
(2011) 06 MAD CK 0424
In the Madras High Court
Case No : Writ Petition (MD) No. 1258 of 2007

A. Mathivanan

APPELLANT

Vs

The Revenue Divisional Officer and The State

RESPONDENT

Date of Decision : 09-06-2011

Acts Referred:

Citation : (2011) 06 MAD CK 0424

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : S.S. Sundar, for the Appellant; D. Muruganantham, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

D. Hariparanthaman, J.—The Petitioner joined in service as Village Karnam. After abolition of the post of Village Karnam, he was appointed as Village Administrative Officer on 11.08.1982 in Kankatarapuram, Peravurani Taluk, Tanjore District.

2. An F.I.R. dated 10.07.2003 was registered against several Village Administrative Officers including the Petitioner on the allegation of irregularities and malpractices in issuing certificates towards copra sales to the farmers in the year 2000. However, No. criminal case was filed and the Vigilance found that there was No. malpractices and the entire action has been dropped.

3. However, by an order dated 05.06.2004 of the Revenue Divisional Officer, the Petitioner and all the other Village Administrative Officers, whose names were found in the aforesaid F.I.R were transferred to different stations.

4. Accordingly, the Petitioner was transferred to Kattukurichi, Papanasam Taluk from Kankatarapuram, Peravurani Taluk. As per the transfer order, all the other Village Administrative Officers approached the Tamil Nadu Administrative Tribunal and obtained stay of the transfer order except the Petitioner. The Petitioner did not join duty at the transferred place. According to him, he was not well and that

was the reason for not joining duty. He applied for medical leave.

5. While so, a charge memo dated 28.06.2006 was issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The crux of the allegation was that he was unauthorizedly absent from 11.07.2004 and he failed to join duty at the transferred place. He submitted an explanation dated 19.08.2006. He explained that he was not well and he sent medical certificate and he asked for transfer to Kankatarapuram and the District Revenue Officer asked him to wait till the completion of the criminal proceedings. Ultimately, the proceeding was dropped and therefore, the disciplinary action would also be dropped. But, not satisfied with the explanation, an enquiry was held. Based on the enquiry, the impugned order dated 17.11.2006 was passed terminating the Petitioner from service for unauthorized absent from 01.07.2004 for about two years. The Petitioner has filed the present petition to quash the aforesaid order dated 17.11.2007.

6. No counter affidavit is filed. The learned Government Advocate has made his submission based on instructions.

7. I have heard the submissions made on both sides.

8. The learned Counsel appearing for the Petitioner submits that apart from the Petitioner, all the other V.A.Os., who were also arrayed as accused in F.I.R. dated 10.07.2003, were transferred and all of them have approached the Court and obtained stay of transfer. The Petitioner alone did not approach the Court. Only in those circumstances, he remained absent. His entire career for about 20 years as V.A.O. is without any blemishes.

9. It is also submitted that the vigilance also found that there was No. irregularities or malpractices and ultimately the criminal action was dropped. Taking into account the entire facts and circumstances and more particularly that other V.A.Os have obtained stay of transfer, the removal of Petitioner from service is too harsh as it has deprived the livelihood of the Petitioner. The learned Counsel has relied on the judgment of the Apex Court in Government of Tamil Nadu and Another Vs. K. Rajaram Appasamy, , Secretary, School Committee, Thiruvalluvar Higher Secondary School Vs. The Govt. of Tamil Nadu and Others, and (2009) 8 MLJ 460 (SC) (Chairman cum Managing Director, Coal India Limited and Anr. v. Mukul Kumar Choudhuri and Ors. and submits that this Court could interfere with the impugned order by passing suitable order.

10. On the other hand, the learned Government Advocate seeks to sustain the impugned order stating that since he was absent for about two years, the termination is fully justified.

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

12. Admittedly, F.I.R. was lodged against the Petitioner and other V.A.Os. alleging certain irregularities and committing malpractices. But, the criminal action was dropped subsequently as it was found that there was No. malpractices. However

the Petitioner and other V.A.Os. were transferred. All other V.A.Os have approached the Tamil Nadu Administrative Tribunal, questioning the transfer order and obtained stay. The Petitioner did not approach the Tribunal and there was No. stay order in his favour. But, he did not join at the transferred place and hence, it was unauthorized absent.

13. According to him, he was not well and he was also told that he would be transferred back to Kankatarapuram after the completion of the criminal case. But, the criminal was dropped. Other V.A.Os. continued in the same place. But, the Petitioner was not transferred back to his original place.

14. On the other hand, disciplinary action was taken for unauthorized absence from 01.07.2004. It is true that when he was transferred, he should have joined at the transferred place. Since, he did not join at the transferred place, his absence from 01.07.2004 has to be construed as an unauthorized one.

15. Th Petitioner rendered more than 20 years of service without any blemish and that is not disputed. The 1st Respondent failed to take into account that other V.A.Os. were retained in the same place, after they obtained stay order. The first Respondent also failed to take into account that the criminal action was also dropped and that the Petitioner rendered more than 20 years of unblemished record of service.

16. Normally, this Court could not interfere with the order of punishment. But, in this case, taking into account the entirety of the circumstances, I am of the view that the extreme penalty of termination is too harsh and arbitrary and needs interference.

17. As rightly contended by the learned Counsel appearing for the Petitioner, in similar circumstances in Government of Tamil Nadu and Another Vs. K. Rajaram Appasamy, , where, a Government Doctor remained absent for 5 years, he was reinstated in service with 50% back wages by the Tamil Nadu Administrative Tribunal. However, the Hon''ble Apex Court has set aside the 50% back wages and the reinstatement was confirmed. In the other case viz., in Secretary, School Committee, Thiruvalluvar Higher Secondary School Vs. The Govt. of Tamil Nadu and Others, wherein the Apex Court ordered reinstatement with 60% back wages. In that case, the teacher was dismissed from service for his absence for a very long period. In the third case in (2009) 8 MLJ 460 (SC) (Chairman cum Managing Director, Coal India Limited and Anr. v. Mukul Kumar Choudhuri and Ors. wherein, the Apex Court confirmed the order as to reinstatement, while setting aside the portion of the order granting back wages, in the case of dismissal of an employee for absence for 6 months. The relevant portion in Paragraph No. 26 is extracted herein:

26. The doctrine of proportionality is, thus well recognized concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial

intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review. One of the tests to be applied while dealing with the question of quantum of punishment would be: would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment. In a case like the present one where the misconduct of the delinquent was unauthorised absence from duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reasons for his absence by stating that he did not have any intention nor desired to disobey the order of higher authority or violate any of the Company's Rules and Regulations but the reason was purely personal and beyond his control and, as a matter of fact, he sent his resignation which was not accepted, the order of removal cannot be held to be justified, since in our judgment, No. reasonable employer would have imposed extreme punishment of removal in like circumstances. The punishment is not only unduly harsh but grossly in excess to the allegations. Ordinarily, we would have sent the matter back to the appropriate authority for reconsideration on the question of punishment but in the facts and circumstances of the present case, this exercise may not be proper. In our view, the demand of justice would be met if the Respondent No. 1 is denied back wages for the entire period by way of punishment for the proced misconduct of unauthorised absence for six months.

In the above said case, the System Officer was removed from service for his absence for a period of six months. Thus, the Apex Court interfered in the matter of punishment in the case of unauthorized absence for 6 months and ordered reinstatement without back wages.

18. Following the aforesaid decisions, I am also inclined to set aside the impugned order and direct the 1st Respondent to reinstate the Petitioner without back wages, but with continuity of service.

19. Accordingly, the writ petition is allowed and the order in Na.Ka. No. 3748/2004 A1 dated 17.11.2006 passed by the 1st Respondent is set aside. The 1st Respondent is directed to reinstate the Petitioner without back wages, but with continuity of service. No. costs.