

Madras High Court

Dr.N.Periasamy vs The Government Of Tamil Nadu on 28 January, 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:28.01.2011

CORAM:

THE HON'BLE MR.JUSTICE VINOD K.SHARMA

W.P.No.10177 of 2009

AND

M.P.No.1 of 2010

Dr.N.Periasamy

..Petitioner

Vs

1. The Government of Tamil Nadu
rep. by Secretary to Government
Animal Husbandry and Diary Development
Department,
Secreariat, Fort St.George,
Chennai 600 009.

2. The Tamil Nadu Cooperative Milk Producers
Federation Ltd.,
rep. by its Personnel Committee
Aavin Illam, Madhavaam Milk Colony,
Chennai 600 051.

3. The Managing Director,
The Tamil Nadu Cooperative Milk Producers
Federation Ltd.,
Aavin Illam, Madhavaam Milk Colony,
Chennai 600 051.

...Respondents

~~Petitioner~~ filed under the Constitution of India praying to issue a writ of

For Petitioner: Mr.Balan Haridass
For Respondents 1 : Mr.B.Vijay
For Respondents 2 & 3:Mr.Tamilvendan

O R D E R

The petitioner has invoked the jurisdiction of this Court with a prayer for issuance of writ in the nature of certiorari for quashing the order vide which the second respondent ordered de- nova enquiry vide letter Ref.No.25315/Pers.IR.3/2005 dated 28.5.2009 and also the consequential order of suspension passed by the second respondent dated 28.5.2009. The prayer is also for issuance of a writ in the nature of mandamus directing the respondents to settle all the terminal benefits of the petitioner, such as Gratuity, Leave wages etc along with interest.

2. The petitioner's case is that the impugned order is arbitrary, illegal and passed in violation of principles of natural justice.

3. The facts pleaded for the relief claimed are, that the petitioner is the Doctor in Veterinary Science. The petitioner joined the services of the second respondent as Junior Manager(Veterinary) in the year 1977 and by departmental promotion, he reached the stage of Deputy General Manager.

4. The petitioner was to retire on 30.5.2009. The petitioner was issued a charge memo dated 3.12.2005 on the allegation of misconduct. The charges framed against the petitioner was that he had allowed supply of inferior quality of raw materials to cattle field plant, Erode at a higher price, as if the procured raw materials was of standard quality.

5. The petitioner submitted a detailed explanation dated 12.05.2006 denying the charges. Not satisfied with the explanation submitted by the petitioner, the third respondent appointed an enquiry officer to look into the charges vide letter dated 25.8.2006. The enquiry officer started enquiry on 10.10.2006 which continued till 20.01.2007. It is pleaded in the affidavit to writ petition that the petitioner has reasonable grounds to believe that the third respondent dropped the proceedings, as no action was taken on the report of enquiry officer for two years of submission of enquiry report. (This fact is disputed by the respondents wherein a specific stand has been taken that the petitioner was guilty of the charges levelled against him).

6. 4. The case set out by the petitioner further is that he was served with an order dated 28.5.2009 bearing reference No.25315/Pers.IR/3/2005 based on the order of the first respondent ordering de nova enquiry. The petitioner was also placed under suspension till finalisation of disciplinary action initiated against the petitioner.

7. The case pleaded by the petitioner in the affidavit is that the enquiry officer had conducted full fledged enquiry and had submitted his finding. It was only the disciplinary authority i.e. the third respondent who could pass final orders, based on the enquiry proceedings and the reply to be submitted by the petitioner, if so required.

8. The petitioner has challenged the jurisdiction of the first respondent to issue directions as mentioned in the impugned order, on the ground that no power is vested with the first respondent to order de nova enquiry without any valid reason, rather the competent authority dealing with enquiry report also does not have any such authority to order de nova enquiry, only on the ground that the delinquent official is exonerated of the charges by the enquiry officer. The other stand taken by the petitioner is that since the time limit prescribed for finalisation of the enquiry proceedings as

per the rule had already expired. The respondents therefore have no jurisdiction to pass orders on the enquiry officer's finding; or order denova enquiry.

9. The grounds on which the relief is claimed are :

(a) That the first respondent has no power to order denova enquiry, when the enquiry was concluded way back in the year 2007. The order is totally without jurisdiction and contrary to rules.

(b) When the enquiry officer has concluded the enquiry, re-enquiry cannot be ordered, by the respondent merely to get a report to suit convenience.

) that the first respondent has no power to order re-enquiry or in any case without giving opportunity of hearing to the petitioner.

(d) The order of the respondent suspending the petitioner after conclusion of the enquiry is totally without jurisdiction.

(e) The other reasons given by the respondents for re-enquiry are without any basis".

10. The writ petition was opposed by the second respondent by placing reliance on G.O.Ms.No.115 dated 16.12.2007. The contention of the learned counsel for the second respondent was that as the charges levelled against the petitioner were of serious nature of corruption. Therefore it was open to the Animal husbandry Department to issue a direction for holding denova enquiry.

11. This contention of the learned counsel for the petitioner is totally misconceived. Even in G.O.Ms.No.115 issued by the Animal Husbandry Dairying and Fisheries Department dated 6.12.2004, on which, reliance has been placed by the learned counsel for the second respondent, mentions as under:

"Charge should be confined only to the offence or irregularities committed by the Accused officers contained in the report of the appropriate authority without indicating anything about the investigation conducted by the said authority and his report. This should be kept in mind while issuing charge show cause letter to the Accused Officer or pending any further communication to the Accused Officer vide the Government Memo No.93261 A/78 Personnel and Administrative Department, dated 01.12.78,. The copies of show cause notice/charge memo issued to the Accused should be sent to the appropriate authority vide Government letter No.44581/90-13, Personnel and Administrative Reforms (Per.N) Department dated 17.2.92.

This order should not be quoted in any of the references issued to the Accused Officer. The disciplinary authority should send a copy of the Enquiry Officers report to the appropriate investigation authority immediately, after the enquiry is over as G.O.(Ms).No.28, Personnel and Administrative Reforms Department dt.29.1.96 instead of sending them along with the final orders passed. The Disciplinary Authority should also mark a copy of the final order passed on them to the appropriate authority vide Govt. Memo No.47793A/75-3, Personnel and Administrative Reforms

(Ser.N) Department dated 27.1.76."

12. The contention of the learned counsel for the second respondent is noticed to be rejected, for the reason that it is not disputed that the petitioner is employed in Tamil Nadu Cooperative Societies Milk Producers Federation, which is the society registered under the Tamil Nadu Cooperative Societies Act, 1983 and is an independent legal entity. The Animal Husbandry department cannot have any control over the functions of the Cooperative Society therefore above referred G.O. Ms.No.115 dated 16.12.2007 is without jurisdiction. The fact that the department of Animal Husbandry had no such jurisdiction is clear from G.O.itself, as it is mentioned therein that this order should not be quoted in any references issued to accused officer.

13. Learned counsel for the second respondent had also placed reliance on page 11 of the affidavit filed in support of this writ petition, where it is averred by the petitioner that the Government control is in the society, therefore it is not open to petitioner now to challenge the order passed by the Government.

14.This contention of the second respondent, on the face of it, is misconceived. The averment made in paragraph 11 of the affidavit only states the Constitution of the Society so as to plead, that the second respondent is "State" within the meaning of Article 12 of the Constitution of India, therefore amenable to the writ jurisdiction of this Court. Otherwise also, the petitioner by pleading cannot give or take away the jurisdiction of the State Government, with regard to the control over the Society.

15. Learned counsel for the State on the other hand referred to Rule 24 of the TCMPF Employees (Conduct, Discipline and Appeal) Rules (hereinafter referred to as the Rules) which reads as under:

24.POWERS TO GOVERNMENT:

" Notwithstanding anything contained in this rule, Government shall have the power to call for any records or proceedings of the TCMPF and its Unions to rectify any acts of omission or commission by invoking Section 153 of the TNCS ACT 1983."

16.The contention of the learned counsel for the State was that in view of the powers conferred under Rule 24 of the Rules, it was within the jurisdiction of the Government to issue direction to the second respondent to hold de novo enquiry, when the directions issued by the State Government in conducting enquiry, were not followed, by the second respondent.

17. A reading of Rule 24 of the Rules or Section 153 of the Cooperative Societies Act, 1983 on which reliance was placed by the State would reveal that there is no such power with the state to interfere or regulate day to day working of respondent No.2. Nor does the Rule 24 of the Rules or Section 153 of the Act gives power to interfere with the power of appointing authority in disciplinary matters.

18. The power under Rule 24 of the Rules or under Section 153 of the Cooperative Societies Act can be exercised by the State Government independently by taking the issue on its file and thereafter to

proceed, in accordance with law.

19.The power to be exercised would be a quasi judicial power, which will require the observance of principles of natural justice and also require Appellate order. The exercise of power under Section 153 would also oust the power of competent authority to deal with the matter any further.

20.By at no stretch of imagination, these powers can be used to give a direction to the third respondent to hold de nova enquiry, without application of mind by competent authority.

21.Learned counsel for the petitioner therefore rightly contended that the impugned order, directing holding of de nova enquiry, is totally without jurisdiction, as it has been passed by the competent authority, on the direction of the State Government and not by applying an independent mind. The order of de nova enquiry being without jurisdiction, therefore deserves to be set aside.

22. The contention of the learned counsel for the respondents, that this Court should not exercise the jurisdiction under Article 226 of the Constitution of India, as the petitioner has statutory remedy of appeal against the impugned order, also cannot be accepted. As the impugned order is totally without jurisdiction and has been passed on the direction of the State Government with any legal authority. The alternative remedy therefore cannot come in way to exercise the jurisdiction under Article 226 of the Constitution.

23. The second challenge of the learned counsel for the petitioner to order of suspension. deserves to be rejected. Rule 12 of the Rules reads as follows:

Rule 12: Communication of orders:

"Every order made by the Disciplinary Authority after enquiring under rule 8 or rule 9 shall be communicated to the employee concerned, who shall also be supplied with a copy of the report of enquiry, if any. The entire proceedings shall be completed within 180 days from the date of framing charges and the Enquiry Officer appointed under this rule shall furnish his report within 90 days."

24. It is not disputed by the petitioner that the departmental enquiry against the petitioner is not yet concluded. The pleading in the affidavit shows that the enquiry officer has submitted his report to the punishing authority and then the punishing authority is yet to take decision on the enquiry report in accordance with law. The order of suspension being in consonance with Rule 12 of the Rules, deserves to be upheld.

25. Considering the facts and circumstances of the case, the third respondent is directed to take a final decision on the enquiry proceedings against the petitioner by passing an appropriate order in accordance with law.

26.The respondents are however directed to pay the subsistence allowance along with the arrears due to the petitioner within one month from the date of receipt of certified copy of this order and thereafter continue to pay the subsistence allowance to the petitioner during the pendency of the

enquiry in accordance with rules and regulations.

27. The writ petition is disposed of by quashing the impugned order vide which denova enquiry is ordered, however order placing the petitioner under suspension is upheld subject to directions given above. No costs.

28.01.2011 Index:Yes/No Internet:Yes/No VJY To

1. The Secretary to Government Animal Husbandry and Diary Development Department, Secreariat, Fort St.George, Chennai 600 009.

2.The Personnel Committee Milk Colony, Chennai 600 051.

The Tamil Nadu Cooperative Milk Producers Federation Ltd., Aavin Illam, Madhavaam Milk Colony, Chennai 600 051

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