
(1998) 02 MAD CK 0119
In the Madras High Court
Case No : Writ Petition No. 1008 of 1992

Sreeraman S.

APPELLANT

Vs

District Judge

RESPONDENT

Date of Decision : 06-02-1998

Acts Referred:

Tamil Nadu Civil Services (Classification, Control and Appeal) Rules, 1953 — Rule 17

Citation : (1999) 2 LLJ 350

Hon'ble Judges : Shivaraj Patil, J;M. Karpagavinayagam, J

Bench : Division Bench

Advocate : C. Selveraju, for the Appellant; R. Thirugnanasambandam, A.G.P. (Writs), for the Respondent

Final Decision : Allowed

Judgement

Shivaraj Patil, J.—Heard learned counsel for the parties. The petitioner in this writ petition has questioned the validity and correctness of the order dated November 1, 1991 passed by the respondent and prayed to direct the respondent to reinstate the petitioner in service with all monetary and attendant benefits.

2. The short facts leading to the filing of the writ petition are the following:

The petitioner was temporarily appointed as Office Assistant of the respondent Tribunal by proceedings No. 489/80 dated August 8, 1980 as a candidate sponsored by the Employment Exchange. He reported for duty on August 8, 1980. His services were regularised by proceedings dated November 10, 1983. He was declared to have satisfactorily completed the probation on the afternoon of August 8, 1982. Thus he was an approved probationer in service with effect from August 9, 1982. His services were not confirmed as he was not made a permanent member of the service. When the petitioner remained absent unauthorisedly certain charges came to be framed by the respondent in the proceedings in D. No. 2104/90 dated December 5, 1990. The following are the

four charges framed:

"Charge No. 1: Thiru S. Sreeraman, Office Assistant was unauthorisedly absent from duty on August 5, 1990 when he was posted for duty at the residence of the Judge and he unauthorisedly failed to report to duty and attend office on August 7, 1990 in spite of strict instructions sent to him through Thiru D. Shanmugam, Office Assistant of this Tribunal and Thiru Gopal, Office Assistant of the Private Colleges Appellate Tribunal Madras and thereby he committed dereliction of duty.

Charge No. 2: Thiru S. Sreeraman, Office Assistant failed to report on August 29, 1990 on the expiry of 20 days unearned leave on medical certificate applied for by him and also failed to produce medical fitness certificate and he also failed to report to duty on the afternoon of September 7, 1990 on the expiry of 10 days earned leave applied for by him and thereby he committed dereliction of duty.

Charge No. 3: Thiru S. Sreeraman, Office Assistant wantonly failed to submit his explanation to the official memorandum in D. No. 1342/90, dated August 8, 1990 and wantonly failed to come and meet the Judge in the office as directed in the official memorandum in D. No. 1627/90 dated September 3, 1990 and wantonly failed to submit his explanation to the official memorandum in D. No. 1696/90 dated September 12, 1990 and to the official memorandum in D. No. 1927/90 dated October 31, 1990 and thereby committed insubordination.

Charge No. 4: Thiru S. Sreeraman, Office Assistant deliberately and unauthorisedly absented himself from duty continuously from September 8, 1990 without submitting any form of leave application and without any information to the office and thereby committed dereliction of duty and desertion of service."

In spite of the opportunity given to the petitioner more than once, he did not avail the opportunity by filing his explanation to the Official Memorandum or the written statement in relation to the charges. However, a personal hearing was conducted in which the statement of the petitioner was also recorded. Thereafter, the respondent finding that the charges framed against the petitioner, were established, passed the impugned order removing him from services, exercising power under Rule 17(b)(ii) read with Rule 8(vii) of the Tamil Nadu Civil Services (Classifications, Control and Appeal) Rules. Hence the petitioner has approached this Court by filing this writ petition for the relief as stated above.

3. Learned counsel for the petitioner urged several grounds in support of his writ petition; he submitted that the report of the Enquiry Officer was not furnished to the petitioner so as to provide an opportunity to him to give his say in the matter, prejudice was caused to the petitioner as the learned District Judge, who framed the charges, was one at whose residence the petitioner refused to attend; at any rate, the punishment imposed was shockingly disproportionate to the charges even if they are held to be proved.

4. On the other hand, learned Additional Government Pleader argued in support

and justification of the impugned order. He submitted that when the petitioner did not give explanation to the Official Memorandum and did not file the written statement in spite of opportunities given he cannot now turn round and find fault with the orders passed by the respondent.

5. Although the specific ground is not raised in the writ petition, learned counsel for the writ petitioner urged that under Rule 17(b)(ii) no notice was given to the petitioner before punishment of removal from service was imposed on him. According to the learned counsel for the non-compliance of this mandatory provision, the entire proceedings are liable to be vitiated. At any rate, the impugned order cannot be sustained. Learned Additional Government Pleader on the basis of the records and instructions fairly submitted that no such notice as required under Rule 17(b)(ii) was given to the petitioner before imposing major penalty of removal of the petitioner from service.

Although the complaint as to non-furnishing of the enquiry report as required under Rule 17(b)(ii) is not raised in the writ petition, this being a pure question of law seriously affecting the right of the petitioner, we consider it appropriate to take into consideration the same in order to render substantial justice to the parties, particularly so, when there are no disputed facts touching this question that is no notice was given after the personal hearing was held.

6. In our view, the impugned order has to be set aside on this short ground namely, that notice as required under Rule 17(b)(ii) after the conclusion of the enquiry including the personal enquiry and before imposing a penalty was not given so as to provide an opportunity to the petitioner to give his say in the matter. In the view we are taking we consider it unnecessary to express one way or the other, on the other contentions raised by the petitioner in the writ petition and the contentions urged by the learned counsel before us. We leave those contentions open to be urged in response to the notice that has to be given under Rule 17(b)(ii).

7. In the result, for the reasons stated above we allow this writ petition, set aside the impugned order and direct the respondent to issue notice as required under Rule 17(b)(ii) of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules and thereafter proceed to pass appropriate orders in accordance with law. No costs.