
(2009) 10 MAD CK 0243

In the Madras High Court

Case No : Writ Petition No. 35155 of 2006 (O.A. No. 7873 of 1998)

T. Dhanalakshmi

APPELLANT

Vs

The District Project Nutrition Officer

RESPONDENT

Date of Decision : 14-10-2009

Acts Referred:

Constitution of India, 1950 — Article 309, 311(2)

Citation : (2009) 10 MAD CK 0243

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : P. Mohanraj, for the Appellant; R. Neelakantan, GA, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—The petitioner was working as a Child Welfare Assistant in the Child Welfare Centre at Muthiampatti, Erode District. She filed OA No. 7873 of 1998 before the Tribunal, challenging an order of the respondent, the District Project Nutrition Officer (DPNO), Erode, dated 6.6.1998. By the said order, the petitioner was terminated from service on the ground that she was absent without prior intimation and without leave and therefore, the affairs of the centre was affected. Her termination was done in the interest of administration and in public interest. Hence she was removed from service without any formal enquiry with effect from 6.6.1998.

2. Pending the OA, the petitioner had the benefit of an interim order, dated 25.9.98, which was also extended until further orders.

3. On notice from the tribunal, the respondent has filed a reply affidavit, dated 15.2.1999. In the reply affidavit, it was stated that the petitioner had applied for medical leave from 7.11.1997 to 31.12.1997 and she was to join duty on 1.1.1998. But, she did not join duty and she also did not submit any leave application. She never informed about her whereabouts. It was stated that the

Child Welfare Centre was created for the welfare of poor and needy children. The Assistants will have to bring the children from their home to the centre and cook food for them. Unless an helper attends her duty, it is difficult for the Child Welfare Organizer, who is in-charge of the centre, to run the centre. If the Child Welfare Assistant is absent for duty, the attendance of the children will come down and food cannot be prepared and supplied to the beneficiaries on time. This will not only create interruption in the routine duty of the centre, but also cause inconvenience to the general public. Since the petitioner was absent for more than 140 days, it had caused inconvenience to the centre and that she was removed from service.

4. In the reply affidavit, a letter sent by the petitioner and the various reminder letters asking the petitioner to report for work, dated 8.1.1998 were also enclosed. The extract from the Register of attendance was also enclosed, showing that the petitioner was on continuous leave right from November, 1997 till end of December, 1997.

5. The ground for the Tribunal to grant an interim order was that in view of the termination order, giving specific reasons for termination, an enquiry must have proceeded before dispensing with the service of the petitioner. In the OA, except by pleadings that the petitioner was holding a civil post coming under Article 311(2) of the Constitution, which mandates that before removal, reasonable opportunity was to be given, no other grounds are pleaded. It is also seen from the records that subsequent to the proceedings, dated 8.1.1998, the petitioner never reported for duty for more than five months and finally, she was removed from service by an order, dated 6.6.1998. Except by making a bald statement that she never recovered completely from her illness and that she had extended leave along with medical certificate to the Community Nutrition Instructor, the petitioner had not stated anything more.

6. In any event, it is claimed by the petitioner that even if the petitioner did not belong to any constituted service, under Article 309 of the Constitution, elementary principles of natural justice will have to be followed before dispensing with her service. In the present case, the same was absent.

7. As to what constitutes elementary principles of natural justice, the Supreme Court vide its judgment in *Meenglas Tea Estate Vs. Its Workmen*, held as follows:

4. ...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. The 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....

8. In the absence of minimum standards of an enquiry being followed, the impugned order must necessarily be set aside. Due to the interim order passed by the Tribunal, it must be presumed that the petitioner must be working continuously. No further complaint has been made against the petitioner before this Court. In the light of the same, it is unnecessary to direct a fresh enquiry to be conducted against the petitioner. The period of absence of the petitioner may suitably be regularized. But, while ordering for her regularisation, it is made clear that she will not be paid any monetary benefits due to such regularisation.

9. In view of the abolition of the Tribunal, the matter stood transferred to this Court and was renumbered as W.P. No. 35155 of 2006.

10. In the light of the above, this writ petition stands allowed. No costs.