S. Chidambaram Vs The Additional Director General of Police and The Superintendent of Prison

Court: Madras High Court

Date of Decision: Aug. 14, 2009

Acts Referred: Constitution of India, 1950 â€" Article 226
Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 â€" Rule 17

Hon'ble Judges: R. Banumathi, J

Bench: Single Bench

Advocate: T.T. Thiru Moorthy, for the Appellant; V. Viswanathan, Addl. Govt. Pleader, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

R. Banumathi, J.
Petitioner seeks writ of certiorarified Mandamus to quash the proceedings of the first and second respondents dated

05.10.2006 and 26.03.2005 issued in No. 25751/EW1/2006 and in No. 20674/Po4/2004 and consequently to direct the second respondent to

reinstate the petitioner with full back wages.

2. Petitioner Grade-II Warden was selected through employment exchange and he was working in the Department for the past 22 years. On

06.09.2004, he was assigned duty from 6.00 pm to 9.00 P.M, in special Sub Jail Coimbatore Block No. 1, where high security risk prisoners viz.,

Ul-Umma Prisoners and prisoners of many banned organisations are lodged. After lock-up, when the Special Team went to search in 20th cell, the

petitioner was alleged to have informed the searching to the prisoners through gestures. When the petitioner was searched on suspicion, an amount

of Rs. 160/- and a pocket diary with various Telephone numbers have been recovered from him. In the 20th cell, the following contraband articles

were seized from the prisoners:- (i) One Tobacco Packet(24 Numbers), (ii) Beedi one pocket, (iii) One cigar light and (iv) Cell phone charges

with adopter.

3. The petitioner had failed to search properly and also he had signed in the register falsely that no contraband articles were found in blocks. The

petitioner was dealt with charges under Tamil Nadu Civil Services (Discipline and Appeal) Rules No. 17(b). After oral enquiry, the Enquiry Officer

submitted his findings, wherein he had stated that, all the charges framed against the petitioner were proved beyond any reasonable doubt. Based

on the findings of the Enquiry Officer, the petitioner was awarded the punishment of Compulsory Retirement by the impugned proceedings No.

20674/G4/2005 dated 26.03.2005 by the second respondent.

4. The petitioner was already informed that he can prefer an appeal against the punishment directly to the Additional Director General of Prisons

i.e. first respondent by memo dated 25.04.2005 of the second respondent. Instead of availing this opportunity, the petitioner filed a writ petition in

W.P. No. 14256 of 2005 and the same was disposed with a direction. After a couple of writ petitions, the DIG of Prisons Trichy Range was

appointed as Appellate Authority. The appeal petition was disposed by the DIG of prisons Trichy in the proceedings No. 2226/CA/2006 dated

23.05.2006 stating that the orders passed by one Range DIG of Prisons cannot be revised by the another DIG of Prisons. Thereafter, the

petitioner also preferred an appeal to the first respondent and the same was rejected by the first respondent on the ground that the petitioner

showed signal about the searching team to the prisoners and that continuation of the service of the petitioner may not be conducive for the prison

administration.

5. Challenging the impugned orders imposing the punishment of compulsory retirement and also the order of Appellate Authority, the learned

Counsel for the petitioner contended that it is a case of no evidence against the petitioner and the petitioner ought not to have been found guilty. It

was further argued that evidence on record would not substantiate the charges. Drawing court''s attention to the punishment imposed on others i.e.,

stoppage of increments for three others, the learned Counsel for the petitioner submitted that all other persons were imposed lesser punishment,

whereas only the petitioner was imposed grave punishment of compulsory retirement and the petitioner was discriminated against.

6. Countering the arguments the learned Government Advocate submitted that the petitioner ought to have preferred the appeal before the

Government and in view of alternative remedy available the writ petition is not maintainable. It was further argued that evidence and materials on

record would be sufficient to sustain the findings and there is no reason warranting interference with punishment imposed upon the petitioner.

7. On 06.09.2004, petitioner was assigned duty from 6.00 p.m to 9.00 P.M. in special Sub Jail Coimbatore Block No. 1, where high security risk

prisoners viz., Ul-Umma Prisoners and prisoners of many banned organisations were lodged. Special Team went to search 20th cell and petitioner

is alleged to have informed the searching to the prisoners through gestures. The contraband articles were seized from the prisoners. The petitioner

was issued charge memo:

(i) He passed the signal about the arrival of the Search Squad.

(ii) He had Rs. 160/- in his pocket along with the phone Number of Muslims.

(iii) He wrote a diary stating that the incriminating materials was available in Cell No. 20 where Ashrab Ali, Siddque Ali and Koolai Ibrahim were

lodged.

The petitioner was also issued another charge memo u/s 17(a) as if he was standing in V.O.C. Block instead of 3rd Block.

8. The petitioner submitted his explanation to the charges stating that:

(i) He never received any signal from the Jailor as he was alleged and he never passed signal to anybody including the Prisoners because he had no

idea or knowledge about the arrival of special squad,

(ii) He had Rs. 160/- travel to Pollachi since he was regularly coming to duty from Pollachi. He had the Phone Number of neighbour of his sister

who lived in Oragadam area without any phone, and

(iii) It is not possible to recover the contraband materials in Cell No. 20 and no persons as stated, was lodged in Cell No. 20.

9. To substantiate the charges, the departmental enquiry was conducted. P.W.1 Sundararajan was examined, in his evidence P.W.1 has stated that

ASP, himself-P.W.1 Sekar and Ilavarasan went to search the prison. P.W.1 further stated that when they checked up lockup No. 20 they seized

the contraband articles:- (i) One Tobacco Packet(24 Numbers), (ii) Beedi one pocket, (iii) One cigar light and (iv) Cell phone charges with

adopter. The petitioner is also alleged to have sent signals to the prisoners in Block No. I. Inspite of cross examination nothing substantial was

elicited from P.W.1.

10. P.W.2 Seetha Raman, head constable was also examined, who has spoken about the posting of duty of the petitioner. P.W.2 has not stated

anything further about the petitioner allegedly sending signals and seizures of contraband articles.

11. The petitioner has examined D.W.1 Ilavarasan who has stated that he saw the petitioner at 5 ''o'' clock in VOC Block. Based on the evidence

of P.W.1, the Enquiry Officer held the charges proved and found the petitioner guilty.

12. The learned Counsel for the petitioner contended that it is a case of no evidence and that evidence of P.Ws. 1 & 2 is not sufficient to sustain

the findings of guilt. The above contention does not merit acceptance. The adequacy or sufficiency of the evidence led on a point is within the

exclusive jurisdiction of the Enquiry Officer. The findings of fact arrived at by the Enquiry Officer is not to be re-opened and the court cannot

substitute its own views.

13. The High Court is competent to interfere in its writ jurisdiction in disciplinary proceedings only where findings of guilt is based on no evidence.

As pointed out earlier, the petitioner was found guilty based on the evidence of P.Ws.1 & 2 such findings cannot be said to be perverse or based

on no evidence warranting interference exercising jurisdiction under Article 226 of the Constitution.

14. In the order of rejection of appeal dated 06.12.2006, by the first respondent, it is indicated that if the petitioner is aggrieved he can prefer the

appeal before the Government. The learned Government Advocate submitted that in view of the alternative remedy of a departmental appeal to the

Government, the writ is not maintainable and therefore the petitioner is not entitled to any relief in the writ petition.

15. The availability of other remedies is no bar to the High Court entertaining the writ petition and issuing the writs, passing orders under Article

226 of Constitution. It is for the High Court to consider in each case the necessity or desirability of interference notwithstanding the availability of

other remedies.

16. Contending that appeal to the Government will not be an effective remedy, the learned Counsel for the petitioner placed reliance upon AIR

1985 Supreme Court 1147(1) Ram and Shyam Company v. State of Haryana and Ors. in the said case

...Power to grant lease for winning minor minerals was exercised formally by the authority set up under the Rules but effectively and for all

purposes by the Chief Minister of the State an appeal to State Government would be ineffective and a writ in such a case would be maintainable.

In such facts observing that petition under Article 226 cannot be rejected on the ground that an appeal lies to the higher officer or to the State

Government, Supreme Court held as under:

...Ordinarily it is true that the Court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Article 226 where the party

invoking the jurisdiction has an effective, adequate alternative remedy. More often, it has been expressly stated that the rule which requirers the

exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law. At any rate it does not oust the jurisdiction of the

Court. Where the order complained against is alleged to be illegal or invalid as being contrary to law, a petition at the instance of person adversely

affected by its, would lie to the High Court.

17. The Appellate Authority-DIG Tirchy Range has dismissed to the appeal. The Additional Director General of Police(prisons) also rejected the

revision. While so remedy by way of appeal to the Government would only be ineffective. Therefore, notwithstanding the availability of alternative

remedy, applying the ratio of Ram and Shyam Company v. State of Haryana and Ors. the writ petition is maintainable.

18. For the proved charges of a being in possession of Rs. 160/- and a diary stating that no incriminating material was available, the petitioner was

imposed punishment of compulsory retirement. Once the charges are proved, it is not for the Court to determined the quantum of punishment

appropriateness of the penalty imposed by the Disciplinary Authority is not open to Judicial review. If the misconduct is established, the court

would not exercise discretion interfering with the quantum of a punishment unless shown to be disproportionate. Severity of a punishment does not

warrant interference by the Court, unless it shocks conscience of the High Court.

19. In B.C. Chaturvedi Vs. Union of India and others,

, the Hon''ble Supreme Court has considered the question as to whether Tribunal was jusitifed in interfering with the punishment imposed by the

Disciplinary Authority by referring to various Judgments to the effect that it is for the Disciplinary Authority who has to impose penalty and normally

Tribunal or High Court should not interfere. Supreme Court has further held that in cases where punishment shocks the conscience of the High

Court or Tribunal, the High Court or Tribunal can either direct the disciplinary authority to reconsider the penalty or to shorten the litigation in

exceptional cases and in rare cases impose an appropriate punishment.

20. In this aspect, Hon''ble Supreme Court has laid down the law as follows:

... A review of the above legal position would establish that the disciplinary authority, and on appeal the appeallate 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.

21. In Syed Zaheer Hussain Vs. Union of India (UOI) and Others,

the delinquent Government servant was dismissed from service on the ground of unauthorised absence for 7 days. Observing that dismissal was

too harsh, Supreme court directed the Appellant to be reinstated with continuity in service with all other benefits but limiting the back wages to

50% only for the period between dismissal to the date of passing of the order by the Court.

22. In the instant case, the proved misconduct of the petitioner is a case of single instance. No previous misconduct has been reported. At the time

of filing the writ petition the petitioner was only aged 46 years and had 12 more years of service. For a single instance of a misconduct imposing

punishment of compulsory retirement appears to be disproportionate and harsh. The learned Counsel for the petitioner has also submitted that on

the same date for the alleged act of misconduct one Kannan Deputy Jailor and one RethinaKumar and Sabaridoss were also charge sheeted. For

the proved charges all three of them were imposed only stoppage of increment for three years without cumulative effect. When the similarly placed

delinquents were imposed lesser punishment, in my considered view the petitioner was discriminated by imposing a grave punishment of

compulsory retirement thereby terminating his service. The quantum of punishment is excessive is harsh and disproportionate warranting

interference. Having regard to the nature of charges, facts and circumstances, the punishment of compulsory retirement is modified as the

punishment of stoppage of increment for three years with cumulative effect.

23. The punishment imposed upon the petitioner by the impugned proceedings of the first and second respondents dated 05.10.2006 and

26.03.2005 issued in No. 25751/EW1/2006 and in No. 20674/Po4/2004 is modified and the Writ Petition is partly allowed.

Ã¯Â¿Â½ The Punishment of compulsory retirement is modified as stoppage of increment for a period of 3 years with cumulative effect.

Ã¯Â¿Â½ The respondents are directed to reinstate the petitioner within a period of four weeks from the date of receipt of a copy of this order.

Ã¯Â¿Â½ The petitioner is not entitled to backwages during the interregnum period.

Ã¯Â¿Â½ However the interregnum period shall be taken into account for continuity of service.