
(2009) 10 MAD CK 0168

In the Madras High Court

Case No : Writ Petition No. 36167 of 2006 (O.A. No. 6904 of 1998)

M. Isha Begum

APPELLANT

Vs

Commissioner of Municipal Administration

RESPONDENT

Date of Decision : 14-10-2009

Acts Referred:

Constitution of India, 1950 — Article 309, 311(2)

Tamil Nadu Municipal Services (Discipline and Appeal) Rules, 1970 — Rule 8(3)

Citation : (2009) 10 MAD CK 0168

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : No appearance, for the Appellant; R. Neelakantan, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—When the matter came up on 13.10.2009, the counsel for the petitioner informed that the petitioner has taken away the bundle along with the change of Vakalat. Therefore, the petitioner's name was directed to be printed in the cause list. When the matter was called out, there was no representation on the side of the petitioner. Therefore, the Court was compelled to deal with the matter on the basis of the available records.

2. The petitioner being employed as Junior Engineer in the Kumbakonam Municipality, Tanjavore District, filed O.A. No. 6904 of 1998 before the Tribunal seeking to challenge the charge memo dated 19.9.1990 as well as the show cause notice dated 29.7.1998 passed by the respondent Commissioner of Municipal Administration. By a show cause notice dated 29.7.1998, the petitioner was directed to offer her explanation on the Enquiry officer's report dated 15.7.1998. Pending the Original Application, the Tribunal by its order dated 28.8.1998 granted interim stay. The ground raised by the petitioner which prima facie found acceptance by the Tribunal was that even before getting explanation and considering the same, the impugned show cause notice was issued wherein

the respondents have stated that the charges were proved and she should explain as to why the proposed punishment should not be imposed on her. The said interim order is continued until further orders. The respondent filed M.A. No. 1164 of 1999 seeking for vacating the interim order. Despite the said application, the Tribunal did not take up the said application for many hearings for the reason best known to it.

3. In the reply affidavit, the respondent has stated that the order came to be passed in terms of Rule 8(3) of the Tamil Nadu Municipal Service, (Discipline and Appeal) Rules 1970 wherein only after arriving at a provisional conclusion, the notice will have to be given. It must be stated that after 42nd amendment, the provision for second show cause notice provided under Article 311(2) has been dispensed with and therefore, there is no further notice regarding penalty even though the Tamil Nadu Municipal Service (Discipline and Appeal) Rules will provide for second show cause notice on penalty and that may not have any constitutional backing in view of the 42nd amendment. The Supreme Court vide its judgment in Union of India and Another Vs. Tulsiram Patel and Others, has held that subsequent to the amendment, even the rules framed under Article 309 will have to be circumscribed by the legal effect of the said amendment. It was thereafter the Supreme Court by its judgment in Union of India and others Vs. Mohd. Ramzan Khan, introduced a condition for providing copy of the enquiry officer's report in case the enquiry officer is different from the disciplinary authority.

4. In the present case, the authorities have proceeded on the basis of the unamended rules and the charge memo came to be issued in the year 1990 before the judgment in Ramzankhan's case was made by the Supreme Court which came into effect from 20.11.1990. The Supreme Court in Ramzankhan's case cited supra has held that the judgment will have prospective effect. In paragraph 18 of the said judgment it is held as follows:

We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry hold the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter.

Therefore, the authority have proceeded on the basis of the old rule and hence, there is no case to interfere with the show cause notice.

5. The second contention raised in the original application is that there was inordinate delay in framing the charges. In the present case, the petitioner has given explanation to the charge memo and also has participated in the enquiry. It is only when the enquiry report was furnished to her, she has chosen to make the grievance about the so called delay in conducting the enquiry.

6. The Supreme Court in 2007 AIR SCW 1639 (Government of A.P. And Ors. v. V. Appala Swamy) has held the parameters of interfering with a charge sheet on the ground of delay in paragraphs 10, 12,13 which read as follows:

Para 10: So far as the question of delay in concluding the departmental proceedings as against a delinquent officer is concerned, in our opinion, no hard and fast rule can be laid down therefor. Each case must be determined on its own facts. The principles upon which a proceeding can be directed to be quashed on the ground of delay are:

(1) Where by reason of the delay, the employer condoned the lapses on the part of the employee.

(2) Where the delay cause prejudice to the employee. Such a case of prejudice, however, is to be made out by the employee before the Inquiry Officer.

Para 12: Learned Counsel appearing on behalf of the respondent, however, placed strong reliance on a decision of this Court in M.V. Bijlani Vs. Union of India (UOI) and Others, . That case was decided on its peculiar facts. In that case, even the basic material on which a departmental proceedings could be initiated was absent. The departmental proceedings was initiated after 6 years and continued for period of 7 years. In that fact situation, it was held that the appellant therein was prejudiced.

Para 13: "Bijlani (Supra), therefore, is not an authority and, in fact, as would appear from the decision in P.D. Agarwal (Supra), for the proposition that only on the ground of delay the entire proceedings can be quashed without considering the other relevant factors therefore.

7. In view of the abolition of the Tribunal, the matter stood transferred to this Court and re-numbered as W.P. No. 36167 of 2006. In view of the above legal precedents, the case of the petitioner cannot be entertained by this Court. Hence, the writ petition stands dismissed. No costs.