S. Chandrasekaran Vs The Joint Director of Agriculture

Writ Petition No. 6836 of 2007 and O.A. No. 5502 of 2002

Court: Madras High Court

Date of Decision: Dec. 3, 2014

Acts Referred:
Constitution of India, 1950 â€" Article 14

Hon'ble Judges: D. Hari Paranthaman, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

D. Hari Paranthaman, J.
The petitioner was working as Agricultural Development Officer at the relevant point of time. He was placed

under suspension by an order dated 25.01.1993 under Rule 17(c) of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules.

Thereafter, a charge memo, dated 05.02.1993 was issued under Rule 17(b) of the Tamil Nadu Civil Services (D & A) Rules.

2. The petitioner filed O.A.No. 4852 of 1993 questioning the suspension order. The Original Application was allowed by an order dated

08.12.1993, directing the department to reinstate him in service without prejudice to the disciplinary proceedings already initiated against him.

3. Thereafter, an order dated 18.01.1994 was passed revoking the order of suspension and the petitioner was reinstated in service. He joined duty

on 25.01.1994. Subsequently, by proceedings dated 06.02.1994 charges were dropped by the first respondent viz., Joint Director of Agriculture.

It is not known as to why the first respondent had dropped the charges, when the Tribunal had directed reinstatement of the petitioner, without

prejudice to the disciplinary proceedings. In view of the dropping of the charges, whatever be the reason, the period of suspension should have

been treated as duty period.

4. Thereafter, a fresh charge memo, dated 08.08.1994 was issued by the second respondent under Rule 17(b) of the TNCS (D & A) Rules on

the same allegations. After enquiry, punishment of stoppage of increment for one year without cumulative effect was issued by the second

respondent in G.O.(3D) No. 15 Agriculture, dated 10.02.2000. The petitioner has not questioned the said punishment order dated 10.02.2000.

5. The petitioner made representations to regularise the period of suspension from 25.01.1993 to 24.01.1994 as duty. However, the same was

rejected by the impugned order, dated 10.06.2002 treating the suspension period from 25.01.1993 to 23.07.1993 as Earned Leave for 180 days

and from 24.07.1993 to 24.01.1994 as Leave on Loss of pay for 185 days. Challenging the same, the petitioner has filed this Original Application.

6. The grievance of the petitioner is that the impugned order is more rigorous than the punishment. Though charge memo was issued under Rule

17(b) of the Rules, only minor punishment was imposed. Hence, such a rigorous treatment is unwarranted. According to the petitioner, in the case

of imposition of minor penalty, proceedings under Rule 17(b) itself is not warranted and in that event, no question of placing the Government

employee under suspension would arise.

7. Furthermore, according to the learned counsel for the petitioner, the petitioner was placed under suspension pending enquiry. Thereafter, charge

memo, dated 05.02.1993 was issued and the said charge memo was also cancelled by the proceedings dated 06.02.1994. Hence, the period of

suspension should be treated as duty. The Department did not choose to place the petitioner under suspension after issuing the other charge memo

dated 08.08.1994.

8. On the other hand, the learned Additional Government Pleader sought to sustain the order on the ground that discretion vests with the

department, as to how to treat the period of suspension under FR 54(b)(1) and therefore, this Court need not interfere with the exercise of such

discretion.

9. Heard both sides.

10. I have considered the submissions made by the learned counsel on either side.

11. The learned counsel for the petitioner has not questioned the discretionary power of the department vested with them under FR 54(b)(1). His

contention is that such a discretionary power should be exercised reasonably. In support of his contention, the learned counsel placed reliance on

the following judgments:-

i) K.Karthikeyan v The Secretary to Government, W.P.No. 14133 of 2006 dated 01.11.2006 and

ii) A.V. Vinod Kumar Vs. The Executive Committee of the Central Warehousing Corporation (A Govt. of India Undertaking) and Another,

12. As rightly contended by the learned counsel for the petitioner, having cancelled the earlier disciplinary proceedings, by proceedings dated

06.02.1994, the period of suspension should have been treated as duty. The present punishment order dated 10.02.2000 was pursuant to the

subsequent charge memo dated 08.08.1994. Hence, I am of the view that the impugned order treating the period of suspension as eligible leave is

illegal, arbitrary and violative of Article 14 of the Constitution.

13. The learned counsel for the petitioner would submit that the punishment of stoppage of increment for one year without cumulative effect

resulted in loss of about only Rs. 1200/-, whereas, the denial of wages for 335 days would result in loss of huge amount. Having imposed minor

penalty, it is not warranted for the Department to treat the period of suspension as earned leave, if eligible. Though the petitioner had to his credit,

Earned Leave of 150 days, the same could have been encashed at the time of his retirement. Because of the punishment, he had to loose wages for

150 days. Apart from that, he had also lost wages for another 185 days.

14. As rightly contended by the learned counsel for the petitioner, for imposing minor penalty of this nature, treating the period of suspension as

leave for a long period is not proper and it is unreasonable exercise of power. It is a different matter if the suspension period is for a few days.

Here the period of suspension was 335 days and it ultimately resulted in imposing of minor penalty of stoppage of increment for a period of one

year without cumulative effect.

15. In similar circumstances, this Court in K.Karthikeyan''s case (cited supra) , in paragraphs 7 to 9 held as follows:-

7. As far as the suspension is concerned, if allegations are pending, which are grave in nature, one can be placed under suspension. But, while

framing the charges, the authorities are duty bound to look into and peruse the entire matter and take a decision whether charges have to be

framed under Rule 17(a) or Rule 17(b). If charges were framed under Rule 17(a), there is no need to place the delinquent under suspension and

the Government has also issued guidelines as to whether to frame the charge under Rule 17(a) or under Rule 17(b). Ultimately, when the

punishment imposed is a minor punishment, for which charge is warranted only under Rule 17(a) and not under Rule 17(b). But due to the non

application of mind of the authorities concerned, charges have been framed under Rule 17(b) and the petitioner was forced to be under suspension

for a period of nearly 565 days from 16.02.1990 to 23.07.1991. Certainly, though it has been regularised as eligible leave, it will have an impact

on his pension and other retirement benefits. But if the charges have been framed with due caution and care, certainly, as far as the case on hand is

concerned, it should have been framed only under Rule 17(a). As such because of the mistake committed by the respondents, charges have been

framed under Rule 17(b), the consequence of which the petitioner was forced to be placed under suspension for a period of 565 days.

8. Though as per Fundamental Rule, if the concerned delinquent is not fully exonerated the period of suspension has to be treated at the discretion

of the concerned authority, i.e., it can either be treated as duty period or as eligible leave, but if the punishment awarded is a major punishment,

passing an order invoking the above said Fundamental Rule is justifiable. But as far as the case on hand is concerned, as pointed out earlier, a very

very minor punishment has been imposed. As such invoking Fundamental Rule, the suspension period cannot be treated as eligible leave.

9. In view of the punishment imposed by the department authorities, the suspension of the petitioner for a period of 565 days is unwarranted and

the respondent cannot take advantage of their own mistake and penalise the petitioner and as such treating the suspension period as a leave eligible

is not sustainable in view of the above discussion. Hence, as far as treating the suspension period is concerned, the same is set aside and the

respondents are directed to treat the period from 16.02.1990 to 23.07.1991 as duty period for awarding the consequential benefits. As far as the

punishment is concerned, the same is confirmed.

16. Likewise, the judgment of the Andhra Pradesh High Court in A.V.Vinod Kumar''s case (cited supra) is directly on the point. Paragraph 18 of

the said judgment is extracted in this regard:-

18. However, I am in full agreement with the submissions made by Sri G.Ramachander Rao, learned counsel for the respondents that the

disciplinary authority has all the power to impose any punishment in the facts and circumstances of the case. The power of the disciplinary authority

is not in dispute, but the question that arises for consideration is that whether, while imposing minor penalty of censure, the disciplinary authority

could have treated the period of suspension as ''not on duty'' and further, held that the petitioner is not entitled for any amount over and above what

was paid towards subsistence allowance. Censure is a minor punishment something like a warning to be careful in future. In fact, in the Order

dated 24.12.1991, it was stated that a lenient view in the matter was taken to afford an opportunity to the petitioner to improve his behaviour and

to be careful in his work in future. While holding so, treating the period of suspension as ''not on duty'' cannot be said to have been done in good

faith and good conscience. The censure itself is a punishment of a minor nature. To treat the period of suspension as not on duty is a severe

punishment, by which the petitioner is denied continuity of service for the purpose of seniority, promotion etc. Therefore, though the disciplinary

authority has got power, such power, in this case, was not exercised reasonably and no reasonable person could have treated the period of

suspension as not on duty while imposing the minor punishment of Censure.

17. For all the aforesaid reasons, the impugned order is quashed and the writ petition is allowed. It is stated that the petitioner retired from service.

Therefore, a direction is issued to the respondents to pay the wages for the period of suspension, after deducting subsistence allowance, if any,

paid during the period of suspension, within a period of eight weeks from the date of receipt of a copy of this order. No costs.