

(1999) 10 MAD CK 0022

In the Madras High Court

Case No : Writ Petition No. 14660 of 1991, W.M.P. No's. 21984 of 1991 and 11090 of 1992

Subramanian N.

APPELLANT

Vs

Collector and Others

RESPONDENT

Date of Decision : 28-10-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 170, 353, 417

Citation : (2000) 2 LLJ 913

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : V. Dhanapalan, for the Appellant; S. Selvi, Government Advocate for Respondent Nos. 1 and 2 and Subbarayalu, for the Respondent

Final Decision : Allowed

Judgement

V. Kanagaraj, J.—The writ petitioner has filed the above writ petition praying to issue a writ of certiorarified mandamus, directing the

respondents to call for the records relevant to the order in Na. Ka. No. 18981/A-6/89 dated March 13, 1990 passed by the second respondent

and to quash the same as illegal, arbitrary and against the principles of natural justice and further directing the respondents to reinstate the petitioner

into service with all consequential, monetary and other benefits.

2. From the affidavit filed in support of the writ petition by the petitioner, it comes to be known that the petitioner got appointed as Noon Meal

Scheme Organiser on February 7, 1983 in the school feeding Centre at Panchayat Union Elementary School, Melpennathur, Chengam Taluk,

Tiruvannamalai Sambuvarayar District; that on July 13, 1989, he was placed under suspension on the allegation of misbehaviour exhibited with his

superiors; that there was also a charge of non-supply of chappals to the students properly; that immediately after suspension, the petitioner

approached the Tamil Nadu Administrative Tribunal filing an application in O.A. No. 2059 of 1989 praying to quash the suspension order and the

Tribunal was pleased to pass an order on December 20, 1989, the operative portion of which is extracted here under:

On going through the material on record, we are of the view that the enquiry must be concluded within two months from this date without keeping

the applicant under suspension. We need not go into the merits of the case relating to the order of suspension. Hence the application is dismissed

with a direction that the fourth respondent will complete the enquiry in respect of the charges, within two months from the date of receipt of this

order, or a copy thereof, failing which the applicant is at liberty to approach this Tribunal for necessary relief. The applicant is also permitted to

take a copy of this order and submit to the respondent for expediting the enquiry. No order as to costs.

3. The further contentions of the petitioner are that in spite of the lapse of the time fixed by the Tribunal, to give a finding in the enquiry kept

pending with the respondents, since the respondents did not comply with the same, the petitioner was prompted to file another application in the

same Tribunal in O.A. No. 603 of 1990 again for quashing the same suspension order and with consequential reliefs. The Tribunal, on March 8,

1990 ordered notice, but adopting dilatory tactics for receipt of the notice, the second respondent, as per his proceedings in Roc. No. 18981/A-

6/89 dated March 13, 1990 passed the order of dismissal against the petitioner.

4. In the mean time, a criminal proceeding was also instituted against the petitioner and another, on charges that the petitioner had arranged for one

Raja to impersonate himself as the Special Officer and to threaten the Headmaster. But on trial, the petitioner was acquitted as per the judgment

dated June 4, 1991 passed by the Judicial Magistrate, Chengam.

5. The petitioner would further state that the second original application filed in G.A. No. 603/1990 before the Tamil Nadu Administrative Tribunal

along with an application in M. A. No. 1512 of 1991 had been disposed of by the Tribunal stating that in the circumstances of the case, such an

original application is not maintainable for want of jurisdiction on the part of the

Tribunal. The relevant portion of the order passed by the Tribunal is extracted hereunder:

This is an application filed by a noon meal organiser. It was brought to our notice that in G.O. Ms. No. 370, Backward Classes Social Welfare

Nutritious Meal Programme and Social Welfare Department dated April 16, 1989, Government while conferring some benefits to the Noon Meal

Organisers like the applicant herein have decided that they will be treated as permanent part-time employees of the local bodies concerned. Since

the jurisdiction of this Tribunal has not been extended to the Local Body Employees, the relief prayed for cannot be granted and the application

itself is not maintainable. In such circumstances, the application is directed to be returned to the applicant with liberty to the applicant to move the

appropriate forum in the matter.

It is only after the above order passed by the Tribunal, the petitioner has come forward to file this writ petition, seeking the said relief mentioned

supra on certain grounds as alleged in the affidavit filed in support of the writ petition.

6. Heard Mr. V. Dhanapalan, learned Counsel appearing for the petitioner and Ms. S. Selvi, learned Government Advocate on the writ side

appearing for respondents 1 and 2 and also Mr. N. Subbarayalu, learned Counsel appearing for the third respondent. During the course of

arguments, the learned Counsel appearing for the petitioner, besides narrating the events in a chronological manner, would also contend that

without any sufficient cause or reason, the petitioner had been victimised by the order of suspension, initiating an enquiry on false and flimsy

charges, which the petitioner could attribute for the misdeeds of the Headmaster, who had eternal enmity against the petitioner for having not

considered with his demands of illegal supply of food materials kept for noon meal supply and that arranging one Raja to pose to be the Deputy

Inspector of Schools and intimidate the Headmaster so that he could throw the blame on the petitioner, lodged a complaint before the police as a

result of which a criminal case came to be registered against the petitioner and that with great difficulties the petitioner had to fight against the

domestic proceedings and also the criminal prosecution.

7. So far as the domestic proceeding is concerned, the petitioner instituting an

original application before the Tamil Nadu Administrative Tribunal, challenging the suspension order and succeeded in getting a direction from the said Tribunal to dispose of the enquiry proceeding which had been kept pending for long, in two months from the date of passing of the said order that is from December 20, 1989. But the respondents never paid heed to the time fixed by the Tribunal as a result of which the petitioner instituted yet another application before the same Tribunal in O.A. No. 603 of 1990 for one and the same purpose of revoking the suspension order and reinstating him in service in which prior to the receipt of the notice from the Tribunal, since the respondents in a hasty manner passed an order of dismissal without either following the procedures laid down by law, or even affording an opportunity for the petitioner to make adequate representation before the Enquiry Officer and holding a slipshod enquiry, served a copy of the dismissal order on the petitioner as a result of which, the Tribunal on the second application instituted by the petitioner had to decide with the same which cannot be maintained by the petitioner since he was dismissed from service further opining that the jurisdiction of the Tribunal does not extend to local body employees and the petitioner could seek relief in the appropriate forum of law as a result of which with fervent hopes, he had to file the above writ petition before this Court.

8. Though it has not been pleaded in the defence that it had been filed on the then existing facts and circumstances encircling the whole affair, it is only after the institution of the writ petition regarding the dismissal order, the other developments have taken place in the case in hand which comes to be known from the arguments of the learned Counsel appearing for the petitioner that the District Collector is the Competent Authority for the noon meal scheme organisers who on receipt of the order of interim stay of the operation of the dismissal order passed by this Court on a writ miscellaneous petition filed along with this writ petition, had reinstated the petitioner in the same service as per his order dated August 12, 1992 and the petitioner having been posted in the same post is now continuing in service subject to the final orders to be passed at the time of pending disposal of the writ petition.

9. So far as the enquiry is concerned, the learned Counsel for the petitioner would contend that the charges have been framed by two authorities,

one by the Deputy Inspector of Schools initially numbering seven based on the two main charges framed at the time of placing him under suspension and thereafter the other numbering eight by the District Educational Officer himself assuming the power of the Enquiry Officer. The learned Counsel would further point out that no proper enquiry was held with due opportunity for the petitioner, nor proper witnesses got examined in evidence. The main charge being the enacting of the drama of impersonation with the help of one Raja, that the management would accuse the petitioner of having arranged for the scene, but in fact it was the Headmaster who was the architect of all these things in order to throw the blame on the petitioner, and to put an end to his job. But in spite of a specific charge having been framed on this issue, the Enquiry Officer did not at all feel it necessary to examine the said Raja as a witness either on the side of the management or suo motu.

10. Further more, it is the Assistant Educational Officer who is the other witness examined on the part of the management who is their Departmental Officer and an interested witness for the prosecution and hence no independent nature of evidence has come forth in favour of the prosecution; that in the mean time, the criminal Court conducted a full trial against both the said Raja and the petitioner under the relevant provisions of the Penal Code punishable under Sections 120-B, 170, 353 and 417 of the Indian Penal Code. The learned Counsel would point out that the Trial Court, ultimately concluding that the prosecution had miserably failed to establish the said case thus bringing home the guilt of the accused and. ordered the acquittal of the petitioner. The learned Counsel would point out that right from the institution of the enquiry down to the arriving at the decision to dismiss the petitioner holding him guilty, neither any regular procedure adopted by the respondents, nor a fair opportunity afforded for the petitioner and wrong conclusions have been arrived at in the order passed by the Enquiry Officer, as per his proceedings dated March 13, 1990.

11. The learned Counsel for the petitioner would also contend that there is neither any valid reason assigned, nor the evidence discussed so as to arrive at the decision of holding the petitioner guilty so as to award the rigorous punishment of dismissal against the petitioner. For the improper and

irregular enquiry held, the learned Counsel would cite the following judgments, the first one reported in Managing Director, Uttar Pradesh

Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee, and the second one in Subramaniam v. The District Khadi and Village

Industries Officer, 1987 WL.R. 252. So far as the first judgment cited above is concerned, it is held:

A regular departmental enquiry takes place only after the charge-sheet is drawn up and served upon the delinquent and the latter's explanation is

obtained. In the present case, no such enquiry was held and the order of dismissal was passed summarily after perusing the respondent's

explanation. The rules of natural justice in this case were honoured in total breach. The impugned order of dismissal was thus bad in law had been

rightly set aside by the High Court.

Citing this portion of the above judgment, the learned Counsel for the petitioner would point out that a decision has been arrived at by the Enquiry

Officer in the case in hand also, summarily and without proper opportunity.

So far as the second judgment cited above is concerned, it is held:

Findings can be given only on oral evidence. Failure to examine any witness and to inform the delinquent of the accusation and the testimony by

which it is supported - Failure to afford opportunity to him to disprove the charges - Proof of entries in records by oral evidence necessary and

they themselves cannot constitute materials for finding of guilt.

The learned Counsel would end up his argument stating that the very proceeding instituted against the petitioner was mala fide and is tainted with

illegalities and the same is liable to be quashed.

12. On the contrary, the learned Government Advocate (On the writ side) appearing for respondents 1 and 2 would contend that there is no mala

fide intention for the respondents, to initiate false proceedings against the petitioner; that both the domestic enquiry and the police prosecution

instituted were on bona fide materials available and the police case might have ended in acquittal and the same cannot in any manner relieve the

petitioner or erase his misdeeds and it is only the result of the domestic enquiry, so far as the public servant is concerned is the ultimate answer.

The learned Government Advocate would also point out that the Collector, on receipt of the stay order from this Court, exercising jurisdiction as

the competent authority for the noon meal organisers, had ordered reinstatement of the petitioner in service pending disposal of the writ petition and that everything had been done only in accordance with law. The learned Counsel for the third respondent would adopt the arguments of the learned Government Advocate on the writ side.

13. In consideration of the facts and circumstances encircling the whole affair, in so far as the institution of the enquiry proceeding, placing the petitioner under suspension, the launching of the criminal prosecution on different provisions of the penal law, the dismissal order passed by the second respondent and the reinstatement of the petitioner ordered by the District Collector, the first respondent herein are concerned, it is relevant to make a mention that none of the proceedings instituted by the respondents, nor orders passed were on the expected line, or in adherence to law. For instance, two persons have framed the charges, viz., the Deputy Inspector of Schools, at the time of instituting the proceeding against him and the District Collector at the time of conducting the enquiry, nor the enquiry has been ordered in the proper manner by the Competent Authority, who is having such jurisdiction to order for an enquiry, but in this case, the District Educational Officer seems to have assumed to himself the powers of ordering the enquiry and conducting the same and arriving at his own conclusions. So far as the order of dismissal passed by the Enquiry Officer in this case is concerned, no proper discussion on specific points has been held by the Enquiry Officer in application of the evidence made available during the enquiry, nor has there been proper appreciation of the evidence in the context of the points taken for consideration.

14. A cursory reading of the enquiry report and the order of punishment would only indicate that even without applying the rudimentary procedures, the Enquiry Officer has proceeded with and concluded holding the petitioner guilty of the offences charged. In short, the order of dismissal is absolutely unsupported by evidence and hence it could be held that the dismissal order is a non-speaking order and an order that has come out of total non-application of mind which cannot be held good for any purpose much less for upholding the punishment of the Enquiry Officer. First of all, the Enquiry Officer himself cannot be the punishing authority

based on the finding arrived at by himself. But here both the distinct acts have been perpetrated by one and the same authority viz. the District Educational Officer.

15. Moreover, on the receipt of the order of interim stay granted by this Court in W.M.-P. No. 21984 of 1991 on October 15, 1991, the District

Collector has reinstated the petitioner into service, no reason much less tangible in nature has been assigned by the District Collector for having

reinstated the petitioner in service. From the reading of the order of reinstatement, it comes to be known that since the interim stay has been

granted against the dismissal order passed by the Disciplinary Authority, the District Collector has ordered reinstatement of the petitioner pending

disposal of the writ petition. In obedience to the order of this Court, the District Collector has reinstated the petitioner in service. Still, the District

Collector without being conscious of the existence of the dismissal order, but only taking into account the suspension order passed against the

petitioner as it comes to be seen from the order passed by the District Collector and without proper application of mind, has passed the order

under the impression that the petitioner at that time was only under suspension.

16. Moreover, till this time, it is not clarified as to in exercise of what authority the District Collector has passed such an order reinstating the noon

meal organiser into service based on an interim order passed by the High Court. Excepting for the fact that the District Collector is the competent

authority for the noon meal organisers, nothing is shown to the effect that he has been conferred with such powers statutorily, either to act as the

appellate authority or to pass such orders as he has passed reinstating the petitioner in service. Regarding the service conditions and disciplinary

proceedings of the noon meal organisers also, it seems that no proper rules have been framed by the Government and it is high time that the

Government framed the rules pertaining to the said affairs of the noon meal organisers.

17. So far as the entire proceedings instituted by the respondents are concerned, nothing has been done in a proper manner as per the

expectations of law. The enquiry proceedings instituted in this case is nothing short of an enquiry suffering from patent errors of law and perversity

in approach besides the whole proceeding getting vitiated on account of mala

fides. Hence, the dismissal order passed by the second respondent becomes liable only to be set aside. No proper charges were framed in the manner it had to be done. Nor proper Enquiry Officer appointed by the competent authority, or had there been a regular enquiry held following the rules and procedures, much less the disciplinary authority designated for this purpose having either framed the charges or in passing the order of dismissal based on the enquiry report holding the delinquent guilty of the charges. For these reasons, the entire enquiry proceeding becomes vitiated.

18. Needless to point out that the affairs of the noon meal organisers, appointed on a special scheme floated by the Government, in so far as the service conditions and disciplinary rules are concerned, are yet to be regularised framing proper rules by the Government. This is yet another reason for most of the inconsistencies and anomalies to occur. It is more appropriate to bring it to the notice of the Government of Tamil Nadu, at this juncture, that earlier it initiates measures to frame the rules regarding the conditions of the service and disciplinary proceedings of the noon meal organisers, better it would solve many a future complications.

19. For the above discussions held, I am left with no option but to allow the writ petition on the following terms:

(i) The dismissal order passed by the second respondent in his proceedings in Na.Ka. No. 18981/A-6/89 dated March 13, 1990 is hereby set

aside;

(ii) The respondents are hereby directed to regularise the reinstatement of the petitioner in service, further taking such measures to repay the petitioner the difference of pay and other benefits that have accrued all these days on account of the institution of the enquiry leading to his suspension and dismissal.

(iii) The Government of Tamil Nadu is hereby directed to intimate such appropriate and early measures to frame the disciplinary rules pertaining to the service conditions of the noon-meal organisers, so that no difficulty will be met with in future while dealing with such disciplinary matters concerned with the noon- meal organisers.

17. With the above directions, the writ petition is allowed.

18. Consequently, connected W.M.Ps are dismissed. No costs.