

(2009) 10 MAD CK 0256

In the Madras High Court

Case No : Writ Petition No's. 28395 and 24617 of 2008 and M.P. No's. 1 and 1 of 2008

K. Rajamanickam

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 23-10-2009

Acts Referred:

Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 17, 36

Citation : (2009) 5 LW 762

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : C. Selvaraj, SC for S. Mani, for the Appellant; T. Chandrasekaran, Spl. GP, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The petitioner is one and the same person in both the writ petitions. In W.P. No. 24617 of 2008, the prayer of the petitioner is for setting aside the order dated 18.8.2008, wherein, the 1st respondent asked the petitioner to show cause as to why the punishment of reduction of pay to the bottom stage in the time scale in the post of Executive Officer, Grade I for two years without cumulative effect, cannot be imposed on the petitioner.

2. In W.P. No. 28395 of 2008, the petitioner sought for a direction to the respondent to consider his claim for promotion to the post of Assistant Commissioner (HR & CE) uninfluenced by the pendency of the show cause notice dated 18.8.2008 issued by the 1st respondent by including his name in the current panel for promotion for the year 2009-2010.

3. It is seen from records that the petitioner was given a Charge Memo under Rule 17(b) of Tamil Nadu Civil Service (Discipline and Appeal) Rules, at the time when the petitioner was working as Executive Officer Grade-I in Arulmigu Masaniamman Temple, Anaimalai, Coimbatore District. Pursuant to his

explanation, an enquiry was conducted. The Enquiry Officer found that out of 28 charges, Charge Nos. 1 to 4, 6,7,9 and 13 were proved. But the additional charges 1 to 15 were held not proved. Based upon the said findings, the petitioner was imposed with a penalty of stoppage of increment for two years without cumulative effect. The petitioner was permitted to file a statutory appeal, if he so desired.

4. As against the original punishment, the petitioner earlier had filed a statutory appeal to the Government and for the reasons best known, he had withdrawn the said appeal. This Court is not inclined to go into the motive for the withdrawal of the said appeal.

5. However, the State Government in exercise of its power under Rule 36 of Tamil Nadu Civil Service (Discipline and Appeal) Rules decided to enhance the punishment and issued the impugned Show Cause Notice. It is for the petitioner to give proper explanation to the show cause notice. Unless the State Government comes to a conclusion one way or other, the question of interfering with a show cause notice at this stage does not arise.

6. The learned senior counsel appearing for the petitioner raised two contentions. The first contention was that while exercising power u/s 36 of Tamil Nadu Civil Service (Discipline and Appeal) Rules, the State Government had not indicated the reason for issuing the show cause notice.

7. A perusal of Rule.36 of Tamil Nadu Civil Service (Discipline and Appeal) Rules does not show that any such requirement is to be made. On the contrary, in the impugned notice , the State Government had stated that the punishment imposed already is not sufficient for the proved misconduct and hence the Government had decided to enhance the punishment by the exercise of its suo moto powers. That itself is the sufficient indication about the mind of the Government.

8. The second ground raised by the learned senior counsel was that in the show cause notice, there is no indication by the State Government that it had consulted the Tamil Nadu Public Service Commission. The requirement that Public Service Commission has to be consulted in terms of Article 320(3) of The Constitution of India is not mandatory. Even in cases where such a consultation does not take place that will not vitiate the action of the State Government. The learned senior counsel for the petitioner relied on the judgment of the Hon''ble Supreme Court in the case of Union of India (UOI) and Another Vs. T.V. Patel, , wherein it is held as follows:

24. He also referred to the decision of this Court in MD, ECIL v. B. Karunakar where this Court dealt with the non-furnishing of the inquiry report to the delinquent officer. The facts of the aforesaid decision are distinguishable from the facts of the case at hand. The aforesaid decisions are not relevant for the purpose of adjudication of the case at hand.

25. In view of the law settled by the Constitution Bench of this Court in *Srivastava*¹ we hold that the provisions of Article 320(3)(c) of the Constitution of India are not mandatory and they do not confer any rights on the public servant so that the absence of consultation or any irregularity in consultation process or furnishing a copy of the advice tendered by UPSC, if any, does not afford the delinquent government servant a cause of action in a court of law. In any event, if there was such requirement, the question of infraction will arise only when the State Government passes final order. In the present cases, we are dealing only with the show cause notice.

9. In the light of the same, the writ petition in WP. No. 24617 stands dismissed.

10. W.P. No. 28395 of 2008 is for grant of promotion to the post of Assistant Commissioner (HR & CE) without reference to the show cause notice, The said Show Cause Notice has been upheld in W.P. No. 24617 of 2008.

11. In the light of the same, the prayer for inclusion of the name in the current panel for promotion for the year 2009-2010 when charges are pending and a show cause notice issued was also pending, cannot be countenanced by this Court.

12. Therefore, both these writ petitions are dismissed. No costs. Consequently, connected Mps are closed.