

(2011) 06 MAD CK 0228

Madras High Court

Case No: Writ Petition No. 10835 of 2009 and M.P. No's. 1 of 2009

L. Mathivanan

APPELLANT

Vs

The Khadi and Village Industries
Commission

RESPONDENT

Date of Decision: June 21, 2011

Acts Referred:

- Khadi And Village Industries Commission Act, 1956 - Section 27(2A)

Hon'ble Judges: T. Raja, J

Bench: Single Bench

Advocate: A. Arulmozhi, for the Appellant; S. Srinivasan, for R1 to R4, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

T. Raja, J.

The present writ petition is directed against the impugned order dated 07.11.2007 passed by the second Respondent, the Chief Executive Officer, Khadi and Village Industries Commission, Mumbai imposing a major penalty of reduction of pay of two stages from Rs. 10,200-Rs.9,650/- in the time scale of pay of Rs. 8,000/--275-13,500/- for a period of one year with effect from 01.12.2007 as confirmed by the first Respondent in the order on appeal dated 26.08.2008/10.09.2008 and to quash the same with further direction to the Respondents to refix the scale of pay of the Petitioner as prior to the impugned order and also to pay all attendant benefits with arrears and pass such orders.

2. Mrs. A. Arulmozhi, learned Counsel appearing for the Petitioner has placed inter alia the following grounds: Firstly, that the impugned order passed by the second Respondent as confirmed by the first Respondent is vague; secondly, it is a case of no evidence, thirdly, the findings reached by the Enquiry Officer has no basis much less evidence to pass any order resulting penalty of reduction of pay of two stages

and finally, it was argued that both the Original Authority and the Appellate Authority have passed the impugned orders without application of mind.

3. The brief facts of the case leading to filing of the present writ petition is here under:

The Petitioner joined the Khadi and Village Industries Commission in the year 1977 in the post of Co-operative Officer. Since the Khadi and Village Industries Commission is a statutory body created by the Act of Parliament, it functions under the administrative control of Ministry of Micro, Small and Medium Enterprises (MSME), Government of India. The Petitioner was also subsequently promoted to the post of Liaison Officer (Cooperation) in the year 1992. Again, he was further promoted to the post of Assistant Director during the year 1996 and at present, he is serving as Assistant Director in the State office of Khadi and Village Industries Commission at Bangalore. He has also served in various states like Central Office, Bombay, Pondicherry, Uttar Pradesh and Tamil Nadu. Thus, he has rendered 31 years of unblemished service without giving any room for any complaint.

4. While the matter stood thus, the Khadi and Village Industries Commission [herein after called as KVIC] has been implemented the Margin Money Scheme, which is later on renamed as Rural Employment Generation Programme (REGP). As per the said scheme, subject to certain terms and conditions, the loans sanctioned by the Bank to the new entrepreneurs, the KVIC provide 25% subsidy to the General category and 30% for special categories viz., SC, ST, Women, OBC, Minorities, etc., Though the subsidy is called as Margin Money, later on it is treated as back ended subsidy. When the matter stands thus, during the year 2002-2003, one Mr. C.K. Mohandas who was serving as Assistant Director of Sub-Office, KVIC, Coimbatore which was under the administrative control of the State Office, KVIC, Chennai, was receiving applications from prospective entrepreneurs and forwarded them to Banks under Rural Employment Generation Programme. The work allocation order was issued to C.K. Mohandas by the State Director in his letter No. SOT/II/EST/WA dated 10.03.2003. Later on, Mr. C.K. Mohandas, Assistant Director, Sub Office, KVIC, Coimbatore in his letter dated 20.03.2003 requested the State Director, KVIC, Chennai to give retrospective effect to the work allocation with effect from October 2002. The said letter was received by the State Office, KVIC, Chennai on 25.02.2003 and after proper processing, the same was submitted through the Superintendent on 27.03.2003 and the said Superintendent with his remarks further submitted the file to the Petitioner who in turn forwarded the same to the State Director for appropriate orders on the same date. Therefore, it was submitted that as per the procedure, the file with draft letter and final order passed by the State Director ought to have been cleared by the Assistant Director viz., the Petitioner herein. Therefore, it was contended that when the file was cleared by the State Director on 29.03.2003, granting retrospective effect to the work allocation given on 10.03.2003, neither the draft letter nor the fair copy of the letter dated 20.03.2003 was routed or

processed through the Petitioner. Therefore, the legal consequences would be that the Petitioner was not aware of the issuance of the letter dated 10.03.2003. Under these circumstances, the State Office received a letter dated 23.07.2003 from the office of the third Respondent (Vigilance) directing the State office to inform as to whether any work allocation was given under Margin Money Scheme to Mr. C.K. Mohandas, Assistant Director, Sub Office, KVIC, Coimbatore and if so, the number of applications forwarded by him to the Banks. After receiving the letter from the fourth Respondent, the dealing Assistant officer has prepared a note for the reply and placed it before the Petitioner through the Superintendent. The Petitioner also subsequently placed this file to the State Director who is the fourth Respondent herein. Finally, the State Director has signed the letter and sent it to the third Respondent office on 25.07.2003. Under these circumstances, the learned Counsel for the Petitioner has assailed the issuance of the charge memo stating that the charge memo dated 09.06.2006 issued by the second Respondent containing two charges alleging that the Petitioner intentionally suppressed factual information and furnished wrong information about the allocation of Rural Employment Generation Programme work to C.K. Mohandas, Assistant Director, Coimbatore with retrospective effect and was instrumental in unauthorised issue of retrospective authorisation to C.K. Mohandas and therefore, he is responsible for pressurising subordinates to over write noting suitable for covering of past unauthorised actions of Mr. C.K. Mohandas, Assistant Director without any basis. However, the Petitioner submitted his explanation to the charge memo. After receipt of the explanation submitted by the Petitioner, the second Respondent who is the Disciplinary Authority finding the explanation not satisfactory, appoints an Enquiry Officer to conduct enquiry into the allegations. Yet the Petitioner faced enquiry and established before the Enquiry Officer to the best of his efforts that he was not aware of the issue of the letter in question dated 20.03.2003 giving retrospective effect to the original order dated 10.03.2003. By properly bringing to the notice of the Enquiry Officer that there were two letters with interpolations with the same content and dated 20.03.2003. Inasmuch as the statement of dealing Assistant and Superintendent also clearly indicate that the Petitioner has no knowledge about the issue of the letter dated 20.03.2003. Inspite of these clear explanations given by the Petitioner, the Enquiry Officer who was appointed to conduct enquiry into the above said charges without taking into account the explanation offered by the Petitioner held both the charges proved in his enquiry report dated 22.01.2007. Subsequently, after receiving the Enquiry Officer's Report along with show cause notice dated 10.05.2007, the Petitioner once again submitted his further explanation on 04.06.2007, without considering the further representation, the second Respondent passed the final order imposing a major penalty of reduction of pay of two stages from Rs. 10,200/- to Rs. 9,650/- in the time scale of pay of Rs. 8,000/--275-Rs.13,500/- for a period of one year with effect from 01.12.2007. Aggrieved by the said order, when the appeal was filed, the Appellate Authority also rejected the appeal. Therefore, the learned Counsel for the Petitioner submitted that the charges

levelled against the Petitioner are as vague as could be for the reason that the charge memo has not clearly pinpointed there is a nature of offence or irregularities caused by him to the Respondent Department.

5. When the charges are not specific and directly implicating the Petitioner's involvement in any of the charges or irregularities, the second Respondent instead of polling the charges as vague wrongly hold the charges against the Petitioner as proved. When the matter was brought to the notice of the first Respondent by way of appeal, the first Respondent also without issuing that there is no specific or direct involvement by the Petitioner without giving any substantial reason wrongly dismissed the appeal. Therefore, she further contended by adding a submission that when no substantial evidence was adduced against the Petitioner, the findings of the Enquiry Officer are perverse because there is no evidence against the Petitioner to say that the Petitioner was at any point of time was responsible for passing any order or his own. Simply when the Rural Employment Generation Programme (REGP) among other schemes was introduced from 1996-1997 onwards providing loan facilities through Banks to new entrepreneurs, as per the said scheme, the KVIC would provide 25% subsidy to the General category and 30% for special categories viz., SC, ST, Women, OBC, Minorities, etc., The said subsidy is called as Margin Money and later on it is treated as back ended subsidy. During the year 2002 and 2003, when C.K. Mohandas was serving as the Assistant Director of Sub Office, KVIC, Coimbatore under the administrative control of State Office, Chennai, he has received an application directly from prospective entrepreneurs and forward the same to the Banks under the Rural Employment Generation Programme. When the State Director issued the work allocation to Mr. C.K. Mohandas in his letter No. SOT/II/EST/WA dated 10.03.2003 there is a specific note submitted by the Superintendent for issuing the order on 08.03.2003 to the Petitioner who was then working as the Assistant Director at State Office, Chennai. Therefore the Petitioner has submitted file to the State Director and the State Director has issued the order on 10.03.2003. The second important thing is after the order dated 10.03.2003 was issued by the State Directors, the said C.K. Mohandas , Assistant Director, Sub Office, KVIC, Coimbatore in his letter dated 10.03.2003 further requested the State Director, KVIC, Chennai to give retrospective effect to work allocation with effect from October 2002. Again, the said letter was received by the State Office, Chennai on 25.03.2003 after properly processed by the dealing Assistant which was subsequently submitted to the Superintendent on 27.03.2003 and the said Superintendent with his remarks submitted again the file to the Petitioner who in turn forwarded to the State Director for orders on the same date. Though the procedure contemplates that the file with draft letter and final order passed by the State Director to be cleared through the Assistant Director viz., the Petitioner but, in the present case, the file was cleared by the State Director on 29.03.2003 because the letter dated 20.03.2003 was sent by the State Director granting retrospective effect to the work allocation order given on 10.03.2003 clearly states that the same

will take effect from October 2002 and the said file was cleared by the State Director on 29.03.2003. Therefore, when the draft letter and the fair copy of the letter dated 23.03.2003 was neither routed through the Petitioner nor processed through the Petitioner, the Petitioner can never do found a fault with. Thus, when the Petitioner was in no way connected to the order dated 20.03.2003, the issuance of the charge memo dated 09.06.2006 is fully motivated with non application of mind and more so, not supported with any specific charge against the Petitioner. On that basis, it was mentioned that the second Respondent passing the impugned order is not only without any basis but when the charge itself as vague as there is no direct imputation against the Petitioner implicating the Petitioner anyway responsible for passing the order dated 20.03.2003 ignoring the nexus and connectivity between the Petitioner and the crucial order dated 20.03.2003, it will be totally unacceptable to allege that the Petitioner was instrumental in issue of retrospective authorised order dated 20.03.2003. Secondly, it was further contended that as per Section 27 2A of KVIC, only the Commission has got the power to issue the retrospective orders. Therefore, on the basis of Section 27-2A, if we look into the present case, the State Director has issued the orders which is in total violation of the provisions of the KVIC Act. If this is the position, suitable action should be taken against the State Director particularly when there is no specific evidence that the Petitioner was instrumental to issue the said order. She went on to add yet another submission stating that the non production of evidence by the Presenting Officer during the enquiry on the charges the Petitioner who allegedly pressurized the staff for making insertion in the noting of the Superintendent, has never been considered either by the Enquiry Officer or by the Disciplinary Authority viz., the second Respondent at the time of passing the impugned order or by the Appellate Authority. Moreso, when the draft letter dated 20.03.2003 issued by the State Director was not even produced by the presenting officer during the enquiry inspite of presenting the same it would be legally unsustainable for the Respondent to say the Petitioner was in anyway instrumental in passing the unauthorised order dated 20.03.2003.

6. Mrs. Arulmozhi, learned Counsel for the Petitioner while emphatically finding fault with the impugned order has also placed one another argument stating that when the deposition of the State Director I. Jawahar to the Superintendent (Vigilance) disclosed that he has issued the order dated 20.03.2003 giving retrospective effect from October 2002 in the interest of the programme. In spite of the fact that the State Director in his own deposition admitted his responsibility, it is not known on what basis the Enquiry Officer have accepted the charges levelled against the Petitioner and the Disciplinary Authority imposed the penalty which shows that it is a clear case of victimisation and principles of natural justice. Finally, it was further contended that when the Superintendent through whom the letter of Mr. C.K. Mohandas, Assistant Director, Coimbatore dated 20.03.2003 was processed and also recorded his observation on file, was not at all questioned at any level much less no explanation was called for to substantiate any allegation against any one. That

apart, he was allowed to go on voluntary retirement scheme that too, with promotion to the post of Assistant Director. The non examination of Superintendent who was crucial witness will go to show that it is a case of no evidence. On this basis, it was submitted that when the State Director deposed before the Superintendent Vigilance admitting the fact that he has issued the order dated 20.03.2003 giving retrospective effect from October 2002 ignoring that substantial evidence admitting the entire case of the Respondent against the Petitioner imposing the impugned punishment is reflection of the perversity on the part of the Respondent on that basis sought for setting aside the impugned order.

7. Opposing the above submission, though counter affidavit has been filed by the Respondent, none of the points pleaded in the affidavit filed in support of the petition has been made by the Respondent in the counter nor any stand has been taken to support the impugned order passed by the second Respondent, as confirmed by the first Respondent.

8. A mere reading of the counter affidavit does not take the court to any logical conclusion.

9. Heard the parties on either side.

10. The Khadi and Village Administrative Industries being a statutory body created under the act of the Parliament which came to be amended by the Act 12 of 1987 has been functioning under the administrative control of Ministry of Micro, Small and Medium Enterprise Government of India. While so, the Petitioner who came into the service of Khadi and Village Industries Commission in the year 1977 for the post of Cooperative Officer was promoted as Liaison Officer (Cooperation) in the year 1992. Subsequently, he was promoted as Assistant Director in the year 1996 and at present, he is serving as Assistant Director in the Sub Office of Khadi and Village Industries Commission at Bangalore. It is relevant to keep it in mind that the Khadi and Village Industries Commission has been implemented Margin money scheme which is later on renamed as Rural Employment General Programme (REGP) from 1996-1997 onwards. Under the said scheme, if anyone applies for the Bank loan, subject to certain terms and conditions, when the loan is sanctioned by the Bank to the new Entrepreneurs the Khadi and Village Industries Commission would also provide 25% of subsidy to the General category and 30% subsidy in the case of special categories viz., SC, ST, Women, OBC, minorities, etc., The said subsidy is called as Margin money which is also otherwise called back ended subsidy. While so ,during the year 2002-2003, one Mr. C.K. Mohandas who was serving as Assistant Director of Sub Office, Khadi and Village Industries Commission, Coimbatore which was under the administrative control of State Office, Chennai on receipt of the applications from the prospective Entrepreneurs used to forward the same to the Banks under Rural Employment General Programme. While so ,the State Director has also issued the work allocation order to Mr. C.K. Mohandas in his letter No. SOT/II/EST/WA dated 10.03.2003. For issuing this order, a note was also placed by

the Superintendent on 08.03.2003 to the Petitioner who at that point of time was working as Assistant Director at State Office, Chennai. Therefore, the Petitioner after receiving the said note submitted the file to the State Director and later on, the State Director has also issued the order on 10.03.2003. It is relevant to bear in mind that the Petitioner at the relevant point of time was serving as Assistant Director at that point of time work order dated 10.03.2003 was issued. After receipt of the work order dated 10.03.2003, issued by the State Director in Letter No. SOT/II/EST/WA dated 10.03.2003, two days before that date, a note was submitted by the Superintendent on 08.03.2003 to issue the order dated 10.03.2003 to the Petitioner at that relevant point of time, when the Petitioner was admittedly serving as Assistant Director at State Office, Chennai who in turn submitted file to the State Director and the State Director has issued the order on 10.03.2003, that's all the Petitioner has done. Let us further see, what is the further involvement of the Petitioner so as to implicate him in the charge memo as finally held by the Respondents 2 and 3 in the impugned order of punishment. After 10.03.2003, when the Petitioner as Assistant Director submitted his file to the State Director, when the State Director has passed the order dated 10.03.2003 one Mr. C.K. Mohandas, Assistant Director, Sub Office, Khadi and Village Industries Commission, Coimbatore in his letter dated 20.03.2003 requested the State Director, Khadi and Village Industries Commission, Chennai to give retrospective effect to the work allocation given on 10.03.2003 with effect from October 2002. The said letter sent by C.K. Mohandas, Assistant Director, Sub Office, Khadi and Village Industries Commission, Coimbatore was received by the State Office, Chennai on 25.03.2003. The same was also processed by the Dealing Assistant and subsequently, the said letter was submitted through the Superintendent on 27.03.2003 with his remarks to the Petitioner and the Petitioner in turn forwarded the same to the State Director for orders on the same date. In fact, as per the procedure, the file with the draft letter and the final order passed by the State Director should be cleared through the Assistant Director viz., the Petitioner. But in the present case, the file was cleared by the State Director on 29.03.2003 giving retrospective effect to the work allocation order dated 10.03.2003 to take effect from October 2002. When the said file was cleared by the State Director on 29.03.2003, neither the draft of the letter nor the fair copy of the letter dated 20.03.2003 was routed or processed through the Petitioner. Therefore, the Petitioner was not aware of the issue of the letter dated 20.03.2003.

11. At this juncture, it is relevant to extract the question put to the State Director by the Superintendent (Vigilance) as follows:

Question by Superintendent (Vigilance): Can work allocation be given from retrospective effect?

Answer (by State Director): It depended upon the request of the Officer intending for retrospective order was considered. It is to my memory that the Banks were

funding cases signed by me and Assistant Director, Sub Office, (Coimbatore) question of authorisation came from Bank to clear pending cases forwarded by sub office.

Question: Did the State Director is having powers to issue order from retrospective effect?

Answer: He was the officer working under State Director and for the implementation of the programme such order was issued.

Thus no responsibility can be thrust upon me (CSO) on an action by the superior (State Director) which was solely and arbitrarily taken by him and for which he is owning full responsibility in his deposition before the Superintendent (Vigilance).

12. From the above question and answer, it can be inferred safely that no responsible can be thrust upon the Petitioner for the simple reason that the State Director himself has owned full responsibility in his deposition before the Superintendent Vigilance. If this is the position, I do not know how the Enquiry Officer proceeded against the Petitioner on his own. Secondly, in the enquiry conducted by the Enquiry Officer neither the Superintendent nor the Dealing Assistant have deposed against the Petitioner that the Petitioner has pressurised them to take any action in this regard. Therefore, there is no finding recorded by the Enquiry Officer against the Petitioner to the charges levelled against him. That apart, if we look at the order passed by the Disciplinary Authority, it is really dissenting to go through few line order passed by the second Respondent, the Chief Executive Officer. The said cryptic order does not substantiate on what basis, the impugned punishment has been imposed against the Petitioner. When a major punishment is imposed against the Petitioner, the order of punishment should precisely mention the nexus between the charge and the punishment. Not only that the Disciplinary Authority after receiving the report of the Enquiry Officer by applying his mind should give a reason order on the issue as to how the Disciplinary Authority has satisfied in imposing the impugned punishment. But, the order passed by the second Respondent imposing penalty of reduction of pay by two stages from Rs. 10,200/--Rs.9,650/- in the time scale of pay for a period of one year with effect from 01.12.2007 does not whisper about the proving of charge or the basis upon which the Disciplinary Authority has come forward to impose or accept the findings of the Enquiry Officer.

13. Therefore, the Petitioner aggrieved by the said impugned order filed an Appeal and the Appellate Authority also ironically by accepting the case of the Petitioner instead of canceling the order impugned in the appeal has erroneously dismissed the appeal. Indeed, it is relevant to refer to the findings of the Appellate Authority before reaching the final conclusion. When the Appellate Authority has submitted the case of the Petitioner that the Presenting Officer had not produced the draft letter dated 20.03.2003, he has admitted one more aspect of the case of the

Petitioner that at the time of enquiry, the Presenting Officer had not provided oral evidence or written documents to corroborate the charges levelled against him. With these findings of the Appellate Authority, the natural legal consequences would be to set aside the order passed by the Chief Executive Officer. But that has not been done. The another interesting finding recorded by the Appellate authority also needs mentioning herein. The Appellate Authority in his order has further come to the conclusion that the Petitioner has no knowledge of the issuance of the letter dated 20.03.2003 and a short relevant portion thereof is also extracted hereunder:

As already mentioned above, he had no knowledge of issue of the letter dated 20.03.2003. In this background, the reply to the Directorate of Vigilance was given on 24.07.2003 as per the noting of the dealing Assistant/Superintendent, as he was the only officer other than State Director to look after the work of State Office, Chennai. There was urgency to give reply to the Directorate of Vigilance within short period. Hence he had to depend on notings of staff and there was no intention of giving wrong information or suppressing facts to the Central Office. Thus, it is incorrect to penalize him on this ground.

14. From the above reading of the findings, the Appellate Authority has come to the conclusion that it is wrong to penalise the Petitioner for the finding given by the Enquiry Officer as well as the reason given by the Disciplinary Authority. If this is the case, instead of allowing the appeal, the first Respondent has wrongly dismissed the appeal.

15. Therefore, as rightly contended by the learned Counsel for the Petitioner, not only the Enquiry Officer even the Original Authority viz., the second Respondent also having come to the conclusion that the Petitioner was not at fault as he was not aware of the letter dated 20.03.2003 issued by the State Director, the only indisputable conclusion would be, to allow the appeal, though the second Respondent has come to the right conclusion that it is incorrect to penalise the Petitioner for the reasons that he was unaware of the letter dated 20.03.2003 issued by the State Director once again confirming the order of penalty imposed by the second Respondent is nothing but reflection of non application of mind by the first Respondent. Besides, the second Respondent has not even assigned any single reason for imposing the punishment of reduction of pay by two stages against the Petitioner. When enquiry was held against the Petitioner, the State Director himself accepted the full responsibility, therefore, there can be no more responsibility to be thrust upon the Petitioner. Further, there is no findings recorded by the enquiry officer against the Petitioner for the charges levelled against him. Yet, he was imposed with a major punishment of reduction of pay by two stages from Rs10,200/- to Rs. 9,650/- in the time scale of pay of Rs. 8000-275-13500 for a period of one year with effect from 01.12.2007. Aggrieved by the said punishment, when appeal was filed, the Appellate Authority also having aggrieved with the case of the Petitioner, wrongly dismissed the appeal. This is not only reflecting the total non

application of mind, but also the malafide and pre-determined mind of the first Respondent. Therefore, the orders impugned herein are liable to be set aside on the ground that the charges levelled against the Petitioner are not only vague but it is a case of no evidence and more so, the findings recorded by the Appellate Authority also are perverse and accordingly, the same are set aside and the writ petition stands allowed. No costs. The connected miscellaneous petition is closed.