

(2009) 10 MAD CK 0126

Madras High Court

Case No: Writ Petition No. 29138 of 2006 and O.A. No. 4226 of 1998

K. Marimuthu

APPELLANT

Vs

Government of Tamil Nadu

RESPONDENT

Date of Decision: Oct. 15, 2009

Acts Referred:

- Constitution of India, 1950 - Article 311(2)
- Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 - Rule 17

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: K.V. Srinivasaraghavan, for the Appellant; R. Neelakantan, GA, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.

Heard both sides.

2. The petitioner filed OA No. 4226 of 1998 before the Tribunal after seven years after his retirement. The petitioner was working as a Block Development Officer. He challenged the Government order in G.O.(D) No. 568, Rural Development Department, dated 12.11.1997. By the said order, the petitioner was imposed with the penalty of deduction of three years' incremental value in monetary terms from the retirement benefit and also withholding of Rs. 58,076/- from the retirement benefits till the disposal of the appeal of the petitioner. However, the balance amount was directed to be paid to him.

3. This case has got chequered history. The charge against the petitioner was that he had purchased Forms and Registers while he was working as the BDO in Minjur Union to the extent of Rs. 1,20,007/- for the use by the Village panchayat. It was

found that it was not his duty to make purchase. It was also found that he did not adhere to the tender rules and did not assess the actual requirements of the said panchayat. Subsequently, charges were framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The petitioner was also placed under suspension by an order, dated 26.6.1990. The petitioner was imposed with a penalty of deduction of three years increment value in monetary terms and also deduction of Rs. 58,076/- from his retirement benefits, by the order of the District Collector (the third respondent), dated 22.6.90. The petitioner filed a review application and thereafter, filed an appeal to the second respondent.

4. When the matter was taken up with the State Government, it passed an order in G.O.Ms. No. 899, Rural Development Department, dated 7.11.1990. It was stated that the District Collector has no authority to pass such an order of recovery and imposition of penalty. It was only the second respondent who could have passed such an order. Therefore, the proceedings of the District Collector was set aside and he was directed to forward the papers to the second respondent who in turn was directed to initiate fresh action. The petitioner was to retire from service on 30.6.90. Therefore, he filed O.A. No. 3903 of 1991, challenging the charge memo.

5. The said OA came to be disposed of by a final order, dated 17.10.1994. In the operative portion of the order, the Tribunal stated as follows:

If any proceedings other than that dealt with by the Collector and by Government in G.O.Ms. No. 899, RD Department dated 7-11-90 is the basis for suspension, the proceedings therein should be concluded without undue delay. Such proceedings should have been concluded in the course of 4 years after the suspension. No reply has been filed inspite of such delay. We therefore direct that the applicant should be permitted to retire, unless there are any other pending proceedings warranting his continued suspension, subject to recovery of the amounts due from him from the superannuation benefits and other payments due to him in accordance with the rules, pending a decision on his appeal to Director of Rural Development which should be dealt with on merits and orders issued within 3 months. Other proceedings, if any, which constituted the basis for suspension in 1990, should also be concluded before 31-3-1995. If not, the applicant should be allowed to retire, without prejudice to the proceedings to be dealt with under the Pension Rules.

6. The petitioner did not question the direction of the Tribunal, which permitted recovery of amounts from the petitioner. Subsequently, on the basis of an enquiry, the petitioner's explanation was called for. Thereafter, the impugned order came to be passed by the State Government.

7. On direction from this Court, the respondents have filed a counter affidavit, dated Nil (2009), justifying the action taken against the petitioner. In paragraph 11 of the counter affidavit, in reply to the averment of the petitioner, it was averred as follows:

11. It is submitted that the contention of the petitioner in para No. 6.11 of the affidavit, that the petitioner is to be allowed to retire from service without prejudice to the disciplinary proceedings was adhered to vide G.O.(D) No. 568, Rural Development (E6) Department, dated 12.11.97. As per the directions of the Hon"ble Tamilnadu Administrative Tribunal, Chennai, the petitioner's suspension was revoked and he was allowed to retire from service on the afternoon of 30.06.90 without prejudice to the disciplinary action pending against him vide by the G.O.(D) No. 568/ Rural Development Department, dated 12.11.97. It was also ordered that the 3 years increment salary should be calculated and deducted from retirement benefits of the individual and also to deduct the recovery of a sum of Rs. 58,076/- from the retirement benefits of the individual and the balance should be paid to the individual after the disposal of the appeal petition. At this juncture the petitioner has filed in OA No. 4226/96 before the Hon"ble T.A.T and hence his retirement benefits could not be released.

8. The only contention raised by the petitioner was that he cannot be mulct with two punishments, i.e. recovery from salary as well as recovery of monetary equivalent of stoppage of increments. In essence, the counsel for the petitioner contended that this would amount to a "double jeopardy" which is not contemplated in law.

9. In this context, it is necessary to refer to the judgment of the Supreme Court in Depot Manager, Andhra Pradesh State Road Transport Corporation v. N. Ramulu and Anr., (1997) 11 SCC 319 . In that case, the Supreme Court upheld the imposition of such punishments, i.e. punishment arising out of disciplinary action as well as recovery of loss sustained by the State. In paragraph 3 of the said judgment, it was held as follows:

3. We think that the entire approach of the Division Bench of the High Court is incorrect. The driver had caused pecuniary loss to the appellant and that was estimated to be Rs. 500. It was this pecuniary loss which was ordered to be recovered from the delinquent. In addition to that, the delinquent was punished for misconduct and it is that punishment with which the Labour Court interfered and so also did the learned Judge of the High Court. The learned Single Judge came to the conclusion that 50 percent of back wages should be refunded to the delinquent besides reinstatement. Against that order both the delinquent and the management went up in appeal. The High Court modified the order of the learned Single Judge and directed payment of full back wages. In other words, the only order that survived was the reimbursement of the loss occasioned to the appellant on account of the act of the delinquent driver. It is true that that has been shown to be a penalty under Regulation 8(v) of the Regulations. But the penalty for the act of negligence was removal fro service. The explanation to Regulation 8, however, enumerates various penalties which are not to be treated as penalties and one of them is as Clause (5) thereof says : "The penalty of recovery from pay of the whole or part of any pecuniary loss caused to the Corporation by an employee's negligence or

breach of orders, may be imposed in addition to any other penalty which may be inflicted in respect of the same act of negligence or breach of orders." This clause clearly says that the penalty of recovering loss caused to the management under Regulation (1)(v) shall not preclude the management from imposing any other penalty. The High Court was, therefore, wrong in thinking that this was a case of double jeopardy. We think that the order passed by the learned Single Judge was eminently just and fair and the Division Bench of the High Court should not have interfered with that order.

10. The Supreme Court in *State of U.P. v. Harihar Bholenath* reported in (2006) 13 SCC 460 had upheld such recovery from the pensionary benefits pursuant to the disciplinary action taken against a Government servant. The following passages found in paragraphs 14 and 17 may be usefully extracted below:

14. The proceedings for recovery of the amount from a government servant can be passed in the event he is held to be guilty of grave misconduct or caused pecuniary loss to the Government by his misconduct or negligence during his service. Some procedural safeguards, however, have been laid down in terms of proviso appended thereto, including the requirement to obtain an order of sanction of the Governor. Such order of sanction, however, would not be necessary if the departmental proceedings have been initiated while the delinquent was on duty. Proviso appended to Regulation 351-A merely controls the main proceedings. The same would apply in the exigencies of the situation envisaged therein, namely, even (sic when) the proceedings were initiated after retirement and not prior thereto.

...

17. In both the situations, a regular proceeding is required to be initiated which would include issuance and service of show-cause notice and in the event, cause is shown, application of mind thereupon. On initiation of departmental proceedings the principles of natural justice must be complied with. In the instant case, the procedures laid down under the statute have been complied with. A report was submitted by the enquiry officer and consequent orders have been passed on the basis thereof, in accordance with the procedure laid down therefore by the disciplinary authority.

11. The Supreme Court in [State of Uttar Pradesh Vs. Brahm Datt Sharma and Another](#), has held in paragraph 8 as follows:

8. A plain reading of the regulation indicates that full pension is not awarded as a matter of course to a government servant on his retirement instead; it is awarded to him if his satisfactory service is approved. If the service of a government servant has not been thoroughly satisfactory the authority competent to sanction the pension is empowered to make such reduction in the amount of pension as it may think proper. Proviso to the regulation lays down that no order regarding reduction in the amount of pension shall be made without the approval of the appointing authority.

Though the Regulations do not expressly provide for affording opportunity to the government servant before order for the reduction in the pension is issued, but the principles of natural justice ordain that opportunity of hearing must be afforded to the government servant before any order is passed. Article 311 is not attracted, nonetheless the government servant is entitled to opportunity of hearing as the order of reduction in pension affects his right to receive full pension. It is no more in dispute that pension is not bounty; instead it is a right, to property earned by the government servant on his rendering satisfactory service to the State. In *State of Punjab v. K.R. Erry* this Court held that the State Government could not direct cut in the pension of officers without giving a reasonable opportunity of hearing to them. In *Deokinandan Prasad v. State of Bihar* it was held that pension is not bounty payable at the sweet will and pleasure of the Government; instead the right to pension is valuable right vested in a government servant. Again in *D.S. Nakara v. Union of India* this Court held that payment of pension does not depend upon the discretion of the Government but it is governed by the rules and government servant coming under those rules is entitled to claim pension. A government employee earns his pension by rendering long and efficient service; the claim of pension is regulated by rules, which provide for reduction in the amount of pension if the government servant has failed to render efficient service. In *M. Narasimhachar v. State of Mysore* this Court upheld the order of the State Government in reducing pension of a government employee as the rules regulating the grant of pension made provision for reduction of pension on account of his having rendered unsatisfactory service. Rule 6.4 of Punjab Civil Pension Rules provides for the reduction in the amount of pension if the service of the government employee has not been thoroughly satisfactory. The State Government's order directing reduction of pension of the employee of State of Punjab were set aside by this Court in *State of Punjab v. K.R. Erry* and in *State of Punjab v. Iqbal Singh* on the ground that the orders imposing deduction in the pension had been passed in violation of principles of natural justice as the affected employees had not been afforded opportunity of hearing. These decisions leave no scope for any doubt that the State Government is competent to direct reduction in pension after affording opportunity of hearing to the government servant.

12. The monetary equivalent of increments stopped were came to be made only because the petitioner had retired by then. The contention of the petitioner that once a person had retired, Rule 9 of the Tamil Nadu Pension Rule alone will apply cannot be accepted. In the present case, the petitioner was allowed to retire without prejudice to the disciplinary action initiated against him. Therefore, arguments advanced by the counsel for the petitioner cannot be accepted. Hence this writ petition stands dismissed. No costs.