarajan, Junior Assistant, a charge came to be framed against him at the verge of retirement based on false complaint.

6. However, the Enquiry Officer, after enquriy into the charges, found the writ petitioner to be innocent as the charges made against him were not proved. Such a report of the Enquiry Officer was sent to the first respondent along with the letter of the second respondent dated 26.05.2006 proposing to drop further action in respect of the charges framed against the writ petitioner. As no orders came to be passed by the first respondent within a reasonable time and the writ petitioner was given to understand that the Director of Vigilance and Anti-corruption on whose instance charges were framed, had not passed any order for more than two years, the writ petitioner made a representation to the fourth respondent, Director of Vigilance and Anti-Corruption on 30.10.2007 to give concurrence to the report submitted by the second respondent. The writ petitioner also applied under the Right to Information Act for particulars regarding the stage of the Disciplinary Proceedings and the action taken. According to the writ petitioner, the Director of Vigilance and Anti-corruption took it an affront on his authority and made the 2nd respondent to pass the impugned order dated 23.01.2008 directing a fresh enquiry in the presence of the Inspector of Vigilance. Aggrieved by the said order directing fresh enquiry and contending that the same would amount to double jeopardy in violation of Article 22 of the Constitution of India, the writ petitioner has knocked at the doors of this Court invoking the writ jurisdiction under Article 226 of the Constitution of India.

7. The second respondent filed a counter affidavit on behalf of all the four respondents, making a general denial of the averments made in the writ petition and contending that the Disciplinary Authority, namely the second respondent took a correct decision to direct a fresh enquiry in the presence of Inspector of Vigilance and Anti-corruption Department since the Disciplinary enquiry was conducted in the absence of Inspector of Vigilance. In the counter affidavit, it has also been stated that the Disciplinary Proceeding was not initiated on the basis of any complaint made by Mr. S. Nagarajan, Junior Assistant; that on the other hand, on a surprise check by the Vigilance and Anti-corruption Department made at the Office of the District Social Welfare Officer, 7 officials working under the control of the Director of Social Welfare Officer were found to possess unaccounted money and that based on the same, 7 officials under the control of the Social Welfare were departmentally proceeded with. It is the further contention made in the said Counter Affidavit that payment of other retirement benefits like earned leave encashment and pay commission arrears were made,

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but the claim for payment of gratuity to the petitioner was audited and the bills were returned by the District Treasury Officer requiring certain certificates regarding settlement of pending charges on Disciplinary proceedings against the writ petitioner; that subsequently, as per instructions of the Vigilance and Anti-corruption Department, the Disciplinary Authority ordered a re-enquriy; that by ordering such re-enquriy procedural lapses were sought to be rectified and that hence, the writ petition should be dismissed as having no merit in it.

8. The submissions made by Mr. R. Rengaramanujam learned counsel for the petitioner and by Mr. Murugan, learned Government Advocate appearing for the respondent were heard. Materials available on record were also perused.

9. It is the contention of the learned counsel for the petitioner that the second respondent has not only violated the instructions given by the Government to avoid suspension of the Government servants on the eve of retirement, but also acted with material irregularity vitiating his proceedings by not accepting the enquriy report submitted by the Enquiry Officer and directing re-enquiry on the dictation of the fourth respondent; that the impugned order directing re-enquriy will virtually amount to a double jeopardy and that the only reason assigned for directing a re-enquiry cannot be sustained. It is the further submission made by the learned counsel for the writ petitioner that the surprise check made by the officials from Vigilance and Anti-Corruption Department should have led to the prosecution of the persons who allegedly found with unaccounted money; that the Vigilance and Anti-Corruption Department having chosen not to proceed with any criminal prosecution and express content with the initiation of the Disciplinary Proceedings, ought not to have taken an upper hand to dictate terms to the Enquiry Officer as to how the enquiry was to be conducted; that expectation of the Vigilance and Anti-Corruption Department to conduct the disciplinary enquiry in the presence of the Inspector of Vigilance will also show the undue interest shown by them and that the conclusion arrived at by the second respondent, the Disciplinary Authority to direct a re-enquiry simply on the ground that the Inspector of Vigilance was not co-opted in the Disciplinary Proceedings, would show that such a procedure contemplated by the second respondent was totally erroneous and would amount to putting the writ petitioner in double jeopardy. It is the further contention raised by the learned counsel for the writ petitioner that the Disciplinary Authority himself should have applied his mind to the materials placed before him along with the enquiry report and taken a decision as to whether the enquiry report could be accepted or not; that on the other hand, the Disciplinary Authority seems to have abrogated and delegated its power to the Director of Vigilance and Anti-Corruption, the fourth respondent herein, which will be obvious from the impugned order that the direction to conduct re-enquiry was ordered pursuant to the directive of the Director of Vigilance and Anti-Corruption, namely the fourth respondent herein. According to the learned counsel for the writ petitioner, the said procedure is unknown to domestic enquiry.

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10. On the other hand, the learned Government Advocate would contend that since the disciplinary enquiry was conducted by the Enquiry Officer not in the presence of the Inspector of Vigilance, on whose report the Disciplinary Proceeding came to be initiated, the second respondent/Disciplinary Authority was right in directing a re11 enquiry to be conducted in the presence of the Inspector of Vigilance; that the same will not amount to a double jeopardy and that hence, the challenge made to the impugned order of the second respondent is bound to be rejected.

11. This Court paid its anxious consideration to the above said contentions raised on both sides.

12. From the counter affidavit filed on behalf of the respondents it is obvious that the officials of the Vigilance and Anti-Corruption Department made a surprise visit to the Office of the District Social Welfare Officer, Ramanathapuram and at that point of time, 7 of the officials present there were found to possess unaccounted money. Neither the counter affidavit nor the materials placed before this Court contain the particulars of those 7 officials who were found to possess unaccounted money at the time of surprise check by the officials of the Vigilance and Anti-Corruption Department. It is also obvious that no criminal proceeding came to be initiated by the Vigilance and Anti-Corruption Department based on the fact that the said officials were found to possess unaccounted money. On the other hand, only the writ petitioner was targeted by the Disciplinary Authority, namely the second respondent, not on the ground that he was found to possess unaccounted money, but on the ground that he was doing business in the name of Amudhu Arts while being employed as a Government Servant, in violation of Rule 8 of the Government Servants Conduct Rules.

13. In fact the charge memo dated 17.03.2006 contains the following charge alone.

"While employed as a Government servant he did business privately as an artist in Amudhu Arts and thereby he violated Rule 8 of the Government Servants Conduct Rules and by the said act he also failed to devote his full attention to his job as a Government Servant in violation of Rule 20 of the Government Servants Conduct Rules."

Annexures 1 to 3 in the charge memo in vernacular are re-produced hereunder.

Fw;wr;rhl;L Fwpg;ghiz vz;. 1541-eph;.5-2008 ehs :;: 17.3.2006

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jpU.I.ghz;o vd;gth; kPJ Vw;gLj;jg;gl;Ls;s Fw;wr;rhl;LfSf;F mog;gilahd rhl;Liufspd; rhuhk;rk;.

Fw;wr;rhl;L vz; 1

rpwg;g[fy;tp g[fl;Ldh; kw;Wk; ngr;Rg; gapw;fpahsuhf fhJ nfshnjhUf;fhd muR Kd;gUtg; gs;sp. ,uhkehjg[uj;jpy; muRg; gzpahsuhf ,Ue;Jf;bfhz;L mKJ Mh;l;!;

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vd;w bgahpy; jdpna Xtpah; gzpa[k; (Private Art Works) bra;J tUtjhy;. ,th; muRg; gzpahsh; elj;ij tpjpfspd; tpjp vz:;: 8 I kPwp bray;gl;Ls;shh;.

,jd; K:yk; jkpH;ehL muR gzpahsh; elj;ij tpjpfs; 1973 tpjp 20 f;F g[wk;ghf bray;gl;Ls;shh;.

Fw;wr;rhl;L Fwpg;ghiz vz;. 1541-eph;.5-2008 ehs :;: 17.3.2006

,izg;g[- 2

jpU.I.ghz;o vd;gtUf;F vjpuhfr; Rkj;jt[s;s Fw;wr;rhl;LfSf;F Mjhukhd mjhtJ, bray;Kiw jtwpa my;yJ gzpKiw jtwp ele;J bfhs;Sjy; gw;wpa Fiw Twy; mwpf;if.

Fw;wr;rhl;L vz; 1

rpwg;g[fy;tp g[fl;Ldh; kw;Wk; ngr;Rg; gapw;rpahsuhf fhJ nfshnjhUf;fhd muR Kd;gUtg; gs;sp. ,uhkehjg[uj;jpy; muRg; gzpahsuhf ,Ue;Jf;bfhz;L mKJ Mh;l;!; vd;w bgahpy; jdpna Xtpah; gzpa[k; (Private Art Works) bra;J tUtjhy;. ,th; muRg; gzpahsh; elj;in tpjpfspd; tpjp vz:;: 8 I kPwp bray;gl;Ls;shh;.

jpU.I.ghz;o mth;fs; jkpH;ehL muR gzpahsh; elj;ij tpjpfs; 1973 tpjp 20- iz kPwp gzpapy; gw;wpd;wp bray;gl;Ls;shh;.

Fw;wr;rhl;L Fwpg;ghiz vz;. 1541-eph;.5-2008 ehs :;: 17.3.2006

,izg;g[- 3

jpU.I.ghz;o vd;gtUf;bfjpuhf tYthdbjdpf; fUjg;gLtjw;F Rkj;jg;gl;Ls;s Fw;wr;rhl;LfSf;Fhpa Mtz'';fspd; gl;oay;.

1.murhizf; fojk; vz; : G.O(2D) No.2, rK:feyk; kw;Wk; rj;Jzt[jpl;lj;Jiw ehs; : 27.01.2006 tprhuiz mwpf;if gFjp - IIIB (Part - IIIB) apy; ghpe;Jiu bra;ag;gl;Ls;sJ.

14. In the written statement of defence submitted by the writ petitioner he claimed that there was no connection between himself and Amudhu Arts and he did not work as an Artist either in the said Amudhu Arts or in any other concern and that there was no truth in the charge framed against him. He had also prayed for a personal hearing. Such charge came to be framed on 17.03.2006, 1 ? months prior to his due date for retirement on superannuation. He was to retire on attaining the age of superannuation on 31.05.2006. The first respondent by his Letter No.7627/SW-1(1)/2006-3 dated 31.05.2006, directed the second respondent to communicate the Enquiry Officer''s report to the DVAC, obtain his remarks and to remit the case to the Government for issue of appropriate orders and then to issue orders permitting the writ petitioner to retire from service on attaining the age of superannuation without prejudice to the disciplinary case pending against him. The second respondent in his proceeding No. 1541/Admn.5/2006 dated 31.05.2006 passed an order permitting the writ petitioner to retire from service on attaining the age of superannuation on 31.05.2006 afternoon without prejudice to the disciplinary case pending against him. Consequently, the third respondent, The District Disabled Rehabilitation Officer Ramanathapuram by br.K.Miz e.f.vz;.300.2006 dated

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31.05.2006 relieved the writ petitioner without prejudice to the disciplinary proceeding pending against him. Though the pensionary benefits were sanctioned by the Accountant General, Tamil Nadu, the writ petitioner could not get the retirement benefits including gratuity since the third respondent had not attached No Due Certificate while submitting the bill to the District Treasury, which resulted in the District Treasury Officer auditing the bill.

15. Admittedly, the Enquiry Officer submitted a report holding that the charge made against the writ petitioner was not proved. As no follow up action was taken and the writ petitioner was made to understand that final order was not passed because of the officials of the Vigilance and Anti-Corruption Department sitting over the file, he sent a communication dated 05.10.2007 to the fourth respondent for furnishing the particulars of the Disciplinary Proceedings initiated on the above said charge and such particulars was sought under the Right to Information Act. A similar letter was also addressed to the fourth respondent on 23.10.2007. The writ petitioner also sent a communication to the Chief Minister Cell by a letter dated 30.10.2007. He also requested the second respondent, namely the State Commissioner for the disabled to sanction at least the provisional pension. Under the said circumstances alone, the State Commissioner for the disabled, who is the second respondent, passed the impugned order under his proceedings R.O.C. No. 1541/Admn.5/06 dated 23.01.2008 rejecting the enquiry report submitted by the Enquiry Officer on the ground that the enquiry was not performed along with the officials of the Vigilance and Anti-Corruption Department, appointing a new Enquiry Officer to conduct fresh enquiry in the presence of V. Ponnambalam, Inspector of Police, Vigilance and Anti-Corruption Department, Ramanathapuram and the witness P. Dhanalakshmi, an employee in the office of the District Social Welfare Officer. A perusal of the impugned order will show that the second respondent has not at all adverted to the enquiry report submitted by the Enquiry Officer and he simply held that the enquiry report was objected to by the Department of Vigilance and Anti-Corruption by their Lr. No. DE.43/2001/Social Welfare/RM dated 27.11.2007 as the enquiry was not conducted in the presence of the officials of the Vigilance and Anti-Corruption Department and the witnesses. The enquiry report was not accepted and a fresh Enquiry Officer was appointed to conduct fresh enquiry in the presence of an Inspector of Police of Vigilance and Anti-Corruption Department, Ramanathapuram and a named witness.

16. It is quite surprising to note that the Disciplinary Authority, who has to take a decision based on the materials, has chosen to surrender his decision making power to the officials of the Vigilance and Anti-Corruption Department by acting on their objection to the report of the Enquiry Officer. The Vigilance and Anti-Corruption Department, having chosen not to prosecute the writ petitioner could only figure as witness in the Disciplinary Proceedings initiated by the Disciplinary Authority. They cannot have any supervisory power over the proceedings of the Disciplinary Authority. In the case on hand, it is quite obvious that the officials of the Vigilance and Anti-Corruption Department was given an upper hand to

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dictate terms to the Disciplinary Authority as to whether the enquiry report could be accepted or not. The only charge made against the writ petitioner was that he was doing private job work as an Artist in Amudhu Arts in violation of Rule 8 of the Government Servants Conduct Rules. The claim of the writ petitioner is that he had no connection with the said Amudhu Arts and that he was not doing any private job either in the name of Amudhu Arts or in any other name and he was not working under anybody as an Artist. The Disciplinary Authority has not chosen to advert to the evidence adduced before the Enquiry Officer to prove the charge.

17. In a Disciplinary proceeding the officials of the Vigilance and Anti-Corruption Department cannot claim that the enquiry should be conducted in their presence. They can be examined as witnesses. Though Clause 106 of the Manual of the Directorate of Vigilance and Anti-Corruption says that the Director of Vigilance and Anti-Corruption Department may write to the Government through the Vigilance Commission, for a review of the findings of the Tribunals within two months from the date of receipt of the report of the Domestic Tribunal, it is obvious from the proceedings of the State Commissioner for the Disabled (second respondent) dated 26.05.2006 that in the enquiry conducted against the writ petitioner, the charge framed against him was not proved and it was proposed to drop further action. Though such an enquiry report came to be submitted before 26.05.2006, the letter of the Director of Vigilance and Anti-Corruption objecting to the report came to be issued only on 27.11.2007. From the same it will be quite obvious that the time stipulated in the above said rule has not been strictly adhered to and the objection letter came to be issued beyond the period of two months.

18. It is also pertinent to note that the writ petitioner submitted two letters to the fourth respondent on 05.10.2007 and 23.10.2007 seeking information regarding the fate of the Disciplinary Proceeding initiated against him under the Right to Information Act and that only after the receipt of the said letters, the fourth respondent, namely the Director of Vigilance and Anti-Corruption seems to have objected to the report of the Enquiry Officer by issuing a letter dated 27.11.2007. The contention of the writ petitioner that the information sought by the writ petitioner under the Right to Information Act was taken as an affront by the fourth respondent, which provoked the issuance of his letter dated 27.11.2007 asking the second respondent to direct a fresh enquiry is quite probable. Hence, this Court is of the considered view that the impugned order of the second respondent dated 23.01.2008 made in R.O.C. No. 1541/Admn.5/06 directing re-enquiry by a new Enquiry Officer is not only biased, but also vindictive besides showing total surrender of the power of the Disciplinary Authority to the officials of the Vigilance and Anti-Corruption Department. The guidelines prescribed for completion of the Disciplinary enquiry against the Government servant expected to retire on superannuation in near future issued under Government Letter No.1118/Per-N/87 dated 22.12.1987, Personnel and Administrative Reforms (Per-N) Department, has been followed in this case more

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in violation than in compliance with the same. The petitioner, who was permitted to retire on attaining the age of superannuation on 31.05.2006 without prejudice to the Disciplinary Proceedings, was made to suffer till 23.01.2008, the date on which the impugned order came to be passed, even though the enquiry report came to be submitted exonerating him from the charge much before 26.05.2006. It is a fit case in which this Court has to exercise its extraordinary power under Article 226 of the Constitution of India to set aside the impugned order dated 23.01.2008, passed by the second respondent in his proceedings No. R.O.C. No. 1541/Admn.5/06 and direct the second respondent to pass an order based on the report of the Enquiry Officer dropping further action against the writ petitioner and granting all the retirement benefits to the writ petitioner.

19. In the result, the Writ Petition is allowed and the order of the second respondent dated 23.01.2008 made in his proceedings No. R.O.C. No. 1541/ Admn.5/06 shall stand quashed. The second respondent is directed to pass necessary orders accepting the enquiry report submitted by the Enquiry Officer and granting all retirement benefits to the writ petitioner within eights weeks from the date of receipt of a copy of this order. No costs.

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