
(2010) 09 MAD CK 0431

In the Madras High Court

Case No : Writ Petition (MD) No. 6873 of 2008 and M.P. (MD) No. 1 of 2010

R. Panneerselvam

APPELLANT

Vs

The Managing Director, Tamil Nadu Housing Board

RESPONDENT

Date of Decision : 29-09-2010

Acts Referred:

Citation : (2010) 09 MAD CK 0431

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : N. Ithayanathan, for the Appellant; A. Kannan, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—The petitioner has come forward to challenge the order dated 19.09.2007, passed by the respondent wherein by which, the petitioner was dismissed from service of the Tamil Nadu Housing Board. In the same order, the petitioner was also informed that if he desires so, he may prefer an appeal to the Board. The petitioner instead of filing an appeal as suggested, filed the present writ petition.

2. When the writ petition came on 31.07.2008, notice of motion was ordered. Pending the writ petition, no interim relief was granted in the miscellaneous petition. On notice from this Court, on behalf of the respondent, a counter affidavit has been filed by the Secretary and Personnel Officer of the respondent, dated 28.09.2010.

3. The brief facts leading to the dismissal of the petitioner are as follows:

The petitioner was working as a Pump Operator under the Thanjavur Housing Unit, Tamil Nadu Housing Board. He was attached to the lists of VIP Guest House. A charge memo was given to him under Regulation 37-B of Tamil Nadu Housing Board Service Regulations, 1969. The charges against the petitioner were three folds and as found in annexure 1 to the charge, they are as follows:

Charge No. 1: - That the said Thiru.R. Panneerselvam, Pump Operator, Thanjavur Housing Unit, Tamil Nadu Housing Board while working in the said office on 8.8.2005 around noon at Tamil Nadu Housing Board Guest House, Thanjavur under the influence of Alcohol, has scolded in un-parliamentary words and misbehaved with the officials and used un-parliamentary words.

Charge No. 2: - That Thiru.R. Panneerselvam, Pump Operator, Thanjavur Housing Unit, Tamil Nadu Housing Board working in the said office on 08.08.2005 evening at Thanjavur Housing Unit under the influence of Alcohol has again misbehaved with the officials.

Charge No. 3: - That R. Panneerselvam, Pump Operator, Thanjavur Housing Unit, Tamil Nadu Housing Board by his above act of misbehavior and indiscipline and un-becoming of an employee of the Board has violated.

4. In the very same charge memo, the charges were sought to be proved basing upon the report of the Executive Engineer-cum-Administrative Officer, Thanjavur Housing Unit, dated 09.08.2005, 18.08.2005 and Annexure-IV to the charge memo gave the list of witness of M. Vadudevean, Surveyor, Hosur Housing Unit, Tamil Nadu Housing Board and an Accounts Officer was appointed as an Enquiry Officer to go into the charges. The Enquiry Officer gave his report dated 07.12.2006 and held that all the three charges were proved but excepting the charge that he was under influence of Alcohol. The charges were said to be proved based on the report submitted by the Executive Engineer-cum-Administration Officer, as set out in Annexure-III. Even in the Enquiry Report, the Enquiry Officer had stated that in the enquiry only the petitioner was examined by him on 14.11.2006 at 2.30 p.m., in his chamber. In paragraph No. 4 he had stated that basing upon the relevant documents and the enquiry made against the charge-sheeted official, the Enquiry Report was preferred. Therefore in essence no other witness including M. Vasudevan, whose name was mentioned in Annexure-IV to the charge memo was examined in the enquiry. It is based upon the said report, a show cause notice dated 21.12.2006 was given to the petitioner enclosing the enquiry report. The petitioner gave an explanation dated 02.04.2007. In the explanation he has mentioned that in the enquiry no witnesses were examined and no documents were also filed. The Enquiry Officer simply went by the report submitted by the Executive Engineer and held that the charges were proved. The enquiry report was opposed to principles of natural justice and he has submitting his explanation with a statement that the charges levelled against him was not substantiated, as no witnesses were examined and no documents were filed. Notwithstanding the explanation submitted by the petitioner, the respondent Managing Director, by an order dated 19.11.2007 held that the charges levelled against the petitioner were proved. After extracting the Enquiry Report in the penultimate paragraph of the order, the respondent observed as follows:

The matter has been examined in detail with connected records. All the charges except under the influence of Alcohol are proved by the Inquiry Officer. In the

interest of Administration of Tamil Nadu Housing Board, Thiru.R. Panneerselvam, Pump Operator (under suspension), Thanjavur Housing Unit is dismissed from the service of Tamil Nadu Housing Board.

5. A perusal of the said order clearly shows that the respondent did not even consider the petitioner's objection made pursuant to the show cause notice issued to him after the enquiry report. But by ipse dixit he merely states that the matter was examined in details with connected records and all the charges were except influence of Alcohol were proved by the Enquiry Officer and therefore, in the interest of Administration of Tamil Nadu Housing Board, the petitioner was dismissed from service. In fact, such an order does not reflect that the respondent never kept in mind the statutory requirement of conducting an enquiry and imposed the punishment accordingly. In the counter affidavit in paragraph No. 7 it was observed as follows:

7. ...The Inquiry Officer after conducting a detailed oral inquiry has submitted his report vide letter dated 7.12.2006. In the inquiry report, the Inquiry Officer has reported that the charges framed against the Petitioner are held as proved.

6. However, a perusal of the Enquiry report does not show that any witnesses were examined in the enquiry in support of the charges. Even otherwise, a perusal of the charges would show that the charges lack in details. Merely saying that the petitioner had used un-parliamentary words, does not communicate anything unless the words uttered by the petitioner are set out in the counter affidavit, including the time, place and the context. Similarly, the charge related to misbehavior. In the absence of further elaboration does not set out anything against the petitioner. Therefore, right from the framing of charges the petitioner was handicapped by not able to make an effective reply. Notwithstanding that even in the enquiry, there is no witness was examined in support of the charges. As could be seen from the enquiry report that these facts were brought to the notice of the respondent, who is highest authority of the Board, he ought to have looked into the enquiry report and found out whether the statement made by the petitioner was in accordance with the statement on record. On the contrary, merely asking the petitioner to file an appeal before the Board does not solve any purpose except a self serving purpose, as the Board also with a rubber stamp on the order passed by the Managing Director, who himself is the Chief Executive Officer of the Board. Though the learned Counsel for the respondent attempted to state that he could have filed an appeal, this Court do not think that an effective appeal can cure a defective order passed by the competent authority. On the other hand, as to what constitute an elementary principles of conducting domestic enquiry laid down by the Supreme Court vide its judgment in *Meenglas Tea Estate Vs. Its Workmen*, , at paragraph No. 4, has set out the minimum requirement of conducting an enquiry, which reads as follows:

4. The Tribunal held that the enquiry was vitiated because it was not held accordance with the principles of natural justice. It is contended that this conclusion was erroneous. But we have no doubt about its correctness. The

enquiry consisted of putting questions to each workman in turn. No witness was examined in support of the charge before the workman was questioned. It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross-examination as he desires. Then he must be given a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character and this requirement must be substantially fulfilled before the result of the enquiry can be accepted. A departure from this requirement in effect throws the burden upon the person charged to repel the charge without first making it out against him. In the present case neither was any witness examined nor was any statement made by any witness tendered in evidence. The enquiry, such as it was, made by Mr Marshall or Mr Nichols who were not only in the position of judges but also of prosecutors and witnesses. There was no opportunity to the persons charged to cross-examine them and indeed they drew upon their own knowledge of the incident and instead cross-examined the persons charged. This was such a travesty of the principles of natural justice that the Tribunal was justified in rejecting the findings and asking the Company to prove the allegation against each workman de novo before it.

7. In the present case, the respondent though a statutory Board constituted under the Act of State has miserably failed to follow even the minimum elementary principles of natural justice. Though the counsel for the respondents stated that the petitioner could be given an another opportunity, this Court is of the view that when the charge memo itself do not contain any specific allegation against the petitioner, one more opportunity to resurrect a non existence charge can ever be granted. Therefore, in the absence of a valid charge sheet laid against the petitioner the present request made seeking for one more opportunity is only an agony for the petitioner to go through a second trial. Under these circumstances, this Court is not inclined to consider his submission. Hence, the writ petition stands allowed and the impugned order stands dismissed. The respondents are directed to reinstate the petitioner within a period of three months, from the date of receipt of a copy of this order, with all attendant benefits. If the petitioner has given a room for any complaint, it is always open to the Board to redeploy him to some other station and not to take a drastic action of dismissal, that too, without following even the principles of natural justice. No costs. Consequently, connected miscellaneous petition is closed.