
(2015) 08 MAD CK 0222

In the Madras High Court

Case No : Writ Petition (MD). No. 4788 of 2015

A. Krishnan

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 18-08-2015

Acts Referred:

Citation : (2015) 08 MAD CK 0222

Hon'ble Judges : S. Vaidyanathan, J

Bench : Single Bench

Advocate : A. Thirumurthy for Victory Associates, for the Appellant; S. Kumar, Addl. Govt. Pleader, Advocates for the Respondent

Judgement

S. Vaidyanathan, J—This Writ Petition has been filed, challenging the impugned order dated 26.02.2015 of the 2nd respondent, in and by which, the order passed by the 3rd respondent, dropping all the charges against the petitioner, has been cancelled by the 2nd respondent. The petitioner also sought a direction to the 2nd respondent to regularize the service of the petitioner from the date of his appointment on 14.07.1997 and grant all the service and monetary benefits.

2. Mr.S.Kumar, learned Additional Government Pleader takes notice for the respondents and by consent of both sides, the writ petition itself is taken up for final disposal.

3. Learned counsel appearing on behalf of the petitioner has submitted that the petitioner's father was employed as Headmaster in the Government Kallar Reclamation High School, Vellaimalpuram, Theni District and he died on 09.11.1986, while he was in service. Thereafter, based on the representation of the petitioner, he was given a compassionate appointment as Junior Assistant on 14.07.1997 and after ten years of his service, by G.O. (2D) No. 67, Backward Classes, Most Backward Classes and Minorities Welfare (BC-3) Department, dated 13.11.2007, the petitioner was removed from service on 30.11.2007 on the ground that the petitioner was not eligible for compassionate appointment as

his mother was working as Teacher on the date of death of his father. Challenging the same, the petitioner had filed W.P.(MD)No.10408 of 2007.

4. This Court, vide order dated 21.01.2008, had set aside the said Government Order, as it was passed in violation of the principles of natural justice and liberty was also given to the respondents therein to take action in accordance with law. Pursuant to the orders of this Court, the petitioner was reinstated into service on 25.06.2008 and thereafter, a memo, containing four charges, has been issued and charges have been framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. After due enquiry, a report was submitted and the 3rd respondent herein was directed by the 2nd respondent to pass final orders. In consequence of the same, by order dated 09.07.2012, the 3rd respondent dropped all the charges against the petitioner, taking into consideration the explanation submitted by the petitioner and also the fact that the petitioner was put in around 15 years of service.

5. It is submitted by the petitioner that pursuant to his exoneration from the charges, he made several representations to the respondents to regularize his services from the date of his appointment viz., 14.07.1997 and to extend all the benefits. Since there was no response from the respondents, the petitioner again approached this Court by filing W.P. (MD)No.1865 of 2015, wherein this Court had directed the 3rd respondent to consider the representation of the petitioner dated 09.04.2015 and pass orders on the same on merits and in accordance with law within a period of six weeks.

6. It is further submitted by the petitioner that when he was eagerly waiting for the suitable orders on his representation, he was issued with the impugned order dated 26.02.2015, cancelling the order of the 3rd respondent dated 09.07.2012, vide which all the charges levelled against the petitioner was dropped and by duly stating that the charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, stand restored and enquiry will have to be proceeded against the petitioner.

7. The petitioner assailed the impugned order on the ground that when there is an order passed by the competent authority, viz., the 3rd respondent, as directed by the 2nd respondent dropping all the charges, it is not permissible to recall the said order dated 09.07.2012 by the 2nd respondent, which is wholly illegal and unwarranted. It is not as if, the 3rd respondent passed the order on his own, but it was only at the instance / direction of the 2nd respondent that the 3rd respondent has considered the request of the petitioner and accepted the version of the petitioner. He has further contended that there is no reason for cancelling the order dated 09.07.2012 after a period of more than 2 1/2 years. Apart from other grounds, he is also challenging the same on the ground of laches in recalling the order. Even assuming that the 2nd respondent has got powers to do so, the Court will have to interfere with the impugned order and set aside the same.

8. The 3rd respondent has filed a counter on behalf of all the respondents stating that the petitioner has suppressed the fact that his mother was employed on the date of demise of his father, who was working as Headmaster and on coming to know that he had misrepresented and played a fraud to get the job, steps have been taken and he was disengaged from service. Further, the petitioner was reinstated into service pursuant to the orders of this Court passed in W.P. (MD)No.10408 of 2007 dated 21.01.2008. This Court, while setting aside the termination order, gave liberty to the respondents to proceed against the petitioner in accordance with law. Thereafter, four specific charges have been framed under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and even after conclusion of enquiry, no final orders have been passed. When the 3rd respondent asked the 2nd respondent to pass final orders, the 2nd respondent in turn delegated the power to the 3rd respondent to take a decision on the enquiry report based on the charges of the year 2009. The second respondent has exonerated the petitioner from all the charges.

9. It is stated that the charges of the year 2011 are still pending and no final decision has been taken. When this Court posed a question to the learned Additional Government Pleader, as to whether the very same charges of the year 2009 have been restated in the charges of the year 2011, he replied in affirmative. In the meantime, the petitioner preferred another writ petition in W.P. (MD)No.1865 of 2015, seeking regularization of his service from the date of appointment, viz., 14.07.1997 and this Court directed the respondent to consider the representation.

10. The case of the respondent is that the 2nd respondent, who is the appointing authority, appointed the petitioner and the 3rd respondent should not pass any order, regarding exoneration of the charges against the petitioner and hence, the act of the 3rd respondent in dropping all the charges vide his proceedings dated 09.07.2012, was erroneous one. Hence, by the impugned order dated 26.02.2015, the order passed by the 3rd respondent dated 09.07.2012 was cancelled / reversed. He has further submitted that this Court, in a decision dated 18.10.2011 in W.P.(MD)Nos. 8065 and 19402 of 2009, has observed as follows:

"13. There is no doubt that if any candidate furnishes false or incomplete information or withholds or conceals any material information in his application, he will be debarred from securing employment. It is also true that even if such an applicant is already appointed, his services are liable to be terminated for furnishing false information."

11. He has further submitted that this Court has granted interim order in favour of the petitioner, when he questioned the impugned order in this Writ Petition and that the action of the petitioner by suppressing the material facts is nothing but cheating and is liable to be punished for his criminal breach of trust and hence, the respondent is right in proceeding with the petitioner by the present impugned order.

12. Heard both sides.

13. A careful examination of the entire facts and circumstances of the case would uncover the fact that the petitioner has joined the service on compassionate ground after his father's demise. It is also not in dispute that the petitioner was terminated after ten years" of his service and reinstated back pursuant to the orders of this Court mentioned supra. The issues to be decided in this Writ Petition are that;

i) Whether the impugned order can be passed after dropping of the charges?

ii) Whether fresh charges on the same set of facts can be issued?

iii) The conduct of the petitioner in playing fraud to obtain an order of compassionate appointment is legally sustainable?

14. A perusal of the communication dated 23.11.2009 is very clear to the extent that the 2nd respondent had asked the 3rd respondent to take action on the enquiry report based on the charges of the year 2009. After calling for the explanation and after accepting the same, offered by the petitioner, the entire charges have been dropped. Once the charges are dropped at the instance of the 2nd respondent, the contention of the respondents that the 3rd respondent has no powers, that the petitioner had suppressed the material facts and secured employment by cheating and that the act of the petitioner is criminal breach of trust, cannot be accepted at this stage. It may be true that the petitioner might have got employment by suppressing the details. When the powers have been entrusted to the 3rd respondent by the 2nd respondent and that an erroneous decision has been arrived at thereon so as to give a conclusive relief to the set of charges, the employee cannot be proceeded against once again by issuing another set of charges on the very same facts. The reopening of all the charges of the year 2009 or issuing a fresh set of charges of the year 2011 is not correct. This Court in a decision in the case of D. Kannan Vs. Central Bank of India has held that if any delinquent employee in disciplinary proceedings conducted on the charge memo has been found as innocent then any fresh enquiry on the same charge memo would be illegal. The Hon"ble Apex Court in K.R. Deb Vs. The Collector of Central Excise, Shillong, AIR 1971 SC 1447 : (1971) 1 LLJ 427 : (1971) 2 SCC 102 : (1971) SCR 375 Supp has held as follows:

"12. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in rule 15 for completely setting aside previous inquiries on the ground that the report- of, the Inquiring Officer or Officers does not appeal to the disciplinary, Authority-. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its

own conclusion under rule 9.

13. In our view the rules do not contemplate an action such as was taken by the Collector on February 13, 1962. It seems to us that the Collector, instead of taking responsibility himself, was determined to get" some officer to report against the appellant. The procedure adopted was not only not warranted by the rules but was harassing to the appellant.

14. Before the Judicial commissioner the point was put slightly differently and, it was urged that the proceedings showed that the Disciplinary Authority had made up its mind to dismiss the appellant. The Judicial Commissioner held that on the facts it could not be said that the Disciplinary Authority was prejudiced against the appellant. But it seems to us that on the material on record a suspicion does arise, that the Collector was determined to get some Inquiry Officer to report against the appellant."

15. Once the charges have been dropped against the petitioner, there is no justification whatsoever with the 2nd respondent in reopening the already decided matter. This Court would have agreed with the contention of the respondents, if the appointment order itself is cancelled instead of terminating the petitioner from services and in that event, this Court would have definitely come to the rescue of the respondents. In this case, the appointment order has not been set aside, whereas the respondents have decided to proceed with an enquiry and ultimately, the charges have been held not proved. The attempt of the respondents to rectify their own mistake at later point of time is, looking at any angle, inadmissible, as they are not entitled to pass a fresh order on the unproved charges, by framing some other charges on the very same set of facts.

16. With regard to the issue of fraud played by the petitioner, though I have no quarrel with the above proposition, rendered in the case in K.R. Deb vs. Collector of Central Excise, Shillong (supra), which also comes in aid of the petitioner, it is to be noted that while relying on a judgment, if it is found that the factual situation totally differs, then there is no compulsion for the subordinate courts to blindly rely on the same to arrive at a conclusion, as held by the Hon'ble Supreme Court in the case of Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, AIR 2002 SC 1334 : (2002) 176 CTR 104 : (2002) 255 ITR 147 : (2002) 3 JT 1 : (2002) 2 SCALE 580 : (2002) 3 SCC 533 : (2002) 37 SCL 425 : (2002) 2 SCR 383 : (2002) 170 TAXMAN 303 : (2002) AIRSCW 1156 : (2002) 2 Supreme 359 , as follows:

"Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington vs. British Railways Board (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of

difference between conclusions in two cases."

17. It is an admitted fact that the petitioner had got into the compassionate employment in dubious method, which this Court is unable to digest. If the act of playing fraud in getting public employment, especially on the ground of compassionate, is allowed to continue, the rights of several youngsters, who are longing for Government jobs will be deprived or affected and the very approach of the petitioner was a fraudulent attempt to knock off the interest of other persons. Of course, there is also negligent on the part of the 2nd respondent in empowering the 3rd respondent to take a decision on the enquiry report, but at the same time, it does not assume uniformity due to erroneous actions so as to give right to the petitioner to set right the illegality.

18. There is a general rule that negligence is not a fraud, but it can be an evidence on fraud. It is not disputed that legally the petitioner has got a case in view of the judgment of the Hon"ble Supreme Court, referred to above, but morally, he has no case, as fraud vitiates everything and the same can be set at naught by a proper proceeding. The basic principle is that a person, who secured either an administrative order or judicial order by fraud, cannot be allowed to enjoy its fruits and the fraud is an extrinsic, collateral act, which vitiates the most solemn proceedings of courts of justice, as it avoids all judicial acts, ecclesiastical and temporal. The Hon"ble Supreme Court in the case of S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, AIR 1994 SC 853 : (1993) 2 BC 546 : (1993) 6 JT 331 : (1995) 109 PLR 293 : (1993) 4 SCALE 277 : (1994) 1 SCC 1 : (1993) 3 SCR 422 Supp : (1994) 1 UJ 1 , has observed as under:

"The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the Court is being abused. Property grabbers, tax evaders, Bank loan dodgers, and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation."

19. The Hon"ble Supreme Court in the case of Hamza Haji Vs. State of Kerala and Another, AIR 2006 SC 3028 : (2006) 102 CLT 696 : (2006) 8 JT 215 : (2006) 8 SCALE 75 : (2006) 7 SCC 416 : (2006) 4 SCR 604 Supp : (2006) AIRSCW 4168 , was pleased to hold as under:

"27. The order of the Forest Tribunal in the case on hand had merged in the decision in MFA No. 328 of 1981 rendered by the High Court. The governing decision, therefore, was the decision of the High Court. When seeking to question the decision as being vitiated by fraud, the proper course to adopt was to move the court that had rendered the decision, by an application. In a case where an appeal is possible, an appeal could be filed. The House of Lords indicated in Kinch

Vs. Walcott (supra) that it will be in the power of the party to the decision complaining of fraud to apply directly to the court which pronounced the judgment to vacate it. The Full Bench of the Bombay High court in Guddappa Chikkappa Kurbar Vs. Balaji Ramji Dange, (1941) 43 BOMLR 681 observed that:

"No Court will allow itself to be used as an instrument of fraud and no Court, by the application of rules of evidence or procedure, can allow its eyes to be closed to the fact that it is being used as an instrument of fraud."

28. In *Hip Foong Hong vs. H. Neotia and Company* (1918 Appeal Cases 888) the Privy Council held that if a judgment is affected by fraudulent conduct it must be set aside. In *Rex vs. Recorder of Leicester* (1947 (1) K B 726) it was held that a certiorari would lie to quash a judgment on the ground that it has been obtained by fraud. The basic principle obviously is that a party who had secured a judgment by fraud should not be enabled to enjoy the fruits thereof....."

20. From the above judgments of the Hon"ble Supreme Court, it leaves no manner of doubt than the one that the benefit obtained by fraud can at any stage of litigation, be rectified or set aside by the Courts and the Apex Court is punctilious in disallowing the act of fraud, committed by a person. In this case, the petitioner has knowingly or unknowingly or purposely not brought to the attention of his employer about the employment of his mother and if he is fair enough in revealing the same, definitely, he would not have got the employment on compassionate ground. Therefore, it can be easily presumed that the petitioner has wantonly and willfully hidden the fact of his mother, being employed in a Government department, which does not necessitate this Court to interfere with the impugned order.

In fine and conclusion, I find that the petitioner is not entitled to any relief as prayed for in this writ petition. However, it is made clear that no amount could be recovered from the petitioner, as he had worked in the department all along and had some how used his manpower for the welfare of the department.