
(2009) 10 MAD CK 0350

In the Madras High Court

Case No : Writ Petition No. 34094 of 2006 (O.A. No. 5611 of 1998)

K. Mavalappan

APPELLANT

Vs

The Collector and The Commissioner Madathukulam
Panchayat Union Madathukulam

RESPONDENT

Date of Decision : 01-10-2009

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2009) 10 MAD CK 0350

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : P. Mohanraj, for the Appellant; R. Neelakantan, Government Advocate for R1 and R.K. Kumarasingh, for R2, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—The petitioner was working as a Noon Meal Organiser attached to Panchayat Union Primary School at P. Reddipalayam, Udumalpet Taluk, Coimbatore District. He filed O.A. No. 5611 of 1998 before the Tamil Nadu Administrative Tribunal seeking to challenge the order of the first respondent dated 02.07.1998, wherein and by which he was dismissed from service from the post of Noon Meal Organiser.

2. Pending the O.A., the Tribunal by an order dated 15.07.1998 granted an interim order. Prima facie, the Tribunal was of the view that the respondents have not taken into account the explanation submitted by the petitioner and there was no enquiry conducted before passing the order of dismissal. The interim order came to be continued for the benefit of the petitioner till date.

3. On notice from the Tribunal, the first respondent has filed a reply affidavit dated Nil (1998). In paragraph 5 and 6, it has been averred as follows:

It is submitted that the second respondent has called for explanation from the applicant for the lapses found during the inspection conducted on 19.3.1998 in

Memo Rc. No. 828/A.10 dated 23.3.98 and the applicant submitted explanation vide petition dated 7.4.1998. Similarly explanation has been called for from the applicant for the lapses found during the inspection conducted by Personal Assistant (NMP) to Collector, Coimbatore on 12.5.98 by the second respondent in Memo Rc. No. 1302/98/A.10 dated 25.6.98 and the applicant has submitted explanation on 3.7.98.

In the meanwhile the second respondent has sent a proposal to the first respondent in Lr. No. 1108/98/A.10 dated 3.6.98 in which he mentioned about the details of Memo Rc. No. 828/98/A.10 dated 23.3.98 and explanation offered by the applicant. Further the second respondent has reported the defects noticed, during the inspection made on 12.5.98. After perusing the proposal of the second respondent orders have been passed by the first respondent in Rc. No. 614/98/Q.2 dated 2.7.98. Eventhough the memo of the second respondent and explanation of the applicant have not been mentioned in the removal orders, they were perused by the first respondent and then only orders have been passed in Rc. No. 614/98/Q.2 dated 2.7.98.

6. Regarding the grounds (D) of the application it is submitted that the explanation offered by the applicant to the memo Rc. No. 828/98/A.10 dated 23.3.98 has been scrutinised along with the letter Rc. No. 1108/98/A.10 dated 3.6.98 of the second respondent and then only orders have been passed by the first respondent.

4. Though there was admission on the part of the first respondent that they have considered the petitioner's explanation, but, the same was not reflected in the order. In any event, the petitioner has come out with an explanation about his absence on the particular day when the Personal Assistant to the Collector had visited the centre. Even without considering the said explanation, the respondents had chosen to pass the impugned order.

5. The court cannot pass orders on the basis of the counter affidavit filed by the first respondent. Though the post of Noon Meal Organiser is not a constituted service under Article 309 of the Constitution of India and the provisions of procedure contemplated in the rules relating to the Government service expressly not having applied to such employees, the minimum rules of natural justice will have to be followed before dispensing with the service of employees like the petitioner.

6. As to what constitutes the elementary principles of natural justice was considered by the Hon"ble Supreme Court in Meenglas Tea Estate Vs. Its Workmen, . In paragraph 4, it was held 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 & 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.

7. In view of the abolition of the Tribunal, the matter stood transferred to this Court and was renumbered as W.P. No. 34094 of 2006.

8. Since the respondents have not adhered to the minimum principles of natural justice pointed out by the Supreme Court, the impugned order will have to be necessarily set aside and accordingly, the same is set aside. Since 11 years have lapsed since the date of the incident, the matter is not remitted back to the second respondent for conducting a fresh enquiry. There are no subsequent pleadings brought to the notice of this Court regarding any adverse report against the petitioner. The writ petition stands allowed. However, there will be no order as to costs.