

(2011) 07 MAD CK 0237

Madras High Court

Case No: Writ Petition No. 13128 of 2005 (O.A. No. 3201 of 2001)

S. Sarala

APPELLANT

Vs

Government of Tamil Nadu

RESPONDENT

Date of Decision: July 19, 2011

Acts Referred:

- Constitution of India, 1950 - Article 14, 16
- Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 - Rule 17
- Tamil Nadu Financial Code - Article 274

Hon'ble Judges: D. Hariparanthaman, J

Bench: Single Bench

Advocate: M. Ravi, for the Appellant; R. Ravichandran, Additional Government Pleader, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

D. Hariparanthaman, J.

The Petitioner was an Assistant Treasury Officer at Palacode in Dharmapuri District. On 03.05.1993, the Petitioner deputed the Cashier Mr. K.M.Jegadeesan and the Office Assistant Mr. M.K.Gandhi to the State Bank of India at Palacode to draw a sum of Rs. 90,000/- for disbursing pension to the pensioners. But, the amount of Rs. 90,000/- was stolen at the bank by unknown persons. Based on the aforesaid incident, the Treasury Officer issued a charge sheet dated 28.05.1993 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The crux of the allegation was that the Petitioner was negligent in her duties. She should have accompanied the Cashier and Office Assistant as the amount exceeded Rs. 50,000/-. The Petitioner permitted the subordinate officials to carry the Cash in a Cloth Bag instead of a Cash Box. She failed to supervise the subordinate officials and she was not responsible in her duties. It was also alleged that she was responsible for the

loss of the Government money of Rs. 90,000/-

2. An enquiry was conducted on the charges. After conducting enquiry, the enquiry officer submitted his report. The second Respondent passed an order dated 08.01.1999, imposing the punishment of recovery of Rs. 30,000/- from the Petitioner and also withholding the promotion. The Petitioner preferred an appeal to the first Respondent on 22.02.1999 and the appeal was allowed by the first Respondent in G.O.2D No. 32, dated 21.02.2000, setting aside the order of the Commissioner of Treasuries and Accounts dated 08.01.1999 and the matter was remitted back to the second Respondent to hold the enquiry and to decide the matter afresh. Thereafter, the enquiry was held and the order dated 11.04.2001 was passed imposing the punishment of demotion from Assistant Treasury officer/Senior Superintendent to Sub Treasury Officer/Superintendent for a period of one year and also for recovery of Rs. 30,000/- being the 1/3rd amount of loss of Government money of Rs. 90,000/-. Therefore, the Petitioner has filed the Original Application in O.A. No. 3201 of 2001 before the Tamil Nadu Administrative Tribunal, against the said impugned order dated 11.04.2001. While admitting the original application, the Tribunal granted interim stay of demotion. Accordingly, the Petitioner continued in the post of Assistant Treasury Officer and she also retired from service on reaching the age of superannuation on 30.04.2005. On abolition of the Tamil Nadu Administrative Tribunal, the matter has been transferred and renumbered as W.P. No. 13128 of 2005.

3. Counter affidavit is filed by the Respondents refuting the allegations.

4. Heard the learned Counsel appearing for the Petitioner and the learned Additional Government Pleader appearing for the Respondents.

5. The learned Counsel appearing for the Petitioner submits that the impugned order is liable to be interfered, insofar as, imposing the punishment of demotion is concerned, since no punishment was imposed on Mr. K.M.Jegadeesan, Cashier and Mr. M.K.Gandhi, Office Assistant, while they were directly responsible for the loss of Rs. 90,000/-, the learned Counsel relies on the decision of the Apex Court in *Man Singh v. State of Haryana and Ors.* reported in (2008) 8 MLJ 518 (SC).

6. On the other hand, the learned Additional Government Pleader seeks to sustain the impugned order based on the counter affidavit.

7. I have considered the submissions made on either side.

8. The Petitioner deputed Mr. K.M.Jegadeesan, Cashier and Mr. M.K.Gandhi, Office Assistant to the State Bank of India at Palacode, to draw a sum of Rs. 90,000/- for disbursing pension to the pensioners on 03.05.1993. Those two persons withdrew the amount. According to them, they put the money in a Cloth bag and put it on the cycle. But the same was stolen by some outsiders at the Bank. Based on the same, the charge memo dated 28.05.1993 under Rule 17(b) of the Tamil Nadu Civil Services

(Discipline and Appeal) Rules was issued. The same ultimately resulted in the impugned punishment order dated 11.04.2001 demoting the Petitioner from the Assistant Treasurer officer to Sub Treasury Officer and also recovering a sum of Rs. 30,000/-. The penultimate para in the impugned order is extracted hereunder.

Accordingly, it is hereby ordered to award a punishment to Tmt.S.Sarala, formerly Sub Treasury Officer, Sub Treasury, Palacode now Assistant Treasury Officer, Sub Treasury, Uthangarai, Dharmapuri District, demoting from Assistant Treasury Officer/Senior Superintendent to Sub Treasury Officer/Superintendent for a period of one year and to recover a sum of Rs. 30,000/- being the 1/3rd amount of loss of Government money of Rs. 90,000/-. This will not affect her pension.

9. The Petitioner has categorically pleaded in para 6(f) of the application that No. punishment was imposed on Mr. K.M.Jegadeeshan, cashier and Mr. M.K.Gandhi, Office Assistant, apart from making recovery of Rs. 30,000/-. But a different yardstick is applied in the case of the Petitioner. Para 6(f) of the application is extracted hereunder:

f) With regard to the incident in question, proceedings were initiated against the applicant and Tvl.K.M.Jegadeesan, Cashier and M.K.Gandhi, Office Assistant. While in the case of the other two persons, only a recovery of Rs. 30,000/- each had been ordered without any punishment, in her case not only a sum of Rs. 30,000/- has been ordered to be recovered, but also a punishment of "demotion" has been ordered.

Thus, the persons, who were actually responsible for the loss, have been allowed to go scot-free without any punishment, but the applicant alone has been punished in a most arbitrary and discriminatory manner, which is violative of Articles 14 and 16 of the Constitution of India.

10. The reply of the second Respondent to para 6(f) is found in para 17 of the counter affidavit, which is extracted hereunder:

17. Regarding (f) it is submitted that the applicant has failed to encash the pension imprest on 30.04.1993 for the payment of pension on 03.05.1993. She has also failed to adhere to Article 274(a) of the Tamil Nadu Financial Code Volume I and Government Instruction issued in Government Ir.138086/Sal.II/91-4 (Fin.) dated 10.09.1991 i.e. to accompany the Cashier and the Office Assistant for encashment as the amount exceeds Rs. 50,000/-. Further she had failed to supervise her subordinates when they take their own cloth bag for encashment instead of taking the box provided for it and thus she allowed her subordinates to follow the wrong procedure. Her failure to adhere to the codal Rules and Government instructions and also to supervise her subordinates effectively, thereby failed in her duties as Head of the Office. If she followed the codal procedure, this loss could have been avoided. For the above lapses she had been awarded punishment of demotion to lower Rank apart from recovering the loss of Rs. 30,000/- which is in order.

In para 17, the issues raised by the Petitioner was not answered.

11. The Petitioner categorically pleaded that No. disciplinary action was initiated against two other persons, who were responsible for the loss of Rs. 90,000/- and only recovery of Rs. 30,000/- alone was ordered against each of them. This was in fact admitted in para 17 of the counter affidavit.

12. The learned Counsel appearing for the Petitioner has correctly submitted that the punishment order is highly discriminative and violative of Article 14 of the Constitution of India. The judgment of the Apex Court relied on by the learned Counsel for the Petitioner referred to above squarely applies to this case. Paras 19 and 20 of the judgment is extracted hereunder:

19. We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that No. fair minded authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of "fair play" and reasonableness. We have, therefore, examined the case of the Appellant in the light of the established doctrine of equality and fair play. The principle is the same, namely, that there should be No. discrimination between the Appellant and HC Vijay Pal as regards the criteria of punishment of similar nature in departmental proceedings. The Appellant and HC Vijay Pal were both similarly situated, in fact, HC Vijay Pal was the real culprit who, besides departmental proceedings, was an accused in the excise case filed against him by the Excise Staff of Andhra Pradesh for violating the Excise Prohibition Orders operating in the State. The appellate authority exonerated HC Vijay Pal mainly on the ground of his acquittal by the criminal Court in the Excise case and after exoneration, he has been promoted to the higher post, whereas the appeal and the revision filed by the Appellant against the order of punishment have been rejected on technical ground that he has not exercised proper and effective control over HC Vijay Pal at the time of commission of the Excise offence by him in the State of Andhra Pradesh. The order of the disciplinary authority would reveal that for the last about three 9 decades the Appellant has served the Police Department of Haryana in different capacity with unblemished record of service.

20. In the backdrop of the above-mentioned facts and circumstances of the case, we are of the view that the order of the disciplinary authority imposing punishment upon the Appellant for exhibiting slackness in the discharge of duties during his visit

to Hyderabad when HC Vijay Pal was found involved in Excise offence, as also the orders of the appellate and revisional authorities confirming the said order are unfair, arbitrary, unreasonable, unjustified and also against the doctrine of equality. The High Court has failed to appreciate and consider the precise legal questions raised by the Appellant before it and dismissed the Second Appeal by unreasoned judgment. The judgment of the High Court, therefore, confirming the judgments and decrees of the first appellate Court and that of the trial Court is not sustainable. The Appellant deserves to be treated equally in the matter of departmental punishment initiated against him for the acts of omissions and commissions vis-a-vis HC Vijay Pal, the driver of the vehicle

13. In view of the fact and circumstances of the case, I am of the view that the Respondent has acted in discriminatory manner and proceeded against the Petitioner alone and imposed the penalty of demotion and recovery of Rs. 30,000/-.

14. In these circumstances, I am of the view that the punishment insofar as demoting the Petitioner from Assistant Treasury Officer to Sub Treasury Officer is liable to be quashed and the same is quashed. However, the order as to recover a sum of Rs. 30,000/- is untouched.

15. With the above observation, the writ petition is allowed to the extent indicated above. No. costs.