

T.M. Manikumar Vs Second Additional Junior Civil Judge, Guntur and Others

Court: Andhra Pradesh High Court

Date of Decision: Feb. 11, 2002

Citation: (2002) 2 ALD 428 : (2002) 2 ALT 276 : (2002) 3 LLJ 333

Hon'ble Judges: A.R. Lakshmanan, C.J; G. Rohini, J

Bench: Division Bench

Advocate: K. Balagopal, for the Appellant; M. Bhaskara Laxmi, SC for High Court, for the Respondent

Final Decision: Dismissed

Judgement

A.R. Lakshmanan, C.J.

This writ petition raises an important question as to the nature of duties to be performed by an attender working in the Subordinate Courts.

2. The petitioner herein was appointed as attender on 13-6-1996 on compassionate grounds in place of his late father T. Prasad Rao, Process

Server in the District Court, Guntur who retired voluntarily on 31-5-1996 medical invalidation. The petitioner is now working as an attender in on

the Court of the II Additional Junior Civil Judge, Guntur.

3. The petitioner filed the above writ petition aggrieved by the action of the II Additional Junior Civil Judge in exclusively allotting him daily duty at

night at the residence of the II Addl. Junior Civil Judge in spite of the ill-health of the wife of the petitioner as an act of victimisation for having

refused to work at the residence of the Judge during day time. According to the petitioner, his refusal to work at the residence of the Presiding

Officer during day time was based on the circular issued to all the lower Courts on the administrative side by the High Court in ROC No. 116/92-

C1, dated 24-2-1992 wherein it is stated that house work at the residence of the Presiding Officer is not among the eleven legitimate duties of a

Court attender and, therefore, allotment of exclusively night duty to the petitioner at the residence of the Presiding Officer would amount to

victimisation. Therefore, the petitioner claims that he has a legitimate cause of action for moving this Court in the matter.

4. It appears that when the petitioner was working in the Court of the I Addl. Munsif Magistrate, Gurajala, filed a writ petition seeking an

appropriate direction from this Court for posting him at Guntur town on the ground that his wife is a cardiac patient and medicare for her is not

available at Gurajala. This Court directed the District and Sessions Judge, Guntur to consider his representation and as a consequence he was

transferred to Guntur and posted at the Court of II Additional Junior Civil Judge, Guntur. He was allotted day duty at the residence of the

Presiding Officer. According to the petitioner, the Court attenders can be asked to do only legitimate work at the residence of the Presiding Officer

of the Court such as to guard the Court property at night. This was clarified by the High Court in circular dated 24-2-1992. It is the further case of

the petitioner that as per the rules issued in G.O. Ms. No. 565 GAD (Ser.B), dated 24-10-1992, the list of legitimate duties does not include any

day time work whatsoever at the residences of the Presiding Officers. His protest for being allotted day time work at the residence of the Presiding

Officer was construed as an act of insubordination and disciplinary proceedings have been initiated against him. Subsequently, the petitioner was

directed by the 1st respondent to do exclusively the guard duty at night at the residence of the officer as he objected to do the day duty at the

residence of the officer. According to the petitioner, since the day duty at the residence of the officer is not a legitimate duty that can be demanded

from a Court attender at all, the allotment of exclusive night duty at the residence of the officer would amount to an act of victimisation. The 1st

respondent issued an office order dated 5-10-2001 stating that he was being allotted night duty exclusively for the reason that he was reluctant to

attend any work at the residence of the Presiding Officer. On 16-10-2001 the petitioner made a representation that he may be allotted night duty

and other work in the Court on alternate days. The other work includes delivery of tappals, maintaining order in the Court hall, carrying boxes and

papers from one Court to another, encashing bills and cheques in the banks etc. The 1st respondent on 22-10-2001, however, rejected the

request of the petitioner. Thereafter the petitioner made a representation to the District Judge on 31-10-2001 but no reply thereto was received.

5. The grievance of the petitioner in nutshell is that the eleven duties of attenders and process servers referred to in the circular of the High Court

are allotted to individual employees as per the discretion of the Presiding Officer and it may not be amenable to judicial review by this Court. But,

when on the face of the order a single exclusive duty, which is most inconvenient for the petitioner, is allotted as an act of victimisation for having

refused to do what is not legitimately his duty, such an order is ex facie unlawful and is liable to be set aside by this Court.

6. With the above averments, the petitioner filed the writ petition seeking the following prayer:

To issue an order, direction or writ in the nature of writ of mandamus declaring that the action of the 1st respondent in allotting the petitioner daily

guard duty at night at the first respondent's residence is an unlawful and arbitrary act of victimisation, and further directing the 1st respondent to

allot duties to the petitioner in a fair and just manner.....

7. Pending disposal of the writ petition, the petitioner filed a miscellaneous petition seeking a direction to the District and Sessions Judge to dispose

of his representation dated 31-10-2001 in accordance with law.

8. A counter-affidavit was filed by the District and Sessions Judge, Guntur-2nd respondent denying the allegations made in the writ petition.

According to the 2nd respondent, the averments stated in the affidavit filed in support of the writ petition does not disclose any valid or substantial

grounds for grant of the relief prayed for and as such the writ petition is liable to be dismissed.

9. We will refer to the relevant portions of the counter-affidavit at the appropriate stage.

10. No reply whatsoever has been filed by the petitioner denying the averments made in the counter-affidavit filed by the 2nd respondent.

11. We have heard Sri K. Balagopal, learned Counsel appearing for the petitioner and Smt. M. Bhaskaralakshmi, learned Counsel appearing for

the respondents.

12. Sri K. Balagopal, learned Counsel appearing for the petitioner argued the case on merits and reiterated the contentions urged in the writ

petition and submitted that the petitioner is not duty bound to attend the day work at the residence of the Presiding Officer which is not one among

the eleven legitimate duties of a Court attender and that allotment of exclusively night duty to the petitioner at the residence of the Presiding Officer

on the refusal of the petitioner to attend the day duty would amount to victimisation and therefore, the petitioner has a legitimate cause of action for

invoking the jurisdiction of this Court. The learned Counsel further submitted that the only legitimate work a Court attender can be asked to do at

the residence of the Presiding Officer of the Court at night is to guard the public property.

13. Before considering the rival claims, it is useful to reproduce the office order issued by the 1st respondent to the petitioner, which reads thus:

Since Mr. T.M. Manikumar, Attender, II Additional Junior Civil Judge's Court, Guntur is reluctant to attend any work at the residence of the

officer, as he is canvassing his duty is only to watch the box and books, during night at the residence of the officer (in his explanation to the show-

cause notice). The said T.M. Manikumar is ordered to attend the night duties. At the same time, Mr. S. Sai Prasad, Attender, II Addl. Junior Civil

Judge's Court, Guntur is directed to attend the work, during the day time, at the residence of the officer.

14. From the above it would appear that the petitioner was allotted night duty, as he was not inclined to attend to day duty. It appears that the

petitioner has also made a representation to the 1st respondent requesting the Presiding Officer to allot him alternate night duties at the residence of

the officer, but the same was rejected by order dated 22-10-2001.

15. We may now usefully refer to the circular issued by the High Court of A.P. in ROC No. 116/92-C1 dated 24-2-1992. The said circular was

issued while disposing of the representation made by the A.P. Judicial Class IV Employees Association who represented that they are not willing

to perform night duty to guard the public property i.e., case records and books at the residences of the Judicial Officers and to carry boxes

containing the case records and books to and from the Judges residences etc., and requested the High Court to exempt them from attending the

said duties. After considering the said representation, the High Court issued the following instructions:

Under the circumstances, the High Court feels that a situation has arisen to enumerate the legitimate duties apart from process execution work

attached to the posts of and to be performed by the Process Services and Attenders (since both the posts are in the same class of service and are

interchangeable) which are as follows:

- (1) Guard duty in Court.
- (2) Maintenance of order in and around the Court halls and calling parties.
- (3) Delivery of local tappals and taking letters to and from the post-office.
- (4) Clearing and book railway parcels.
- (5) Depositing money in the Bank or Treasury and cashing bills and cheques.
- (6) Carrying Office boxes, books and records to the Judge's residence and back to Court.
- (7) Carrying boxes and paper from one Section to another.
- (8) Punching and sealing process memoranda.
- (9) Second punching of disposed of records and other miscellaneous duties in the Office.
- (10) Being the duties of Dalayats in casual leave vacancies and
- (11) Night duty at the residence of the Judicial Officers to guard public property i.e., case records and books etc.

The above duties have always been regarded as legitimate duties to be performed by the Process Servers/Atenders.

All the District Judges and other Unit Officers are, therefore, hereby instructed to instruct to entrust the duties as specified above to the process

servers and attenders and see that they are duly performed by them and in case of disobedience or non-performance of any of the above legitimate

duties by any of the process servers and attenders, they may be dealt with according to rules in force.

16. The eleven duties extracted above have always been regarded as legitimate duties to be performed by the process servers/attenders. By the

above circular, all the District Judges and other Unit Officers were instructed to entrust the duties as specified above to the process servers and

attenders and see that they duly perform the duties entrusted. In case of disobedience or non-performance of any of the above legitimate duties by

any of the process servers/attenders, the District Judges and other Unit Officers were instructed to appropriate action according to the rules in

force.

17. Discharging of night duty at the residence of the Judicial Officers to guard public property i.e., case records and books etc., is, therefore, one

of the legitimate duties to be performed by the process Servers and Attenders and they cannot refuse to attend the said duties when entrusted by

the Presiding Officers concerned.

18. A perusal of the counter-affidavit filed by the District Judge would clearly reveal that the petitioner has filed the present writ petition to preempt

the departmental proceedings initiated against him. It appears that the petitioner has been applying for earned leave on the ground of "personal

affairs" ever since he joined as attender on 3-7-2000 at Guntur and thereby causing lot of inconvenience to the work. The particulars of earned

leave applied by the petitioner as detailed in the counter are as follows:

Sl. Nature of leave Period of leave Grounds of leave

No. Applied for applied for

1. Earned leave From 14-8-2000 In 23 8-2000 prefixing public Personal affairs

holiday on 13-8-2000

2. Earned leave for From 24 8-2000 to 31-8-2000 Personal affairs

8 days

3. Earned leave For From 19-9-2000 to 23-9-2000 Personal affairs

5 days

4. Earned leave for From 24-9 2000 to 30-9-2000 Personal affairs

7 days

5. Half pay leave for From 16-12-2000 to 31-1-2001 Personal affairs

48 days

6. Earned leave for From 1-2-2001 to 20-2-2001 Personal affairs

20 days

7. Earned leave for From 27-9-2001 to 1-10-2001 Personal affairs (ill-

5 days health of wife)

19. It is seen from Column No. 4 above i.e., grounds of leave applied for, in his applications for leave the petitioner has not mentioned that his wife

was suffering from cardiac disease and she needs continuous medical treatment and he was also required to attend on her. He has not placed

before this Court or even before the District Judge or before the Presiding Officer of the Court where he was presently working any documentary

evidence to show that his wife was suffering from cardiac disease and his services are required during the night times.

20. Another instance mentioned in para 4 of the counter-affidavit is that when the petitioner was working at the Court of the Special Judicial

Magistrate of I Class for Prohibition and Excise, Guntur, he submitted his leave application on 18-10-2001 to grant him casual leave on 19-10-

2000 and when the said leave was not granted on the ground that men were not available and there was only one process server working, it

appears that the petitioner entered into the chambers of the officer and started demanding that he should be granted casual leave on 19-10-2000

and when the officer refused to grant casual leave and explained to the petitioner as to why leave could not be sanctioned to him, the petitioner in

utter disobedience and in subordinate stated that to mean that "you did like this. I will show you what I all can do" and left the chambers. The

Presiding Officer recorded the statements of the Head Clerk, Accounts Clerk and Process server present and thereafter a show-cause notice was

issued to the petitioner who submitted his explanation denying the allegations. Further, on the request made by the Presiding Officer, by order

dated 2-12-2000, the petitioner was transferred to the Court of Additional Junior Civil Judge, Gurajala. Therefore, it is seen that the petitioner was

transferred on the basis of the request made by the Presiding Officer of the Court of the Special Judicial Magistrate of I Class for Prohibition and

Excise, Guntur in his D.O. letter wherein the officer alleged misbehaviour and adamant attitude on the part of the petitioner. The petitioner also did

not contradict the averments of the Head Clerk, Accounts Clerk and the Process Server who were present at the time of the incident. Since the

incident is the subject-matter of a disciplinary enquiry, we are not inclined to express any opinion on the same.

21. Further when the petitioner filed WP No. 24142 of 2000 questioning the order of transfer, this Court, while rejecting the writ petition,

however, directed the District Judge to consider the representation filed before the District Judge on its own merits and in accordance with law.

The petitioner made a representation on 11-6-2001 and considering the circumstances, he was transferred from Gurajala to Guntur and he was

posted to the Court of II Additional Junior Civil Judge, Guntur where he is presently working. He joined there on 18-9-2001 and on 19-9-2001

the petitioner started disobeying the directions given by the II Additional Junior Civil Judge and told him that he will not attend to any domestic

work of the Officer. A show-cause notice was issued to the petitioner on 19-9-2001 to which he submitted his explanation on 1-10-2001. The

above instances would show that the petitioner has developed a tendency of disobeying the orders of the superior authorities.

22. As regards the posting of Attenders at the residence of the Presiding Officer, the District Judge in his counter-affidavit stated that there are two

Attenders attached to the residence of the Judicial Officer and their turn duties in a day are divided as under:

08.00 am. to 12.00 noon 12.00 noon to 08.00 p.m. (Day 08.00 p.m. to 08.00 a.m. (Night
noon duty) duty)

Attender No.1 Attender No.2 Attender No.1

Attender No.2 Attender No.1 Attender No.2

Attender No.1 Attender No.2 Attender No.1

23. Since the petitioner protested to attend to the day time duties at the residence of the Presiding Officer, the II Additional Junior Civil Judge,

Guntur passed an order dated 5-10-2001 directing him to attend to night duties and the other Attender to attend to day duties and the same was

communicated to him. The turn duties as per the aforementioned order are as follows:

08.00 a.m. to 08.00 p.m. (Day duty) 08.00 p.m. to 08.00 a.m. (Night duty)

Sri S. Sal Prasad (other Attender) Sri T.M. Mani Kumar (Petitioner)

24. Aggrieved by the aforesaid orders, the petitioner has preferred the present writ petition on the ground that the action of the II Additional Junior

Civil Judge in entrusting him guard duty at night at his residence is unlawful and amounts to an arbitrary act of victimisation. In our opinion, the relief

sought for by the petitioner cannot be granted in view of the fact that the petitioner herein was directed to attend to the night duty only by

considering his own representation and for administrative convenience. The petitioner at para 7 of his affidavit filed in support of the writ petition

has clearly stated that ""The only legitimate work the Court Attenders can be asked to do at the residence of the Presiding Officer of the Court is to

guard the Court property at the Presiding Officer's residence at night"". Again at para 9 the petitioner has stated, ""on the basis of this circular issued

by the High Court, I protested at being allotted day time work at the Presiding Officer's residence"".

25. It is thus seen that for the sake of administrative convenience, the petitioner herein was asked to attend to night duty only which is in

accordance with the circular issued by the High Court referred to supra. Therefore, the contention of the petitioner that the action of the 1st

respondent in allotting him to daily night duty at the residence of the Presiding Officer is unlawful and would amount to victimisation is wholly

baseless and incorrect and far from truth. In our opinion, the petitioner is liable to be proceeded against departmentally for insubordination and for

dereliction of duty. From the material on record, it is also evident that he is a frequent leave taker. It appears that he is always in agitational mood

and not willing to carry out the lawful directions issued by the officers concerned and is also not willing to perform the lawful duties entrusted to

him. The service of IV Class employees in the subordinate judiciary is an essential service and their services are essentially required by the Judicial

Officers, as the officers will mostly confine to the Courts and their residences in the discharge of their judicial functions. The discharge of judicial

functions by the Judicial Officers being unique in nature, unlike the other Officers of the State, and for obvious reasons, they are not expected to

have contacts with the public. In such circumstances, the employees of the Court are duty bound to obey the directions issued by the Presiding

Officers of the Court scrupulously. The averments mentioned in the counter-affidavit and in the instances cited by the District Judge in his counter-

affidavit would clearly go to show that the petitioner is frequently applying for leave and thereby causing lot of inconvenience to the routine work of

the Court and he is also facing departmental enquiry for insubordination and for other charges and he is not willing to perform even the legitimate

duties entrusted to him. As already noticed, night duty at the residence of the Presiding Officer to guard public property and also carrying of office

boxes, books and records to the residence of the officer and back to the Court are lawful and legitimate duties enumerated in the circular issued by

the High Court. Under such circumstances, once an employee is entrusted certain duties as specified in the circular, it is the duty of the concerned

Process Server/Attender that the duties and work entrusted to him are lawfully and duly performed by him. In case of disobedience in performing

any of the legitimate duties by any of the Process Servers/Attenders, the Judicial Officers are always at liberty to deal with the erring employees by

initiating appropriating disciplinary proceedings in accordance with law. The writ petition, in our considered opinion, does not disclose any valid

reasons for grant of the relief prayed for.

26. We have earlier noticed the main prayer sought for in the writ petition. The prayer is to declare the action of the 1st respondent in allotting the

petitioner daily guard duty at the residence of the 1st respondent as unlawful and arbitrary act of victimisation. On an analysis of the entire material

on record, we have no hesitation in rejecting the said prayer. Since the action of the 1st respondent in allotting the petitioner daily guard duty at

night at the residence of the Presiding Officer is a lawful duty as per the circular issued by the High Court and since the petitioner is not willing to

perform the day duty, it cannot be said that allotment of night duty would amount to victimisation. The relief asked for cannot at all be

countenanced in view of the circular issued by this Court dated 22-4-1992 enumerating 11 lawful duties to be performed by the Attenders and

Process Servers. The writ petition in our opinion is an abuse of the process of the Court. Having made a representation to the District Judge, the

petitioner ought to have waited for the disposal of the same. Instead, he has rushed to this Court by filing the writ petition.

27. Before parting with the judgment, we direct the District Judge to closely watch the performance of the lawful duties entrusted to the petitioner

and in case of disobedience, he may submit a report to the High Court on the administrative side for considering the case of the petitioner for

transfer from one unit to the other unit, if warranted, so that other employees who are discharging their lawful duties are not influenced by the

conduct and attitude of the petitioner in the discharge of their duties. Disobedience in any form should be discouraged.

28. As already noticed, against the order of rejection of the representation of the petitioner by the II Addl. Junior Civil Judge dated 22-10-2001

for allotting alternate night duties, he has made a representation to the District Judge on 31-10-2001 and according to the petitioner, the same has

not yet been disposed of by the District Judge. The learned Counsel appearing for the petitioner submitted that atleast a direction may be issued to

the District Judge to dispose of the representation made by the petitioner. We have no manner of doubt whatsoever that the learned District Judge

will dispose of the representation filed by the petitioner on its own merits and in accordance with law.

29. We also make it clear that disciplinary proceedings, if any, pending against the petitioner shall be concluded on their own merits and

uninfluenced by any of the observations made by us in this judgment.

30. The petitioner has unnecessarily dragged the II Additional Junior Civil Judge, Guntur, District Judge, Guntur and the Registrar (Admn.) of this

Court as respondents and has made the respondents to incur unnecessary and avoidable legal expenses. Therefore, we are inclined to award some

costs against the petitioner.

31. For the reasons aforesaid, we find no merit in the writ petition and it is accordingly dismissed with costs quantified at Rs. 1,000/- (Rupees one

thousand). The costs shall be paid by the petitioner within a period of two weeks from today to the Member Secretary, A.P. State Legal Services

Authority, Hyderabad, failing which the respondents 1 and 2 are directed to deduct the same from the monthly salary of the petitioner in two equal

instalments at Rs. 500/- per month and remit the same to the Member Secretary, A.P. State Legal Services Authority, Hyderabad.