(2010) 12 MAD CK 0144

Madras High Court

Case No: Writ Petition No. 40737 of 2006

Mr. M. Sathaiah	APPELLANT
Vs	
The Joint Director, The Assistant Director and The Assistant Director, All of Agriculture	RESPONDENT

Date of Decision: Dec. 14, 2010

Acts Referred:

- Constitution of India, 1950 - Article 137, 14, 142, 21
- Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 - Rule 17B

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: S.M. Subramanian, for the Appellant; R. Murali, G.A, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.
Originally, the Petitioner filed OA. No. 7760 of 2000 on the file of the Tamilnadu Administrative Tribunal. Consequent to abolition of the Tribunal, the matter stood transferred to this Court and renumbered as WP. No. 40737 of 2000.

2. The Petitioner was working as a Field Demonstration Officer in the office of the Assistant Director of Agriculture, Palayamkottai - the third Respondent herein. He filed the writ petition challenging the order dated 3.5.2000 passed by the third Respondent and after setting aside the same, sought for his restoration to service with full back wages.

3. As against the said order of removal from service, the Petitioner did not prefer any appeal to any higher authorities. He moved the Tribunal and sought for waiver of the appeal remedy, which was also granted by the Tribunal. The Tribunal admitted the said original application on 4.12.2000 and ordered notice to the

Respondents. Till date, the Respondents did not file any counter affidavit.

4. It is seen from the records that the Petitioner joined the Department in the year 1972 as a Field Demonstration Officer. A charge memo under Rule 17B of the Tamilnadu Civil Services (Discipline and Appeal) Rules was issued to the Petitioner on 24.2.1998. The charges against the Petitioner were that from 6.11.1996 onwards, he was frequently taking leave and even after the Medical Board at Ramnad advised him to join duty, he did do so and continued his leave by applying earned leave and leave without wages. Further, up to 28.2.1998, he sent 19 leave applications and was absent for more than one year. The Petitioner crossed all norms for taking leave as ordered by the Government in G.O. Ms. No. 477 Employment and Administrative Reforms Department dated 21.11.1990. He also breached his own undertaking that he has given on 3.1.1997 that he will report for duty. On the whole, the Petitioner showed total disinterest in joining duty.

5. The Petitioner sent his explanation on 5.12.1998 wherein he stated that due to family conditions, his health got spoiled. He was affected by a problem of debt, difference of opinion among relatives and depression. He was also afraid of certain persons in Palayamkottai, who vowed to finish him. In view of his mental condition, he could not report for work. Even though on 3.1.1997 he agreed to report for work, he could not do so because of threat perception he faced in Palayamkottai.

6. The Respondents were not satisfied with the explanation given by the Petitioner. Therefore, an enquiry was ordered to be conducted by the Assistant Director of Agriculture (I/C), Palayamkottai. In the enquiry, the Petitioner was given a questionnaire, in which, he stated that his explanation dated 5.12.1998 can be accepted and he requested transfer to some district from the existing place. The third Respondent did not accept his explanation and finally gave a report holding the Petitioner guilty of absence for more than a year. The Petitioner''s explanation was again sought for. The Petitioner also gave his explanation on 2.8.1999 wherein he stated that he was not deliberately absenting himself and because of his mental condition, he could not do so and if given an opportunity, he would prove, with the support of medical certificate, his mental condition and therefore, he asked for forgiveness for his lapse and restoration to duty.

7. On the basis of the records, the third Respondent passed an order dated 3.5.2000 and held that the Petitioner was guilty of charges and therefore, he was imposed with the penalty of removal from service. By virtue of this order, the Petitioner was also deprived of his pension, even though he had put in more than 28 years of service. Though, in the present case, the Respondents have not conducted proper enquiry in the manner known to law, since the Petitioner himself has stated in the answer to question No. 10 vide the questionnaire supplied to him that he did not want any opportunity except to consider his explanation, this Court is not inclined to go into the procedure adopted in the enquiry. Further, in the matter of application of leave, there is no question in the oral evidence. It would suffice to state that the

Petitioner pleaded that his mental condition was not alright. But, the enquiry and the tenor of the letter show that he was suffering from fear psychosis and was stating that he was having threat perception from some persons in Palayamkottai and every time the Petitioner had applied for leave for some reason or the other, he gave the explanation that it was done only after consultation with the doctor and he was under the care of his father in law.

8. For the proved misconduct, the Respondents have come to the conclusion that the major penalty alone is proper. Even while considering the major penalty, the Respondents had options of either imposing removal from service or dismissal from service or compulsory retirement. It is not clear as to why the Respondents did not prefer the penalty of compulsory retirement. It was stated in the order knowing fully well that the removal of service will deprive the Petitioner''s pension and they preferred the penalty of removal from service. The circumstances pleaded by the Petitioner, namely his mental condition and his request for forgiveness and also for consequential request of posting him in some other district were not considered by the Respondents. The Petitioner''s previous conduct in the last 28 years was also not referred to in the final order.

9. Under these circumstances, though this Court is of the opinion that the misconduct levelled against the Petitioner in absenting himself without prior intimation was held to be proved, as regards the question of penalty, this Court is satisfied that the Respondents have not adopted correct yardstick in imposing the penalty.

10. Further, the Supreme Court held in a given case that the High Court will be within its jurisdiction to modify the penalty by moulding the relief and in case of dismissal, the protection under Article 21 is squarely attracted. In the judgment in the case of B.C. Chaturvedi Vs. Union of India and others, wherein in paragraph 18, the opinion of the majority is reflected, which is as follows:

A review of the above legal position would establish that the Disciplinary Authority, and on appeal the Appellate Authority, being fact finding Authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the Disciplinary/Appellate Authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

While concurring with the view of Hansaria, J, in paragraphs 23 and 24, it has been observed as follows:

It deserves to be pointed out that the mere fact that there is no provision parallel to Article 142 relating to the High Courts, can be no ground to think that they have not to do complete justice, and if moulding of relief would do complete justice between the parties, the same cannot be ordered. Absence of provision like Article 142 is not material, according to me. This may be illustrated by pointing out that despite there being no provision in The Constitution parallel to Article 137 conferring power of review on the High Court, this Court held as early as 1961 in Shivdeo Singh and Others Vs. State of Punjab and Others, , that the High Courts too can exercise power of review, which inheres in every Court of plenary jurisdiction. I would say that power to do complete justice also inheres in every Court, not to speak of a court of plenary jurisdiction like a High Court. Of course, this Court is not as wide as which this Court has under Article 142. That, however, is a different matter.

What has been stated above may be buttressed by putting the matter a little differently.

The same is that in a case of a dismissal, Article 21 gets attracted, and, in view of the interdependence of fundamental rights, which concept was first accepted in the case commonly known as Bank Nationalisation case (Rustom Cavasjee Cooper Vs. Union of India (UOI), , which thinking was extended to cases attracting Article 21 in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , the punishment/penalty awarded has to be reasonable; and if it be unreasonable, Article 14 would be violated. That Article 14 gets attracted in a case of disproportionate punishment was the view of this Court in Bhagat Ram Vs. State of Himachal Pradesh and Others, also. Now if Article 14 were to be violated, it cannot be doubted that a High Court can take care of the same by substituting, in appropriate cases, a punishment deemed reasonable by it.

11. In view of the facts narrated and the legal precedent cited above, this Court is of the opinion that the punishment of removal from service depriving the Petitioner''s pension after 28 years of service without there being a blameworthy conduct in the past is truly shocking and disproportionate to the gravity of misconduct levelled against him.

K.Chandru, J.

12. Therefore, the writ petition is allowed in part. The impugned order is set aside insofar as imposition of penalty of removal of service. But, there will be imposition of penalty of compulsory retirement so as to make the Petitioner eligible to get pension for the services rendered. The Respondents shall make such payment of the terminal benefits to the Petitioner within twelve weeks from the date of receipt of a copy of this order.