

(2009) 08 MAD CK 0429

In the Madras High Court

Case No : Writ Petition No. 3574 of 2009

K. Thangamari

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 28-08-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 320(3)

Tamil Nadu Government Servants Conduct Rules, 1973 — Rule 17, 20

Citation : (2009) 08 MAD CK 0429

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : N. Jyothi, for A. Rajasekar, for the Appellant; G. Sankaran, Spl. Govt. Pleader for Respondents 1 to 4, CNG. Ezhilarasi, for Respondent 5 and N.A. Hussainy, for Respondent 6, for the Respondent

Judgement

V. Dhanapalan, J.—This Writ Petition has been filed, praying for issuance of a writ of certiorarified mandamus, to call for the records pertaining to the proceedings of the first respondent made in G.O.(2D) No. 12, School Education (A2) Department, dated 16.03.2007, confirming the order of review made in Na.Ka. No. 56298/C12/2003, dated 29.12.2003, of the second respondent, quash the same and consequently direct the respondents 1 and 2 to promote the petitioner and place her at the seniority level of the year 2004, to which the petitioner is entitled.

2. Petitioner joined the services of the first respondent as the District Educational Officer, after having been selected by the fifth respondent on 15.05.1995. Thereafter, she was promoted and posted as the Chief Educational Officer on 21.11.1997. On such promotion, she was posted to discharge the functions of the Director of Shramik Vidyapeeth, under the control of the Director of Non-formal Education, Chennai-6. In such capacity, she called for quotations from different suppliers with varying figures for purchase of computers and submitted the same to the sixth respondent, who was the then Director of Non-formal Education, for issuance of final orders.

3. Be that as it may, on 22.06.2001, the sixth respondent, vide his proceedings in D.O.Lr. No. 2652/A2/99, requested the first respondent to take necessary disciplinary action against the petitioner with regard to certain irregularities committed by her, while acting as the Director of Shramik Vidyapeeth, Chennai, for which the first respondent, vide proceedings, dated 11.02.2003, decided that no further action was called for against the petitioner on that aspect at Government level and the same was communicated to second and third respondents. 4. Subsequently, the petitioner was shifted and posted as the Chief Educational Officer, Dindigul, on 14.08.2002, and while serving in such a capacity, on the recommendations of Directorate of Vigilance and Anti-Corruption, the first respondent, vide his proceedings dated 08.09.2003, directed the second respondent to initiate disciplinary proceedings against the petitioner for the same allegations, pursuant to which, a charge memo was issued to her vide the proceedings of the second respondent in Na.Ka. No. 56298/C12/2003, dated 29.12.2003, framing the charges as under:

CHARGE -1 :

Tmt. K. Thangamari, while holding the post of Director of Shramik Vidya Peeth, Chennai, had placed orders for the supply of computers during the period of three years viz., 1997-98, 1998-99 and 1999-2000 to a company by name C.P.C. Systems Service owned by Thiru C.P.Chittrasu without following the tender procedures and without calling for quotations from the reputed companies and without effecting publication in local dailies.

CHARGE-2:

Recorded in the office registers as if quotations were called for from six companies and failed to send any communication to the said six companies. The computers were purchased continuously for three years from the said C.P.C. Systems Service Company. Thiru C.P. Chittrasu himself had furnished the quotations of other companies also. It is charged that the same is against rules.

CHARGE-3:

Tmt. K. Thangamari had levelled charges against her higher officials whereby evaded from taking any action against her with regard to the purchase of computer.

CHARGE-4:

It is charged that the officer had misused her powers whereby violated the provisions of Rule 20 of Tamil Nadu Government Servants Conduct Rules,1973.

5. After framing of the above charges, the petitioner submitted her explanations dated 08.03.2004, 13.10,2004 and 09.05.2005 to the second respondent, who, in turn, appointed an Enquiry Officer, namely, the fourth respondent, who, after examining the witnesses and on appreciation of the material evidence, by his report dated 03.08.2005, held that the charges 1 and 3 levelled against the

petitioner were "not proved" and that the charges 2 and 4 were "not proved beyond any doubt".

6. At that stage, since the panel was prepared deleting her name, the petitioner made a representation to the first respondent on 21.09.2006 through proper channel, namely, second respondent, seeking for inclusion of her name in the panel. Inasmuch as her representation did not yield any result in inclusion of her name, she filed Writ Petition No. 39638 of 2006 before this Court, for a mandamus, directing the respondents to include her name in the panel of the year 2006 in the appropriate place and promote her as Joint-Director, uninfluenced by the charge memo issued by the second respondent, dated 29.12.2003, whereupon, this Court, by an order dated 19.10.2006, directed the respondents to include the name of the petitioner in the panel for Joint-Director of School Education, if she was otherwise eligible for promotion, within a period of two weeks from the date of receipt of a copy of the order, subject to the final orders to be passed by the respondents in the disciplinary proceedings.

7. But, the first respondent, by his proceedings, dated 18.12.2006, informed the petitioner that her name would be considered only in the panel for next year by holding her position as on 01.01.2007, which, according to the petitioner should have been 01.01.2004. Hence, the petitioner initiated contempt proceedings in Contempt Petition No. 141 of 2007. On 01.02.2007, the petitioner filed W.P. No. 3825 of 2007 praying for a direction to the respondents to pass final orders in respect of the charge memo issued by the second respondent and the same was disposed of by this Court on 03.02.2007, directing the respondents to pass final orders within a period of six weeks from the date of receipt of a copy of the order.

8. Thereafter, as against the order passed in W.P. No. 39638 of 2006, the respondents 1 and 2 filed Writ Appeal No. 313 of 2007. On 16.03.2007, final orders were passed by the first respondent on the charge memo dated 29.12.2003, inflicting a punishment of stoppage of three increments with cumulative effect, in addition to holding that the said punishment would affect the pension of the petitioner and was inclusive of the leave period. Challenging the said punishment, the petitioner filed Writ Petition No. 10935 of 2007 and the same was posted along with W.A. No. 313 of 2007.

9. On 20.04.2007, the Contempt Petition was closed, directing the parties to work out their remedies in the matter before the Division Bench. On 25.07.2007, W.P. No. 10935 of 2007 was withdrawn by the petitioner, so as to enable her to file a review petition against the final order of punishment, dated 16.03.2007, and the Division Bench of this Court, disposed of the Writ Appeal No. 313 of 2007, modifying the order of the learned single Judge passed in W.P. No. 39638 of 2006 to the effect that in case any junior had been promoted, the authority might consider the case of the petitioner for promotion, taking into consideration the record of service, after disposal of the review petition, if any preferred.

10. Accordingly, on 05.09.2007, the petitioner preferred a review petition to set

aside the order of punishment, dated 16.03.2007. Thereafter, the petitioner also submitted a reminder, dated 26.02.2008, to the first respondent, to pass final orders on the review petition. In spite of the same, no orders were passed in the review petition. Therefore, the petitioner filed W.P. No. 6470 of 2008, praying for a direction to the respondents to pass final orders in the review petition, whereupon, this Court, on 14.03.2008, passed orders, directing the first respondent to dispose of the review petition within a period of twelve weeks. Finally, the said review petition was rejected by the first respondent on 16.10.2008. It is, under the above circumstances, the petitioner is before this Court.

11. A counter has been filed by respondents 1 to 4, detailing the factual aspects already stated above, and contending inter alia, that while the petitioner was working as Director of Shramik Vidyapeeth, Chennai, in the cadre of Chief Educational Officer, certain irregularities with regard to the purchase of computers to the value of Rs. 50,000/- during the year 1999-2000 were noticed, whereby the purchase was resorted to without calling for competitive rate of quotation from reputed computer companies and also without effecting publication in local dailies; therefore, the petitioner violated the provision contained in Rule 20 of the Tamil Nadu Government Servants' Conduct Rules 1973, which deals with integrity and devotion to duty; as such, a charge memo, dated 29.12.2003, was issued by the Director of School Education, Chennai, the second respondent herein, and disciplinary proceedings were initiated against the petitioner duly following the procedure contemplated in Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules; in view of the pendency of the charges, the petitioner could not be considered for further promotion and, on conclusion of the disciplinary proceedings, final orders were issued by the Government, namely, first respondent on 16.03.2007, whereby imposing a punishment of stoppage of increment for three years with cumulative effect on the petitioner, which is in order and cannot be found fault with.

12. The vehement contention of the learned Counsel for the petitioner is, that, earlier, the first respondent, who is the competent authority, had dropped the proceedings against the petitioner as not warranted and, now, for the very same charges, the same authority proceeded against the petitioner again and inflicted the punishment, that too against the findings of the Enquiry Officer, which is contrary to the established law and, further, while differing with the findings of the Enquiry Officer, the procedure contemplated is to give an opportunity to call for an explanation besides hearing the delinquent in person and, in the absence of any such opportunity, the principles of natural justice have been violated. It is also contended by the learned Counsel that when several persons, along with the petitioner, were involved in the decision making process, leaving out the others and proceeding solely against the petitioner, thereby imposing punishment, is a clear violation of Article 14 of the Constitution of India.

13. Learned Counsel for the petitioner has relied upon the following decisions:

(i) *State of Assam v. J.N. Roy Biswas* 1975 (1) SCC 234:

3. ...But having been exculpated after enquiry, the State could go at him by reopening the proceedings only if the rules vested some such revisory power. None such has been shown to exist although one wonders why a rule vesting such a residuary power of a supervisory nature to be exercised in the event of a subordinate disciplinary authority not having handled a delinquent adequately or rightly is brought to the attention of Government has not been made. No rule of double jeopardy bars but absence of power under a rule inhibits a second inquiry by the disciplinary authority after the delinquent had once been absolved. The appeal must fail and is dismissed with costs.

(ii) *Nagaraj Shivarao Karjagi Vs. Syndicate Bank Head Office, Manipal and another*, :

17. ...The Article 320(3) like Regulation 20 with which we are concerned provides that the Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted - on all disciplinary matters affecting a civil servant including memorials or petitions relating to such matters. This Court in *A.N. D'Silva v. Union of India* (1962) Supp. (1) (SCR) (968) has expressed the view that the Commission's function is purely advisory. It is not an appellate authority over the inquiry officer or the disciplinary authority. The advice tendered by the Commission is not binding on the Government. Similarly, in the present case, the advice tendered by the Central Vigilance Commission is not binding on the Bank or the punishing authority. It is not obligatory upon the punishing authority to accept the advice of the Central Vigilance Commission.

19. ...The punishment to be imposed whether minor or major depends upon the nature of every case and the gravity of the misconduct proved. The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. The cannot act under the dictation of the Central Vigilance commission or of the Central Government. No third party like the Central Vigilance Commission or the Central Government could dictate the disciplinary authority or the appellate authority as to how they should exercise their power and what punishment they should impose on the delinquent officer...

(iii) *Punjab National Bank and Others Vs. Sh. Kunj Behari Misra*, :

19. ...As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before

the disciplinary authority records its findings on the charges framed against the officer.

(iv) *Badrinath Vs. Government of Tamil Nadu and Others*, :

58. From the above judgments, the following principles can be summarised:

(i) Under Article 16 of the Constitution, right to be "considered" for promotion is a fundamental right. It is not the mere "consideration" for promotion that is important but the "consideration" must be "fair" according to established principles governing service jurisprudence.

(v) *SBI v. Arvind K. Shukla* 2004 (13) SCC 797 :

1. ...The learned Single Judge came to the conclusion that non-furnishing of the reasons, which weighed with the disciplinary authority to differ with the findings of the enquiring officer to the delinquent is fatal, and vitiates the ultimate order of punishment inflicted upon, and therefore the learned Single Judge allowed the writ petition. The Bank assailed the said order by preferring an appeal, but the Division Bench having dismissed the same, the Bank has preferred this appeal before this Court. The only question that arises for our consideration is whether in a case where the disciplinary authority disagrees with the enquiring officer on certain articles of charges, then before it records its findings of such charge, it is duty-bound to record its tentative reasons for such disagreement and give the same to the delinquent officer, an opportunity to represent before it ultimately records its findings.

(vi) *Ranjit Singh Vs. Union of India (UOI) and Others*, :

20. In *Punjab National Bank v. Kunj Behari Misra* this Court has clearly held that the principles of natural justice are required to be complied with by the disciplinary authority in the event he intends to differ with the findings of the enquiry officer observing: (SCC p.97, para 19)

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

22. In view of the aforementioned decisions of this Court, it is now well settled

that the principles of natural justice were required to be complied with by the disciplinary authority. He was also required to apply his mind to the materials on record. The enquiry officer arrived at findings which were in favour of the appellant. Such findings were required (sic sought) to be overturned by the disciplinary authority. It is in that view of the matter, the power sought to be exercised by the disciplinary authority, although not as that of an Appellate Authority, but is akin thereto. The inquiry report was in favour of the appellant but the disciplinary authority proposed to differ with such conclusions and, thus, apart from complying with the principles of natural justice it was obligatory on his part, in the absence of any show-cause filed by the appellant, to analyse the materials on record afresh.

24. We are, therefore, of the opinion that interest of justice will be subserved if the disciplinary authority is directed to consider the matter afresh in the light of the show-cause filed by the appellant herein before it. It will be desirable that an opportunity of personal hearing is also given to the appellant herein.

(vii) Mukesh Ali Vs. State of Assam and Another, :

14. As already noticed, disciplinary proceedings were initiated against the appellant and he was placed under suspension and was later reinstated in service. He was served with a memo dated 29-7-1997 to show cause certain charges. The appellant submitted his written statement as well as the additional written statement. In the meanwhile, this Court issued certain directions on 15-1-1998. The enquiry officer, after concluding the enquiry submitted his report wherein it was found that the appellant is not guilty of the alleged offence. The proceedings against the appellant were dropped on 1-11-2000 with the order directing that the suspension period of the appellant from 16-9-1994 to 12-12-1994 was to be treated as on duty.... The findings of the High Court, if followed, would create a chaos as it would mean that by virtue of the aforesaid orders passed by this Court all departmental proceedings concluded in the past would become liable to be opened as that would never have been intended by this Court." "15. According to the learned Counsel appearing for the appellant, the mala fide action of the respondents in passing the order dated 20-10-2001 was passed at a time when the appellant's promotion to the post of Divisional Forest Officer had become due and the appellant had been deprived of enjoying his promotion in view of the purported review of the departmental proceedings already closed and sought to be reopened under the garb of orders dated 15-1-1998 and 12-5-2001 passed by this Court which are only prospective in operation...

16. This Court also did not intend to give retrospective operation to the two orders passed by it referred to in paragraphs supra and, therefore, the adequacy of the action taken cannot be a reason for reopening the concluded issue. This Court's directions were not intended to allow the State Government to reopen all or any proceeding which was logically concluded by accepting the enquiry report in which the respondent State gave warning just cautioning to be careful in

future as no direct guilt or wrong was attributed to the appellant by the enquiry officer. Hence, in our view, the order dated 1-11-2000 dropping the proceedings by the Government cannot be termed as letting the appellant off for any reason or on account of any laxity or lapse in the enquiry proceedings.

(viii) *Lav Nigam v. Chairman & MD, ITI Ltd.* 2006 (9) SCC 440 :

10. The conclusion of the High Court was contrary to the consistent view taken by this Court that in case the disciplinary authority differs with the view taken by the inquiry officer, he is bound to give a notice setting out his tentative conclusions to the appellant. It is only after hearing the appellant that the disciplinary authority would at all arrive at a final finding of guilt. Thereafter, the employee would again have to be served with a notice relating to the punishment proposed.

14. The above contentions are controverted to by the learned Counsel for the respondents, stating that the principles, as contemplated under the rules, have been followed; there is no violation of any of the procedure and, therefore, the order passed by the first respondent is perfectly in accordance with law.

15. I have heard the learned Counsel for the parties and also gone through the voluminous records.

16. On a thorough perusal of the entire records, what transpires is, that on promotion to the cadre of Chief Educational Officer, the petitioner was placed under the control of the sixth respondent, who was the then Director of Non-formal Education, to discharge the functions of Director of Shramik Vidyapeeth, and, he being her immediate superior, the petitioner, by listening to his oral instructions, restricted the process of securing quotations to three persons only during the particular year i.e., 1999-2000 as against the mandated instructions of seeking quotations from six persons and much after the finalisation of the said three quotations, the sixth respondent wanted the petitioner to send fresh letters to three newly persons of his choice, seeking for quotations in a belated manner. Therefore, on 17.03.2000, the petitioner, in view of difference of opinion with the sixth respondent, had sent a representation to the first respondent, seeking for transfer, pursuant to which the sixth respondent, by his letter, dated 22.06.2001, to the first respondent, recommended for initiation of disciplinary proceedings against the petitioner, while she was serving under him as the Director of Shramik Vidyapeeth, Chennai. On the said occasion, when the Director of Adult Education made a proposal for initiation of disciplinary proceedings against the petitioner for the similar charges, which were made by the second respondent in his proceedings, dated 29.12.2003, based on the same material evidence and on a thorough analysis of the same, the disciplinary authority viz., first respondent had arrived at a conclusion that no material was there to proceed against the delinquent officer, rather to conclude her as a delinquent and, accordingly, dropped the proceedings against the petitioner.

17. Based upon the very same material evidence, for no better reasons assigned,

fresh disciplinary proceedings have been initiated by the disciplinary authority on the recommendations of Directorate of Vigilance and Anti-Corruption and, ultimately, taking a different view from that of the Enquiry Officer, who held the charges "not proved", the disciplinary authority has arrived at a conclusion that the delinquent officer is guilty of the charges.

18. Even in the second departmental proceedings, when the Enquiry Officer, who is the fact finding authority and who conducted the enquiry with the benefit of watching the tenor of the witnesses, on a thorough scrutiny of the entire materials available on record, has arrived at an irresistible conclusion that the delinquent is not guilty of the alleged charges, the disciplinary authority, with no substantial reasons, has taken a "U" turn from that of the Enquiry Officer and found the delinquent guilty of the same charges.

19. It is true, the disciplinary authority is empowered to have his own view and take a different opinion from that of the Enquiry Officer and arrive at a final decision on the disciplinary proceedings when there are sufficient materials for establishment of the same. But, in the case on hand, on a careful analysis of the entire materials available on record, I have no hesitation to hold that the disciplinary authority has erred in his conclusion to find the delinquent guilty on flimsy grounds and for the very same charges, against which the disciplinary proceedings were already dropped by the very same authority earlier. The properly evaluated enquiry report of the Enquiry Officer viz., fourth respondent, which was based on evidence, has been totally ignored by the first respondent. In other words, when the matter was already ordered to be closed, it was not known as to what prompted the first respondent to reopen the closed matter, which would clearly indicate that it was done only with an ulterior motive at a time when the petitioner was due for promotion and the petitioner had been deprived of enjoying her promotion in view of the purported review of the departmental proceedings already closed and sought to be reopened under the garb of orders of the first respondent, dated 08.09.2003.

20. No doubt, the State has power to reopen the proceedings. When such a residuary power of supervisory nature to be exercised in the event of a subordinate disciplinary authority not having handled a delinquent adequately or rightly is brought to the attention of the Government, then the authority competent can look into the matter, but, that power cannot be exercised contrary to the established principles, as in the present case. Therefore, the very initiation of the second departmental proceedings against the petitioner, in my considered view, is besmirched with bias.

21. Just because the petitioner had initiated various court proceedings against the first respondent seeking for remedy, the first respondent took a contra view from that of the enquiry officer against the petitioner and held her guilty of the charges. If at all the petitioner was to be proceeded with any enquiry, it should have been a joint enquiry, by enlisting the sixth respondent, who was the then Director of Non-formal Education, under whose control the petitioner was serving

as the Director of Shramik Vidyapeeth, as the very same officer approved the purchase of computers for the academic years 1997-98, 1998-99 and who directed the petitioner to restrict the process of securing the quotations to three persons only from the year 1999-2000 and the other staff, who were equally responsible for the transaction. It is not out of place to mention here that the petitioner was not the sole authority for purchasing the computers and her duty was only to forward the bids/tenders to the higher authority, namely, the Director of Non-formal Education, for approval. The deletion of those persons has prejudiced the whole issue, in addition to not placing the petitioner on par with others. Such being the position, fixing the liability solely on the petitioner is violative of Article 14 of the Constitution of India.

22. The principles of natural justice have been violated inasmuch as the first respondent has not recorded proper reasons for his disagreement over the findings of the enquiry officer and no opportunity to represent or the explanation is given by him to the petitioner.

23. One of the cardinal principles enunciated by the Supreme Court and this Court is that in the event of the appointing authority differing with the views of the Enquiry Officer, the principles of natural justice mandate that a personal hearing shall be given to the delinquent, before being proceeded with imposition of punishment.

24. In the present case, the issue relates to the academic year 1999-2000 and the petitioner is sought to be punished after eight years, that too against the findings of the Enquiry Officer, who gave a clean chit to the petitioner. Therefore, the departmental enquiry, at the second instance against the petitioner, was planned to be initiated when her name was about to be brought into the panel for promotion and the charges were framed after nearly four years of the alleged incident, ignoring the fact that the matter had already been closed earlier. To put it differently, the delay in initiating the disciplinary proceedings especially when the petitioner was due for promotion and the punishment made thereon were so concocted as to deter her from reaching her due position in the hierarchy of service, despite there being a direction of the Division Bench in W.A. No. 313 of 2007 to the disciplinary authority to consider the case of the petitioner for promotion in case her junior is promoted, taking into consideration the record of her service.

25. The first respondent, only with a view to avoiding the petitioner from being promoted to the higher post, has intentionally reopened the issue, which was already closed by him on an earlier occasion, and dragged on the proceedings for years together, keeping the same pending. It was only pursuant to the filing of a writ petition by the petitioner in W.P. No. 3825 of 2007, final orders came to be passed by the first respondent on 16.03.2007 in respect of the charge memo, dated 29.12.2003, issued by the second respondent, that too adverse to the findings of the Enquiry Officer and without affording an opportunity of personal hearing to the petitioner, which is non est in law. The allegation of the

respondents that just because the disciplinary proceedings were pending against the petitioner as on the date of relevance her name was not considered for empanelment of the year 2006 cannot be pitted against the petitioner. As such, the impugned proceedings, in no ambiguous terms, suffer from infirmity, on the ground of laches on the part of respondents 1 to 3 and also being tainted with ulterior motives of the said respondents, thereby warranting interference of this Court.

26. In the light of the elaborate discussion made above and on analysing the various decisions cited by the learned Counsel, I am of the considered opinion that the petitioner has to succeed. Therefore, this Writ Petition is allowed, setting aside the order impugned of the first respondent, dated 16.03.2007, and directing the first respondent to place the petitioner at the seniority level of the year 2004 over and above her juniors and promote her, if she is otherwise eligible, and consequently afford her all service and monetary benefits thereof. No costs. Consequently, the connected M.P. No. 2 of 2009 is closed.