
(2011) 01 MAD CK 0128
In the Madras High Court
Case No : Writ Petition No. 1673 of 2007

S. Packiam

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision : 03-01-2011

Acts Referred:

Tamil Nadu Government Servants (Disciplinary and Appeals) Rules — Rule 17B

Citation : (2011) 01 MAD CK 0128

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : A. Jenasenan, for the Appellant; K. Balasubramanian, SGP, for the Respondent

Final Decision : Dismissed

Judgement

P. Jyothimani, J.—The Petitioner was appointed as a Sub. Registrar Grade II after having been selected from Tamilnadu Public Service

Commission while he was working as a Senior Inspector of Cooperative Societies in 1974. As per the appointment through the Tamilnadu Public

Service Commission, he joined as Sub. Registrar Grade II on 14.12.1977. He was also granted promotion as Sub. Registrar Grade I on 9.5.1985

and after completion of ten years, he was granted selection grade in May 1995 and in the said post, he had been working. The Petitioner was due

to retire on 31.10.2010.

2. However, on 3.2.2003, a charge memo came to be issued against him under Rule 17B of the Tamilnadu Government Servants (Discipline and

Appeal) Rules with two charges. The Petitioner submitted his explanation for the charges and an enquiry was conducted through an Enquiry

Officer. It is seen that the Enquiry Officer accepted the case of the Petitioner and

submitted a report to the effect that the first charge was not proved while stating that the second charge stood proved. After a copy of the report of the Enquiry Officer was furnished, the Petitioner submitted his explanation on the same and thereafter, the second Respondent passed final orders on 21.9.2004 holding that charge No. 1 has not been proved. The second Respondent further held that the second part of charge No. 1 and the second charge were proved and passed an order of punishment of stoppage of increment for five years with cumulative effect.

3. It has been stated that as against the order of the second Respondent imposing the said punishment, the Petitioner has also filed an appeal before the first Respondent. In the mean time, the first Respondent, under the impugned show cause notice, with a desire to enhance the punishment, directed the Petitioner to submit his explanation within fifteen days.

4. The main contention of the Petitioner, as contended by the learned Counsel, is that in as much as against the original order imposing punishment, the appeal has been filed and the same is pending before the first Respondent as early as 18.1.2005, unless the first Respondent disposes of such appeal, the first Respondent cannot issue the impugned show cause notice for the purpose of enhancing the punishment.

5. I do not agree with the contention of the learned Counsel for the Petitioner. It is true, as seen from the impugned show cause notice itself, that against the order of the second Respondent imposing punishment to withhold increments for five years with cumulative effect, the appeal dated 18.1.2005 is pending before the first Respondent. But, that does not mean that the first Respondent loses jurisdiction from exercising his powers to enhance the punishment provided the procedure contemplated under law is followed i.e the show cause notice is given so as to enable the delinquent to submit his explanation for the proposal. In such view of the matter, there is absolutely no substance in the contention of the learned Counsel for the Petitioner. Therefore, the contention of the learned Counsel for the Petitioner fails.

6. Hence, the writ petition is dismissed with liberty to the Petitioner to give explanation to the impugned show cause notice. It is made clear that if the Petitioner submits his explanation within two weeks from the date of receipt of a copy of this order, the first Respondent shall consider the

same on merits and pass appropriate orders in accordance with law, along with the appeal filed by the Petitioner dated 18.1.2005 against the order of the second Respondent dated 21.9.2004, within three months thereafter. No costs.