

(2013) 08 MAD CK 0301
In the Madras High Court
Case No : Writ Petition No. 36640 of 2002

P. Nageswaran

APPELLANT

Vs

The District Collector, The District Elementary Educational
Officer, The Additional Assistant Elementary Educational
Officer and Gandhiji Primary School

RESPONDENT

Date of Decision : 19-08-2013

Acts Referred:

Citation : (2013) 08 MAD CK 0301

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : S. Dharmakkan and Mr. D. Vijay, for the Appellant; R. Lakshmi Narayanan, Addl. Govt. Pleader for R-1 to R-3 and Mr. D. Chandrasekaran for R-4, for the Respondent

Final Decision : Allowed

Judgement

C.S. Karnan, J.—The short facts of the case are as follows:-- The petitioner submits that he is working as Headmaster in the Gandhiji Primary School, Pottulupatti, Vadipatti Taluk. In the election held for the local bodies on 16.10.2001, he was posted as Election Officer for Ward No. 6, Vadipatti Panchayat Union No. 7. Mrs. M. Bhavani was the Chief Election Officer. Mrs. R. Chandra also was functioning as Election Officer, who maintained the electoral roll and obtained the signature of the voters in the register. It appears that there was about 100 excess votes in the box and the officers in charge of election requested him to give a statement stating that there was commotion among the crowd on 3 or 4 different periods of times and 100 votes had been taken by anti-social elements. They obtained the statement for the purpose of settling the issue of 100 votes found in excess in the box. The election result was declared and nobody challenged the election. The petitioner further submits that Mrs. Chandra, who was working in the Government High School, Vadipatti, was solely responsible for the maintenance of the register and electoral role. However, the Government Officer fixed the responsibility on the petitioner. Further, the

petitioner submitted that he had given the statement to the officers concerned as they had affirmed that the issue will be closed.

The second respondent, viz., District Elementary Educational Officer by his proceeding in Na.Ka. No. 10409/A4/2001, dated 28.12.2001 directed the third respondent to initiate disciplinary proceedings against him for the alleged incident in the local body election. The first respondent i.e., the District Collector had unilaterally decided that he was responsible. The second and third respondents directed the school to initiate the disciplinary proceedings against him regarding the alleged incident in the election. The fourth respondent, initiated disciplinary proceedings and called for his explanation. He submitted his explanation on 23.01.2002 to the fourth respondent. On the basis of the pressure exercised by the respondents 1, 2 and 3, the fourth respondent imposed a punishment of withholding the increment for six months without cumulative effect. He was not responsible for the alleged offence, but on the instigation exercised by the respondents 1 to 3, the fourth respondent imposed the punishment and the punishment was given effect to and the punishment was recorded in the service register and counter signed by the third respondent. The punishment imposed on him was also informed to the respondents 1 to 3. The first respondent, not being satisfied by the punishment imposed on him, compelled the second and third respondents to initiate further proceedings against him under Rule 17 of the Tamil Nadu Civil Services (Classification Control and Appeal) Rules. The second and third respondents threatened the fourth respondent that they would take action for de-recognition of the fourth respondent-school and coerced the fourth respondent to initiate the disciplinary proceedings under Rule 17 of the Tamil Nadu Civil Services (Classification Control and Appeal) Rules for the second time.

2. The petitioner further submits that the respondents 1 to 3 compelled the fourth respondent to initiate disciplinary proceedings for the second time under Rule 17 of the Tamil Nadu Civil Services (Classification Control and Appeal) Rules, which is applicable to the Government servants only. Therefore, the direction of the respondents 1 to 3 to initiate disciplinary proceeding against him for the second time is without jurisdiction and inapplicable. He submits that under code of conduct prescribed by the Tamil Nadu Recognised Private School Regulation Act, 1973, he is innocent.

3. No counter statement has been filed by the respondents till date. However, it is seen that the writ petition is pending for about 10 years on this Court file and therefore, this Court is constrained to pass a final order on the basis of available records and on hearing the arguments of the learned counsels.

4. The highly competent counsel for the petitioner submits that on the same occurrence, the petitioner was imposed a punishment of withholding the increment for six months without cumulative effect and that this order has been passed on 22.02.2002, by the fourth respondent's school authorities. This punishment was imposed as per letters of the third respondent dated 25.01.2002

and 07.02.2002 and by his proceedings No. Na.Ka.2668/E/2001. On the basis of the same proceedings, the third respondent had sent a letter on 01.07.2002 to the fourth respondent stating that the stoppage of six months increment is not under the disciplinary rules and therefore, directed the school authorities to conduct proper enquiry and then send the findings. The third respondent's proceedings have been done on the basis of the same occurrence and therefore, the enquiry is not maintainable as it would amount to double jeopardy i.e., endanger the petitioner and also goes against the principles of natural justice. This punishment had not been challenged by the petitioner. Further, the petitioner is not the only person responsible for the 100 votes which had been taken by anti-social elements as the Chief Election Officer and Election Officer is also responsible. The very competent counsel further submits that based on the initial impugned order passed by the fourth respondent on 22.02.2002, six months increment has been withheld without cumulative effect. The same punishment had been entered in his service register and also operated. Therefore, there is no lacuna in the punishment order passed by the fourth respondent. Further, the fourth respondent's order is operating and the petitioner also went through the punishment. Hence, the learned counsel entreats the Court to set-aside the impugned order of the respondents.

5. The learned counsel for the respondents 1 to 3 vehemently argued that the fourth respondent arbitrarily passed an order on 22.02.2002, in their special co-ordinate committee and imposed the punishment. If any Government servant had committed any irregularity, they could be punished under Tamil Nadu Civil Services (Classification Control and Appeal) Rules, but the punishment had not been imposed under the said Rules and therefore proper disciplinary enquiry is required under the Tamil Nadu Recognised Private School Regulation Act, 1973. Without following this Act, the fourth respondent has passed an arbitrary order. Therefore, the fourth respondent has not followed the procedure under the law. Hence, the second enquiry had been ordered by the respondents 1 to 3, which is sustainable under law. The very competent counsel further submits that the question of quantum of punishment is not pertinent and the only question is whether or not the disciplinary proceedings should be initiated under Tamil Nadu Recognised Private School Regulation Act, 1973, which was not followed in the instant case. Therefore, the fourth respondent's order indicates a lapse. Hence, the learned counsel entreats the Court to dismiss the writ petition.

6. The highly competent counsel for the fourth respondent submits that on the basis of third respondent's direction to the fourth respondent, a special committee proceedings was conducted on 15.02.2002, consisting of School Committee Members and the matter was decided against the erring employee, i.e., the writ petitioner and punishment was imposed on him i.e., six months increment withheld without cumulative effect. The said punishment is an operating one and has been endorsed by the third respondent herein. As such, the third respondent has no locus-standi to direct the fourth respondent to initiate one more parallel proceeding on the same irregularity. Once the

petitioner had agreed to undergo punishment and pleaded guilty, the second inquiry or appeal or revision or any other form of proceedings is not maintainable under law. This punishment also may be treated as awarded under Tamil Nadu Recognised Private School Regulation Act, 1973. The detailed enquiry is required only if the writ petitioner had not accepted the punishment. In this case, the writ petitioner had undergone the punishment imposed on him for the past ten years and therefore, the second enquiry will be prejudicial to the interest of the writ petitioner.

7. Per contra, the learned counsel for the writ petitioner vehemently argued that the fourth respondent who is the employer had conducted a special committee meeting on 15.02.2002 and they themselves decided the issue and imposed punishment on the petitioner. The one sided order had been accepted by the writ petitioner and he had undergone the punishment. Therefore, on the same irregularity, one more enquiry is not necessary since the earlier punishment was also imposed under Tamil Nadu Recognised Private School Regulation Act, 1973 and the punishment also awarded by the private school authorities i.e., the fourth respondent herein. Therefore, there is no lacuna in the fourth respondent's earlier punishment order.

8. On verifying the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the impugned order of the respondents and also perusing the annexures with the writ petition, this Court is inclined to set-aside the third respondent's order since through the said order, the fourth respondent has been directed to initiate one more parallel proceeding on the same irregularity committed by the writ petitioner, which is not maintainable since the punishment has not been set-aside so far and as it is operating after being approved by the third respondent. In the result, the writ petition is allowed. Consequently, the proceedings in Na.Ka. No. 2668/E/2002, dated 01.07.2002, 16.07.2002 and 23.07.2002, on the file of the third respondent is quashed. There is no order as to costs. Accordingly ordered.