

(2010) 04 MAD CK 0400
In the Madras High Court

K. Sakthivel

APPELLANT

Vs

Additional Director General of Prison, Deputy Inspector
General of Prison, Coimbatore Range and The Superintendent
of Prison, Coimbatore Central Prison

RESPONDENT

Date of Decision : 26-04-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 146, 147, 148, 17
Tamil Nadu Government Servants Conduct Rules, 1973 — Rule 146, 147, 148, 20,
20(1)

Citation : (2010) 04 MAD CK 0400

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : M.S. Soundararajan, for the Appellant; B. Vijay, Government
Advocate, for the Respondent

Final Decision : Dismissed

Judgement

T. Raja, J.—The petitioner, K. Sakthivel, who was appointed as Secondary Grade Teacher on 21.05.1990 at Salem Central Prison, joined the jail service. Subsequently, he was transferred to Kovai Central Prison in the year 1994. While he was serving at Kovai Central Prison, on 19.05.2003, at about 16.50 hours, at the time of returning from duty he was searched by the Jailer at his office and the following contraband articles were recovered by him.

1. Cash Rest. 65/-
2. Green colour pocket diary having so many addresses and Telephone numbers
3. Nila Xerox Bills 3 Nose
4. Nila Xerox Bills 1 No
5. Salem Telephone Receipt 1

6. Telephone Receipt 3
7. Chit Written as CA. No. 768/2000 L. Rajan Soundarapandian
8. Sudhakar Advocate visiting card
9. TPDA Nagaraj - Radhakrishnan chit
10. Elango phone no
11. Chit written with phone number Rest. 500/- and to Kaliappan addressed to Arumugam
12. M.O. Receipt for Rest. 400/- sent by one Parvathy with a request to handover it to the concerned prisoner.

The possession of above articles is a clear evidence of his illegal relationship with the prisoners inside the jail and also they are not in any way connected with his profession. The above act of the said individual is violative of Tamil Nadu Prison Manual Volume II and Rule Nos. 146, 147 and 148 and Rule 20 of Tamil Nadu Government Servant's Conduct Rule, 1973. A charge memo under Tamil Nadu Civil Services (Discipline and Appeal) Rules was issued vide Superintendent's memo No. 11045/G4/2003, dated 30.05.2003. In response to the above said charge memo, the petitioner also submitted his explanation dated 18.06.2003. Having not been satisfied with the explanation offered by the petitioner, the P.A. to Superintendent of the Central Prison was appointed as Enquiry Officer and after completing the oral enquiry on 29.07.2003, he submitted his findings holding that the charges levelled against the individual were proved beyond any doubt. Based on the minutes of the Enquiry Officer, final orders were issued vide Superintendent's proceedings No. 11045/G4/2003, dated 30.08.2003 by compulsorily retiring the petitioner from service. Aggrieved by the order of compulsory retirement, the petitioner preferred an appeal and the same was rejected by the 2nd respondent on 26.02.2004. As against that order, the petitioner filed Review Petition dated 18.05.2004 before the 1st respondent/the Additional Director General of Police (Prisons), Chennai. The Review Petition was also rejected by the 1st respondent on 29.07.2004. Therefore, the present Writ Petition has been filed challenging the impugned order of compulsory retirement.

2. The learned Counsel appearing for the petitioner submits that the Enquiry Officer wrongly conducted the enquiry by violating the principles of natural justice, because the Enquiry Officer first examined P.W. 1, Mr. Anandan (Jailer), on 25.07.2003. Thereafter, on the same day, he has examined the defence witness and cross examined the petitioner. Once again, he has examined one Mr. Loganathan, P.W.2 on 29.07.2003. The above said procedure is contrary to the procedure of conducting disciplinary proceedings and against the principles of natural justice. As per the enquiry procedure, the Enquiry Officer ought to have examined the prosecution witness namely, departmental witness in the first instance in the presence of the charged employee. Secondly, the Department should have given an opportunity to the delinquent to cross examine the said

witness and then the delinquent should have been asked as to whether he wanted to give any explanation about the evidence let in against him by the other side. Since these procedures were not followed, it was contended that the principles of natural justice have been violated and on that basis prayed for setting aside the impugned order of compulsory retirement from service.

3. Rebutting the above said submissions, the learned Counsel appearing for the respondents submits that the petitioner, while serving as a Secondary Grade Teacher at Coimbatore Central Prison, he was returning from duty on 19.05.2003 at 16.50 hours and he was searched by the Jailer at his office. As a result of the search made by the Jailer, 12 contraband articles were seized. Since the possession of contraband articles is a clear evidence of his illegal relationship with the prisoners inside the jail, which is also violation of Tamil Nadu Prison Manual Volume II and Rule Nos. 146, 147 and 148 and Rule 20 of the Tamil Nadu Government Servant's Conduct Rules, 1973, a charge memo under Rule 17(b) of the Tamil Nadu Civil Service (D&A) Rules, dated 30.05.2003 was issued calling upon the petitioner to submit his explanation there for. Accordingly, the petitioner submitted his explanation, but, since the explanations offered by the petitioner were not satisfactory, an enquiry was conducted and the Enquiry Officer, after giving reasonable opportunity to the petitioner as well as to the respondents, submitted his enquiry report finding him guilty of all the charges levelled against him. After the submission of the enquiry report, 2nd show cause notice was issued calling for his explanation as to why suitable action should not be taken against the petitioner. After submission of the explanation to the 2nd show cause notice, the disciplinary authority, having not been satisfied with the explanation offered, by viewing seriously the commission of various misconducts which are violative of Rule Nos. 146, 147 and 148 of Tamil Nadu Prison Manual Volume II and also Tamil Nadu Civil Services Rules thought it fit to pass the impugned order of compulsory retirement. The petitioner, aggrieved by the order of compulsory retirement, preferred an appeal unsuccessfully and as against that, Review was filed which was also dismissed. Aggrieved by the above said order, the present Writ Petition has been filed under Article 226 of the Constitution of India.

4. In his further submission, it is stated that since the Enquiry Officer has found that the Coimbatore Central Prison is a high security prison where various hardcore prisoners are confined, for the allegation of having contact with the prisoners, the said act should not be viewed leniently and if any lenient approach is shown, it will encourage other staff members working in this prison to commit similar offence like the petitioner and further this message will spread among all other staff members thereby affecting the discipline in the Coimbatore Central Jail and since the charges made against the petitioner were proved, the punishment to the petitioner by way of compulsory retirement is justifiable and the same need not be interfered with by this Court.

5. Heard the learned Counsel on both sides.

6. When the petitioner was posted as Secondary Grade Teacher to work in the highly sensitive Coimbatore Central Prison, on 19.05.2003 at 16.50 hours, the Jailer carried out a search on the petitioner and he noticed 12 contraband articles in possession of the petitioner, like cash of Rs. 65/-, Green Colour pocket Diary with so many addresses and phone numbers, Sudhakar Advocate Visiting Card, phone number of one Elango, a paper chit written with phone number Rs. 500/- and to Kaliappan addressed to Arumugam and Money Order Receipt for Rs. 400/- sent by one Parvathi with a request to handover it to the concerned prisoner. Since the above articles are clear-cut evidence of the petitioner's illegal relationship with the other prisoners, particularly Money Order receipt for Rs. 400/- sent by one Parvathi with a request to hand over it to the concerned prisoner, the Jailer who inspected the petitioner on 19.05.2003 at 16.50 hours, has caused initiation of departmental enquiry against him.

7. As a result, the case of the petitioner receiving Money Order from outsider to hand over the money to the prisoner inside the prison and also possession of several other incriminating documents being in clear violation of Tamil Nadu Prison Manual Volume II Rule Nos. 146, 147 and 148 and also violation of Rule 20 of Tamil Nadu Government Servants' Conduct Rule, 1973, which are punishable under the I.P.C, the charge memo was issued under Rule 17(b) of the Tamil Nadu Civil Services Rule (D&A) Rules by the Superintendent's memo No. 11045/G4/2003, dated 30.05.2003, calling upon the petitioner to submit his explanation therefore.

8. Thereafter, the petitioner had submitted his explanations on 18.06.2003. Disagreeing with the above said explanation, an enquiry was conducted. After completing the enquiry on 29.07.2003, the Enquiry Officer submitted his enquiry report by stating that the charges framed against the petitioner were proved beyond reasonable doubt and, thereafter, 2nd show cause notice was given calling upon the petitioner to submit his explanation. After receipt of the petitioner's 2nd explanation, the disciplinary authority, not being satisfied with the same, passed the final order dated 30.08.2003, compulsorily retiring the petitioner from the service of the respondents.

9. Aggrieved by the order of compulsory retirement, an appeal was filed by the petitioner before the 2nd respondent, who dismissed the same by order dated 26.02.2004. Having been aggrieved by the order passed by the 2nd respondent, a Review Petition dated 18.05.2004 was also filed by the petitioner and the 1st respondent concurring with the findings of the 2nd respondent as well as the disciplinary authority, rejected the Review Petition. Aggrieved by the order passed by the 1st respondent, the present Writ Petition has been filed.

10. The enquiry report clearly proves the fact that the petitioner had illegal relationship with the prisoners in Coimbatore Central Prison which is a high security prison where various hardcore prisoners including prisoners relating to banned organisations like Al-Umma, TNLA and TNRT etc., are confined. It is relevant to mention that when the petitioner was returning from duty, he was

searched by the Jailer at which time he was in possession of 12 contraband articles. The Enquiry Officer's report clearly proves the petitioner's willful breach of Rule Nos. 146, 147 and 148 of Tamil Nadu Prison Manual Volume II and also violation of Tamil Nadu Government Servants Conduct Rules 20(1) which requires every Government Servant to maintain absolute integrity and devotion to duty. Therefore, the disciplinary authority has rightly come to the conclusion that the act of the petitioner is unbecoming of a teacher, who works in the prison. Therefore, the respondents passed an order of compulsory retirement holding that he should not be allowed to continue in service, that too in a sensitive department like Prison Department. If he is allowed to continue in service by taking a lenient view, it will encourage other staff members working in the prison to commit the same offence like the one committed by the petitioner. Hence, this Court is not inclined to interfere with the impugned order.

In view of the above, I do not find any merit in the present Writ Petition. Hence, the Writ Petition is dismissed. No costs.