

(2013) 04 MAD CK 0346
In the Madras High Court
Case No : Writ Appeal No. 442 of 2011

M. Meenakshinathan

APPELLANT

Vs

The Assistant Director of Sericulture

RESPONDENT

Date of Decision : 01-04-2013

Acts Referred:

Citation : (2013) 4 MLJ 186

Hon'ble Judges : M.M. Sundresh, J;M. Jaichandren, J

Bench : Division Bench

Advocate : S. Vaithianathan for Ms. C.S. Monica, for the Appellant; S. Gunasekaran, Government Advocate., for the Respondent

Final Decision : Dismissed

Judgement

M.M. Sundresh, J.—This writ appeal has been preferred against the order passed by a learned single Judge of this Court in W.P. No. 14712 of 2009, dated 18.11.2010, by which the writ petition filed by the appellant was dismissed, upholding the order impugned therein. According to the appellant-writ petitioner, while he was working as Assistant Inspector of Sericulture, during the financial year 2008-2009, a quantity of 24750 CRR Hybrid Layings were not taken delivery by the officials concerned in the months of January, February and March 2009 and it had resulted in stagnation of the layings at the Grainage. Therefore, he was issued with a charge memo, by the respondent, under Rule 17[a] of the Tamil Nadu Civil Services [Discipline & Appeal] Rules, to the effect that the appellant-writ petitioner made a belated request seeking ratification after a period of four months, thus causing loss to the respondent. The appellant-writ petitioner gave his explanation to the effect that the ratification report was given in a bunch, at the end of the financial year 2009, and therefore, there is no motive behind the belated request made for ratification. On a consideration of the explanation given by the appellant, the respondent, in and by the order dated 22.7.2009, imposed a punishment ordering recovery of a sum of Rs. 86,625/- to be recovered every month from his salary. Challenging the said

order, the appellant filed the writ petition. The learned single Judge dismissed the writ petition, after considering the materials available on record. Aggrieved, the present writ appeal has been preferred.

2. Mr. S. Vaithianathan, learned counsel for the appellant has contended that even though charges have been framed under Rule 17[a] of the Tamil Nadu Civil Services [Discipline & Appeal] Rules, considering the facts of the case, which involve disputed questions, an enquiry ought to have been ordered. It is the specific case of the appellant that the other Officers are responsible for the alleged loss. The learned counsel has also placed reliance upon certain documents filed by way of additional typed set of papers. In support of his contention, the learned counsel has relied upon three decisions, viz., [i] Bittu Sehgal and Another vs. Union of India and Others, (2001) 9 SCC 181 [E. Ramakrishnan v. The Conservator of Forest, Madurai Circle] and [iii] W.P. No. 11712 of 2007 [OA No. 2113 of 2002] [P. Swamikannu v. The State of Tamil Nadu, rep. by the Superintendent of Central Prison, Vellore].

3. Per contra, the learned Government Advocate appearing on behalf of the respondent would submit that the procedure contemplated under Rule 17[a] of the Tamil Nadu Civil Services [Discipline & Appeal] Rules, was clearly followed; that there is no infirmity in the order impugned; in a writ of certiorari, the courts are more concerned with the decision-making process than the decision itself; furthermore, the documents relied upon by the appellant before this Court were not relied upon either before the respondent or before the learned single Judge. On these grounds, the learned Government Advocate has prayed for the dismissal of the writ appeal.

4. We are in total agreement with the submissions made by the learned Government Advocate. Before the respondent, the appellant had only contended that the delay in making the request for ratification was neither wilful nor deliberate. In other words, it is his specific case that even though there is a delay of four months in making a request for ratification, in the absence of any motive behind it, the same will have to be condoned. In these circumstances, we are of the view that the contention of the learned counsel for the appellant, placing reliance upon certain documents produced by him, for the first time, before this Court, cannot be accepted.

5. Regarding the legal contentions raised by the learned counsel for the appellant, we are of the view that the same is also liable to be rejected. Rule 17[a] of the Tamil Nadu Civil Services [Discipline & Appeal] Rules, does not provide for an enquiry. It provides for an enquiry only in a case involving withholding of increments likely to affect adversely the amount of pension payable to the Government servant, or withholding increments of pay without cumulative effect for a period exceeding three years, or withholding increment of pay with cumulative effect for any period. Only in those contingencies mentioned, the procedure laid down in sub Rule[b] of Rule 17[a] will have to be followed. In this connection, it is useful to extract the judgment of the Hon''ble

Apex Court, relied upon by the learned counsel for the appellant. The said judgment reported in *Bittu Sehgal and Another vs. Union of India and Others*, (2001) 9 SCC 181 is extracted hereunder:

1. Leave granted.

2. The High Court has recorded its opinion on two questions: (i) that the punishment imposing stoppage of three increments with cumulative effect is not a major penalty but a minor penalty; (ii) in the case of minor penalties, it is not necessary to give opportunity to the employee to give explanation and it is also not necessary to hear him before awarding the penalty: a detailed departmental enquiry is also not contemplating in a case in which minor penalty is to be awarded.

3. While we agree with the first proposition of the High Court having regard to the rule position which expressly says that withholding increments of pay with or without cumulative effect is a minor penalty, we find it not possible to agree with the second proposition. Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with.

4. Learned counsel for the respondent, however, says that though the second proposition of the High Court may not be correct, yet so far as this case is concerned it does not make any difference for the reason that in this case, as a fact an opportunity was given to the appellant and that there has been adequate compliance with the principles of natural justice. But since the High Court has not considered the matter from the above angle that is on merits the proper course in our opinion is to remit the matter to the High Court to consider whether an opportunity was given to the appellant to put forward his case and whether in the light of the facts and circumstances of the case, an enquiry was called for and if called for, was it held according to law and the principles of natural justice, and to dispose of the matter according to law. The appeal is allowed with the above directions. No costs.

On a perusal of the judgment of the Hon''ble Apex Court cited supra, we find that the facts involved therein and the facts involved in the case on hand are totally different. The Hon''ble Apex Court had an occasion to deal with the position of stoppage of increments, and therefore, it was rightly held that even though the proceedings have been initiated under Rule 17[a], an enquiry under Rule 17[b] will have to be followed mandatorily. Unfortunately, that is not the case herein. In this case, an order of recovery has been passed under Rule 8[5]. Admittedly, the order of recovery is a minor punishment. Therefore, the respondent has rightly followed the procedure contemplated under Rule 17[a]. The other two decisions, relied upon by the learned counsel for the appellant, which were

passed by the Single Bench, are not applicable to the facts of the case on hand and they were rendered on different facts. Therefore, we do not find any assistance from those two decisions.

In the result, we find no merits in the writ appeal. Accordingly, the writ appeal stands dismissed. At this juncture, the learned counsel for the appellant-writ petitioner submitted that during the pendency of the writ appeal, the entire amount had been recovered by implementing the impugned order of recovery. We make it clear that if the amount had already been recovered, then the respondent shall not recover any further amount. MP Nos. 1 and 2 of 2011 are closed. No costs.