
(2010) 03 MAD CK 0019
In the Madras High Court
Case No : Writ Petition No. 10055 of 2005

Kumar P.

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 23-03-2010

Acts Referred:

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

Citation : (2010) 4 LLJ 237

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : G. Muthukrishnan, for the Appellant; A. Suresh, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

P. Jyothimani, J.—Heard the learned Counsel appearing for the petitioner and the learned Government advocate for the respondents.

2. This writ petition is directed against, the impugned charge memo issued by the third respondent against the petitioner dated February 15, 2005

and consequential order dated March 9, 2005 by which an order of punishment of withholding the increment for a period of six months without

cumulative effect came to be passed. The petitioner was appointed by the Joint Director (Craftsmen Training) of the commissionerate of

Employment and Training, Chennai-5 on April 27, 1998 temporarily as a Junior Training Officer and posted at Hosur. Thereafter, on April 29,

1998 within two days, the same authority has modified the earlier order and posted the petitioner to the Government Industrial; Training Institute,

Salem as Junior Training officer (Maths) cancelling the earlier order dated April 27, 1998. The third respondent by his proceedings, dated July 7,

2004 has allotted the petitioner and Ors. to the Industrial; Training Institute, Salem, he being the Deputy Director as well as the Principal on August

16, 2004, the third respondent in his memo, on the basis of a letter of a training officer one K.Rajarethinam that when he visited on August 13,

2004 at 6.45 p.m., the petitioner was not available in the class room and he having obtained permission between 7.30 p.m to 8.30 p.m. has left at

6.45 p.m. itself and on enquiry found that from 5.30 p.m. to 7.30 p.m. he has not taken class has called upon the petitioner to explain for the same.

In a reply dated September 8, 2004 addressed to the third respondent, the petitioner has stated that on the said day between 7.30 p.m. to 8.30

p.m. he sought permission from the said K. Rajarathinam to go for a temple and that request was granted at 6.40 p.m. However, due to the reason

that he had to attend the nature's call for four times and due to dysentery, he was unable to be present in the class at 6.45 p.m. to 7.30 p.m and he

became alright only at 10 p.m. on the said day and it was due to that reason, he was not able to enter the attendance register also. It is stated that

thereafter, the Joint Director (Craftsmen Training) of the Commissionerate of Employment and Training has transferred him on December 13, 2004

to the Government Industrial Training Institute, Tiruchendur.

3. It is the case of the petitioner that it was based on the above said explanation submitted by him on September 8, 2004, there was an enquiry

conducted by the Regional Joint Director by examining Vice Principal Mr. Natarajan and the Training Officer, K. Rajarathinam. However, no

enquiry report was submitted and therefore, the transfer order, dated December 13, 2004 according to the petitioner was made by way of

punishment for the said memo issued on August 16, 2004.

4. It is stated that in the meantime for the purpose of preparation of the panel of promotion of Assistant Training Officers particulars were not

called for including that of the petitioner. Thereafter, the impugned charge memo came to be issued by the third respondent framing the same

charges under Rule 17-A of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Regarding the alleged absence of the petitioner on

August 13, 2004 not taking class on August 13, 2004 and not taking attendance on the said date calling upon the petitioner to submit his

explanation.

The petitioner has submitted his explanation to the charge memo, dated February 15, 2005 on February 25, 2005 and after conducting enquiry

and taking note of the fact that the petitioner has admitted the charges, the third respondent has passed the impugned order of punishment of

withholding increment for a period of six months without cumulative effect which is challenged in this writ petition.

5. The main ground of attack on the impugned charge memo as well as the consequential order as submitted by the learned Counsel for the

petitioner is that it is the case of the double punishment in respect of the same allegation. It is his case that when originally the third respondent has

issued memo on August 16, 2004 for which the petitioner has replied and thereafter, when the transfer order was passed by the appointing

authority namely the Joint Director, Coimbatore by transferring him from Salem to Tiruchendur, it should be treated as a punitive order and

therefore, on the same allegation a consequent charge memo issued on February 15, 2005 is not sustainable and therefore, according to him, the

punishment of withholding six months increment without cumulative effect amounts to second punishment since for the same alleged conduct an

order of transfer has already been passed as a punitive measure. It is his further submission that when the Appointing Authority of the petitioner is

the Joint Director, the impugned order as well as the charge memo issued by the third respondent who is stated to be subordinate to the Joint

Director and therefore, the impugned order suffers for want of jurisdiction.

6. It is the case of the respondents as it is seen in the counter affidavit filed while denying that there has been any animosity by the third respondent

towards the petitioner, it is stated that while the petitioner has sought permission to leave by 7.30 p.m. to 8.30 p.m. he has left before 7 p.m.

without informing his higher ups. It is stated that when the original memo was issued on August 16, 2004 the petitioner has requested extension of

time on many occasions and attempted to interfere with the administration through political parties and developed quarrel. It is denied that the third

respondent has given any permission to the petitioner to conduct pooja.

7. I have considered the submissions made by the learned Counsel on either side and perused the entire materials available on record.

8. The averment made by the petitioner is that based on the said memo dated

August 16, 2004 an enquiry was conducted by the Regional Joint

Director, Coimbatore on November 18, 2004 and based on the finding of the enquiry, the Joint Director has transferred the petitioner to the

Government Industrial Training institute, Tiruchendur is admitted. Subsequently, in the counter affidavit filed, it is stated to be on administrative

ground. The said paragraph of the counter affidavit which relevant for the purpose of this case is as follows:

5. The averments made in para 6 & 7 of the affidavit are denied. It is submitted that an enquiry on the above incident was conducted by the

Regional Joint Director, Coimbatore on November 18, 2004. Based on the findings of the enquiry, the second respondent, in his proceedings No.

TP2/72405/2004, dated December 13, 2004, transferred the petitioner to Government Industrial Training institute, Tiruchendur on administrative

grounds. It was the prerogative of the second respondent's office to make transfer on administrative grounds. But, the petitioner had prejudiced

that the transfer was made only on punishment which is incorrect.

9. In the counter affidavit, it is stated that the said transfer has nothing to do with the impugned punishment and the punishment has been imposed

under Rule 17-A Tamil Nadu Civil Services (Discipline and Appeal) Rules which is a minor punishment was imposed because of the evasion of the

petitioner during his duty assigned and it is not intended to stop his further promotion. It is also stated in Paragraphs 8 (b) of the counter affidavit in

this regard is as follows:

8(b) The punishment to the petitioner was not awarded with an intention of stopping his further promotions.

10. Even though, there is substance in the contention of the learned Government Advocate for the respondents that the order of transfer passed by

the Joint Director, dated December 13, 2004 transferring him to Tiruchendur is stated to be on administrative reasons, in the light of the specific

ground raised by the petitioner in the affidavit filed in support of the writ petition that based on the memo, dated August 16, 2004 calling upon the

petitioner to submit his reply for the same charges for which the petitioner has submitted his explanation on September 8, 2004 as admitted by the

respondents in the counter affidavit that the Regional Director, Coimbatore has conducted enquiry. It is specifically admitted as elicited above in

the counter affidavit filed that it was based on the enquiry conducted, the transfer order was passed on December 13, 2004 transferring the petitioner to the Government Industrial Training institute, Tiruchendur. Therefore," even though in the said order of transfer dated December 13, 2004, the reason assigned is administrative reason on the factual context of conducting of enquiry and admitted order of transfer was passed based on the said enquiry. It has to be necessarily held that the order of transfer was passed on December 13, 2004 was only based on the memo already issued to the petitioner for which the petitioner has submitted his explanation based on which an enquiry was conducted.

11. In such view of the matter, certainly the respondents are not entitled to frame the same charge once again and even though the impugned order is one of minor punishment, such an order cannot be sustained in the eye of law especially on the specific stand of the respondents in the counter affidavit. Merely because it is stated in the counter affidavit that by virtue of the impugned punishment the petitioners avenue of further promotion would not be obstructed is not sufficient to sustain the order of punishment as legal. When on admitted fact that the second enquiry and charge memo is not sustainable in law, it is immaterial as to whether the consequence of such punishment will have any bearing effect on the promotional avenue of the petitioner.

12. In such view of the matter, the impugned order of the third respondent stands set aside. The writ petition stands allowed with a direction to the respondents to confer all promotional and other monetary benefits to the petitioner/if there are no other, legal impediments. Such conferment order shall be passed within a period of eight weeks from the date of receipt of a copy of this order, no costs.