

Case relating Departmental Promotion:

Parties : E. Sankaran Versus The Secretary to Government, Labour and Employment PP1 Department, Chennai

Court : High Court of Judicature at Madras

Case No : Writ Petition No.8792 of 2006

Judges: THE HONOURABLE MR. JUSTICE M. JAICHANDREN

Appearing Advocates : For the Petitioner: Mr. K. Venkatramani, Senior Advocate, Mr. T. Ayngaraprabhu, Advocate. For the Respondent: Mr. S. Gopinathan (AGP).

Date of Judgment : 28-02-2011

Head Note :-

Tamilnadu Civil Services (Discipline and Appeal) Rules, 1955 – Rules 9-A & 17(a) -Tamilnadu Public Service Commission Regulations, 1954 - Regulation 18(1)(b) (iii) – petition filed to direct the respondent to reinstate the petitioner into service and grant him all consequential service and monetary benefits - petitioner had colluded with the Store Keeper, while procuring the materials from unauthorised firms - respondent had issued the order, imposing the punishment of compulsory retirement from service on the petitioner - He was given a lenient punishment, by way of an order, imposing a cut in pension of Rs.100/- per month for a period of five years and he was allowed to retire from service, with all service and monetary benefits - order imposing the major punishment of compulsory retirement of service on the petitioner is arbitrary and discriminatory in nature - this Court does not find sufficient cause or reason to interfere with the impugned order of the respondent - claim of the petitioner that he had put in a number of years of blemishless service is not correct, as he had been imposed with certain punishments on earlier occasions - Petition dismissed.

Cases Referred:

- 1) Bhagwati Prasad Dubey V. F.C.I (1988 SCC (L&S) 243)
- 2) State of U.P. And others V. Raj Pal Singh (JT 2001 (Suppl.1) SC 44)
- 3) R.M.Palaniappan V. The Transport Commissioner, Chepauk, Chennai and others (2006(1) M.L.J. 48)
- 4) Anand Regional Coop. Oil Seedgrowers' Union Ltd. Vs. Shaileshkumar Harshadhbai Shah (2006(6) SCC 548)
- 5) Inspector Prem Chand Vs. Government of NCT of Delhi and others (2007(4) SCC 566)
- 6) Bongaigaon Refinery and Petrochemicals Ltd. And others Vs. Girish Chandra Sarma (2007(7) SCC 206) and
- 7) Man Singh Vs. State of Haryana and others 2008(8) MLJ 518 (SC).

Judgment :-

(Prayer: Petition filed seeking for a Writ of Certiorarified Mandamus, calling for the records of the respondent in connection with the impugned order passed in GO D No.128, Labour and Employment (PP1) Department, dated 27.2.2006 and quash the same and further direct the respondent to reinstate the petitioner into service and grant him all consequential service and monetary benefits.)

1. This writ petition has been filed praying that this Court may be pleased to issue a Writ of Certiorarified Mandamus to call for and quash the impugned Government Order, in G.O.(D) No.128, Labour and Employment (PP1) Department, dated 27.2.2006, and to direct the respondent to reinstate the petitioner in service and to grant him all consequential benefits.

2. It has been stated that the petitioner had entered the service, as an Instructor in the Government Industrial Training Institute in the year, 1979, with the qualification in Diploma in Mechanical Engineering. He had completed his Bacherlor's degree in Engineering, in the year, 1986, and he had applied for the post of Principal, by direct recruitment, through the Tamil Nadu Public Service Commission. After he had been sselected he was appointed in the year, 1994, and he had served, as a Principal, in a number Government Industrial Training Institutes.

3. It had also been stated that the Principal of a Government Industrial Training Institute has the onerous responsibility of administering the Institute, including the management of the staff and the students, as well as to take up teaching assignments. Every year, based on the indent given by the Junior Training Officer/Assistant Training Officer and forwarded through the Training Officers, in respect of each faculty, orders would be placed to purchase the materials from the various concerns and units, whose names are in the approved list of firms of the Directorate of Employment and Training.

4. Before the matter is placed before the Principal it is scrutinsed by the Administrative Officer, assisted by a Purchase Manager, under whose control a Store Keeper and Store Assistant are functioning. Whenever any material is required by the Training Officer, for the purpose of imparting training on students, he would place orders through the Purchase Manager. The file is processed through the Store Assistant and the Store Keeper. After it is scrutinised by the Administrative Officer, it is finally placed before the Principal. Thereafter, purchase orders are placed, based on the approval of the Principal. However, the Principal would not have access to all the relevant information, which are available with the other officers and their assistants.

5. It has been further stated that, when the petitioner was serving as a Principal in the Government Industrial Training Institute, the Store Keeper, one Ravichandran, had by passed the Administrative Officer and the Office Manager and had obtained the approval from the petitioner, for the purchase of the materials. At the time of obtaining the approval of the petitioner, the Store Keeper had not chosen to furnish the names of the approved firms. Due to the irregularities committed by the Store Keeper, orders were placed for the materials from certain firms, which were not in the list of approved firms. Therefore, a detailed enquiry had been conducted for the period, from 1.4.2000 to 31.1.2002. Based on the enquiry a charge memo had been issued to the petitioner, on 22.1.2003, containing eight charges. Thereafter, the petitioner had submitted a detailed explanation, in order to prove his innocence.

6. It has been further stated that one of the main charges alleged against the petitioner was that he has allowed the Store Keeper to purchase the materials from unapproved firms and that certain materials had been purchased in numbers, which more than the required quantity, thereby causing financial loss to the Government. The enquiry officer, who had conducted an enquiry, had submitted a report holding that all the charges, except the 7th charge, had been proved against the petitioner. The enquiry officer had conducted the enquiry with the group of officials, who were present at that time. The petitioner had not been allowed to cross examine the witnesses, as there was no chief examination. No documents were shown or marked during the course of the enquiry. However, the enquiry officer had come to the conclusion that the charges levelled against the petitioner, except Charge No.7, had been proved, without following the procedures established by law.

7. It has also been stated that, for the same delinquency committed by one Sabapathy, who had succeeded the petitioner, as the Principal of the Government Industrial Training Institute concerned he had been given a lenient punishment of cut in pension, whereas the petitioner had been imposed with the major punishment of compulsory retirement from service, by the Government Order, in G.O.Ms.No.128, Labour and Employment (PP1) Department, dated 27.2.2006.

8. The learned counsel for the petitioner had submitted that the impugned order passed by the respondent is against law, weight of evidence and the probabilities of the case. The order of the respondent is a non-speaking order. The detailed explanation submitted by the petitioner had not been taken into consideration before the said order had been passed. Proper reasons have not been given for arriving at the conclusions. There was no separate discussion for each of the charges. The impugned order is in violation of Rule 9-A of the Tamilnadu Civil Services (Discipline and Appeal) Rules, 1955. The charges had emanated from a common preliminary enquiry and charges had been framed, in respect of the allegations made against the petitioner, as well as the successor Sabapathy and the Store Keeper, and a common enquiry officer had been appointed to conduct the oral enquiry. However, a separate enquiry had been conducted, in respect of the three delinquents. Thereafter, the Government had chosen to issue a separate order on 29.12.2005, imposing a minor punishment of cut in pension of Rs.100/- per month, for a period of five years and had allowed the said Sabapathy to retire from service, with all service and other monetary benefits. However, a major penalty of compulsory retirement from service had been imposed on the petitioner, by the impugned order, dated 27.2.2006, arbitrarily and in an illegal manner.

9. It has been further stated that, even though the petitioner was not directly incharge of the purchase of the materials, as it was based on the list given by the Store Keeper, he has been held liable for the loss said to have been caused to the Government. The petitioner had no knowledge about the placing of the orders, for the purchase of the materials, from certain firms, whose names were not found in the list of approved firms.

10. The learned counsel had also submitted that Sabapathi, who succeeded the petitioner, as the Principal of the Government Industrial Training Institute, had been kept under suspension in view of the fact that he was due to retire from service, on 31.7.2003. He was given a lenient punishment, by way of an order, issued on 29.12.2005, imposing a cut in pension of Rs.100/- per month for a period of five years and he was allowed to retire from service, with all service and monetary benefits.

11. Therefore, the order imposing the major punishment of compulsory retirement of service on the petitioner is arbitrary and discriminatory in nature. He had also submitted that there is no allegation of misappropriation of funds of the State Government, by the petitioner. Further, there is no allegation that the petitioner had committed the irregularity, intentionally.

11. The fact that the petitioner had rendered meritorious service for nearly 27 years, in various capacities, without any blemish, had not been taken into consideration before the impugned order had been passed. Hence, the punishment of compulsory retirement from service imposed on the petitioner is excessive in nature, as it is disproportionate to the delinquency alleged to have been committed by him. Hence, it is liable to be set aside.

12. The learned counsel appearing on behalf of the petitioner had relied on the following decisions in support of his contentions:

- 1) In Bhagwati Prasad Dubey V. F.C.I (1988 SCC (L&S) 243)
- 2) State of U.P. And others V. Raj Pal Singh (JT 2001 (Suppl.1) SC 44)
- 3) In R.M.Palaniappan V. The Transport Commissioner, Chepauk, Chennai and others (2006(1) M.L.J. 48)
- 4) In Anand Regional Coop. Oil Seedgrowers' Union Ltd. Vs. Shaileshkumar Harshadhbai Shah (2006(6) SCC 548)
- 5) In Inspector Prem Chand Vs. Government of NCT of Delhi and others (2007(4) SCC 566)
- 6) In Bongaigaon Refinery and Petrochemicals Ltd. And others Vs. Girish Chandra Sarma (2007(7) SCC 206) and
- 7) In Man Singh Vs. State of Haryana and others 2008(8) MLJ 518 (SC).

13. In the counter affidavit filed on behalf of the respondent, the averments and allegations made by the petitioner, in his affidavit filed in support of the writ petition, had been denied. It has been stated that, when the petitioner was serving as the Vice-Principal in the Government Industrial Training Institute, North Chennai, during the year 2000-2002, certain disciplinary proceedings had been initiated against him, under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, relating to the issuing of identity cards to outsiders, for a

sports meet. The charges levelled against the petitioner have been proved and he had been awarded the punishment of censure, by the proceedings of the Director of Employment and Training, dated 18.4.2002. On the appeal filed by the petitioner the State Government had confirmed the punishment imposed on him. Further, another charge had been made levelled against the petitioner, under Rule 17(a) of the said Rules, for having failed to supervise certain works, as it was required. The petitioner was let off with a severe warning, by the proceedings of the Director of Employment and Training, dated 4.4.2002.

14. It has also been stated that every Government Industrial Training Institute has to maintain the list of approved firms, duly recognized by the Commissioner of Employment and Training, Chennai, for the purchase of materials, for imparting training on the students. It is the primary duty of the petitioner, as the Principal of the Government Industrial Training Institute, to decide on the indent placed for the purchase of the materials, by following the procedures laid down for granting approval for their procurement. He has to verify the connected records before granting the necessary approval.

15. The contention of the petitioner that he cannot have access to the material records before granting such approval, due to his various other official works, cannot be accepted. Even though the store keepers concerned are required to send the concerned purchase files to the office manager, who is in charge of the purchase section, and route them through the Administrative Officer, for obtaining the approval from the Principal, it would not be open to the petitioner to contend that he would not be liable for the ultimate decision taken by him for purchasing the materials. When excess quantities of materials are purchased, or when the quality of the materials purchased are not of the specified standards and when the materials are purchased from unauthorised firms, which are not found in the approved list, the principal of the concerned Government Industrial Training Institute would also be liable, along with the others, for the irregularities said to have been committed by them.

16. In fact, the store keeper V.G.Ravichandran had by-passed the office manager/administrative officer and had obtained the approval from the petitioner, for the purchase of the materials from unapproved firms, some of which are non-existent. In such circumstances, the petitioner ought to have been more vigilant in granting the approval for procuring the materials. In fact, it has been found that the petitioner, with an ulterior motive, in connivance with the store keeper, had violated all the norms for the purchase of the materials concerned. In the Special Audit conducted it had been found that certain irregularities had been committed, while making purchases of the materials, from 1.4.2000 to 31.1.2002.

17. The petitioner had been working, as the Principal of the Government Industrial Training Institute concerned, from 1.4.2000 to 3.11.2000. Thereafter, P.Sabapathy had succeeded him, as the Principal of the said Institute and he had continued as such, from 4.11.2000 to

31.12.2002, while V.G.Ravichandran had been working, as the Store Keeper, in the said institute, from 26.11.1997. The Special Audit team had found that the petitioner, as well as P.Sabapathy, had been functioning as the Principals during the relevant period. It had also been noted that V.G.Ravichandran, the store keeper had also been found to be responsible for the irregularities committed. Therefore, the Commissioner of Employment and Training had decided to initiate disciplinary proceedings against the petitioner, under Rule 17(b) of the Tamilnadu Civil Services (Discipline and Appeal) Rules, 1955. Accordingly, eight charges had been framed against the petitioner in the memo issued by the Commissioner of Employment and Training, dated 21.1.2003. The charges levelled against the petitioner were that he had allowed the Store Keeper to purchase the materials from unapproved firms and that more than the required quantity of materials had been purchased including, materials which were not required for the training.

18. It had also been alleged that certain financial loss had been caused to the State Government, due to the irregularities committed by the petitioner and the others. It had been found that certain items had been procured from unapproved firms and that they had been procured, without the indent of the concerned Junior Training Officer. The petitioner had approved the goods, without the necessary certificate from the Training Officer concerned and without verifying the connected records and without ensuring that the bills were routed through the Office Manager/Administrative Officer of the Industrial Training Institute. Thus, it was clear that the petitioner had colluded with the Store Keeper V.G.Ravichandran, while procuring the materials from unauthorised firms.

19. It had also been stated that the petitioner had not expressed any dissatisfaction regarding the procedures followed in conducting the enquiry. The enquiry officer, after holding the enquiry in accordance with the procedures established by law and by following the principles of natural justice, had come to the conclusion that all the charges levelled against the petitioner, except Charge No.7, had been proved. Based on the enquiry officer's report the petitioner had been given an opportunity to submit his further explanation. The petitioner had submitted his explanation, on 23.1.2004. After getting the necessary legal advice, the respondent had forwarded the matter to the Tamilnadu Public Service Commission for its opinion, under Regulation 18(1)(b) (iii) of the Tamilnadu Public Service Commission Regulations, 1954. After getting the opinion of the Tamilnadu Public Service Commission and after following the necessary procedures the respondent had issued the order, dated 27.2.2006, in G.O.(D).No.128, Labour and Employment (PP1) Department, imposing the punishment of compulsory retirement from service on the petitioner.

20. It had also been stated that P.Sabapathy had retired from service, on 31.7.2003, and therefore, his case was tried under the Tamil Nadu Pension Rules, 1978. As such, a lesser punishment of cut in pension had been imposed on him. Thus, it is clear that there was no discrimination or arbitrariness in the order passed against the petitioner, imposing the punishment of compulsory retirement from service on him.

21. In view of the averments made in the affidavit filed in support of the writ petition and in view of the counter affidavit filed on behalf of the respondent and in view of the submissions made by the learned counsel appearing on behalf of the parties concerned and in view of the decisions cited above, this Court does not find sufficient cause or reason to interfere with the impugned order of the respondent, dated 27.2.2006.

22. Even though it has been submitted, on behalf of the petitioner, that the enquiry conducted, based on the allegations made against the petitioner, is vitiated, the said claim had not been substantiated with sufficient evidence. It is noted that the petitioner had participated in the enquiry proceedings, without any objections. Thereafter, sufficient opportunity had been given to the petitioner to submit his explanation. Since, the explanation submitted by the petitioner was not satisfactory, the disciplinary authority had imposed the punishment of compulsory retirement from service on the petitioner, for the irregularities alleged to have been committed by him.

23. The claim that the irregularity in the purchase of the materials in question had happened due to the storekeeper, who had also been imposed with a similar punishment, cannot be accepted. It was the duty of the petitioner, as the Principal of the Government Industrial Training Institute, to have verified the relevant factual aspects before approving the purchase orders. It is not in dispute that the materials in question had been purchased from unapproved firms and more than the quantity required for imparting training on the students. It is not in dispute that an excess amount of expenditure of a sum of Rs.63,000/- had been caused to the State Government, due to the alleged irregularities in the purchase of the materials.

24. The petitioner has not been in a position to show that the allegations made against him were based on mala fide reasons or that they were without any basis. The allegations made against the petitioner had been established by way of an enquiry. Based on the enquiry report the disciplinary authority had decided to impose the punishment of compulsory retirement from service on the petitioner. The said punishment imposed on the petitioner had also been confirmed by the respondent, after getting an opinion from the Tamilnadu Public Service Commission, as required under law. The claim made by the petitioner that the impugned order had been passed, without application of mind, as no elaborate reasons had been given in the said order, for confirming the punishment imposed on the petitioner, cannot be accepted to be a valid ground for setting aside the impugned order.

25. From the records available, it is seen that sufficient reasons had been given by the authorities concerned in arriving at their decisions. Further, the claim of the petitioner that Sabapathy, who had been appointed in the post of Principal of the Government Industrial Training Institute, had been given a lesser punishment of cut in pension, cannot be accepted as a valid ground to show that the punishment imposed on the petitioner is disproportionate in nature. The said Sabapathy had been imposed with the punishment of cut in pension only due to the reason that he had retired from service, on his attaining the age of superannuation, and the

said punishment had been imposed on him, under Rule 9 of the Tamilnadu Pension Rules, 1978, whereas the petitioner who was continuing in service had been imposed with the punishment of compulsory retirement from service.

26. In such circumstances, it cannot be said that the impugned order imposing the punishment of compulsory retirement from service, on the petitioner, is arbitrary and malafide in nature. Even though charge No.7, alleged against the petitioner, had not been proved during the enquiry, the other charges levelled against the petitioner had been sufficiently proved, for the disciplinary authority to impose a major penalty on the petitioner. Further, it is noted that the claim of the petitioner that he had put in a number of years of blemishless service is not correct, as he had been imposed with certain punishments on earlier occasions. As such, the writ petition is devoid of merits. Hence, it is dismissed. No costs.