

(1999) 04 MAD CK 0053
In the Madras High Court
Case No : Writ Petition No. 17765 of 1990

Annamalai M.

APPELLANT

Vs

Registrar, High Court and Another

RESPONDENT

Date of Decision : 07-04-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 4 LLJ 978

Hon'ble Judges : V. Kanagaraj, J;Subramani, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

V. Kanagaraj, J.—The above Writ Petition has been filed under Article 226 of the Constitution of India, praying thereby to call for the

records of the respondents relating to the proceedings respectively in R.Dis. No. 558/1990 dated April 24, 1990 of the first respondent and in

Roc. No. 16/88/A1 dated January 9, 1989 of the second respondent, issuing a Writ of Certiorari or any other appropriate Writ or order of

direction in the nature of writ and quash the order of the first respondent in R. Dis. No. 558/90, dated April 24, 1990 and pass such other or

further orders as this Honourable Court may deem fit and proper in the circumstances of the case.

2. The writ petitioner had been originally posted as Office Assistant in the Court of Judicial Magistrate, Mayuram and for certain reasons not

revealed any where here, he had been suspended on August 9, 1987 and thereafter his suspension had been revoked on August 29, 1987 as per

the orders of the Chief Judicial Magistrate, Thanjavur at Kumbakonam in Roc. No. 16/87 A1 dated December 23, 1987 and the writ petitioner

had been ultimately punished with demotion to the post of night watchman and was directed to join the Court of Judicial II Class Magistrate,

Tiruvarur in such capacity and as such he had also joined duty on December 31, 1987 at Thiruvavur. After joining duty on December 131, 1987,

he had applied for permission to avail the joining time on January 1, 1988, January 2, 1988 and January 3, 1988 and resumed duty on January 4,

1988. On the very same day of his resuming duty on January 4, 1988. On the very same day of his resuming duty and on the subsequent day i.e.,

on January 4, 1988 and January 5, 1988, he was complained of having committed the offence in violation of Rule 20 of the Tamil Nadu

Government Servants" Conduct Rules, 1973, consequent to which, enquiry proceedings have been initiated against him on specific charge that on

January 4, 1988 at about 10.30 a.m. and 11.30 a.m. and on January 5, 1988 at about 11.30 a.m. during office hours, he was seen roaming about

at the veranda adjacent to the Bar room, on the first floor of the Court building and had been staring at and passing on signals and gestures to the

ladies, who were taking bath half-naked in the adjacent pond, thus he not only involved in acts touching the moral turpitude but also failed to

maintain absolute integrity and devotion to duty, by indulging in acts which are unbecoming of a member of the Tamil Nadu Government Service

besides degrading the dignity of the Court.

3. On the above specific charge, a regular enquiry has been instituted with the Sub. Divisional Judicial Magistrate, Thanjavur as the Enquiry

Officer. During enquiry, the Enquiry Officer, besides following the procedures established by Law, had also conducted the enquiry with due

opportunity for the petitioner to be heard at each and every stage of the enquiry, as revealed by records. The prosecution has also examined 8

witnesses for oral evidence besides making nine documents for documentary evidence. On the part of the Petitioner one witness would be

examined as D.W.I and no document would be marked.

4. So far as the evidence recorded by the Enquiry Officer from witnesses is concerned, A.M. Hassan Mohammed, the Secretary of the Advocates

Association, Tiruvarur, who has been examined as P.W. 1 would speak to the effect that two advocates namely Mr. Raj Kumar and Mr.

Murugesan informed him that they witnessed the scene of the petitioner staring

at the women bathing in the pond and giving gestures and wanted him to lodge a complaint against the petitioner with the Magistrate concerned, as a result of which on January 11, 1988, he lodged a complaint against the petitioner, in his capacity as the Secretary of the Advocates' Association, Tiruvarur, in Ex. P. 1.

5. P.Ws. 2,3 and 7, who are also advocates attached to the Tiruvarur Bar Association would give evidence to the effect that they saw the

petitioner in the veranda, from where he is said to have committed the offence, but they have not seen the actual occurrence, P.Ws. 4 to 6, who

are also advocates attached to the Tiruvarur Bar Association would definitely state before the Enquiry Officer that they not only witnessed the

scene of the petitioner standing in the veranda upstairs and staring at the bathing women in the nearby pond but also seen him giving gestures to

them. P.W.8 is none other than the Judicial II Class Magistrate, Tiruvarur and this witness would speak to the effect of having been in possession

of the Service Register of the petitioner, from which it was found that from August 9, 1984 to August 20, 1984, the petitioner had been placed

under suspension by the Judicial I Class Magistrate, Mayuram as per Ex.P.6 Suspension Order and the said Order had also been revoked as per

Ex. P. 7 and the further order treating the suspension period as leave by . the Chief Judicial Magistrate would be marked as Ex. P. 8. This witness

also speaks to the antecedents in placing him under suspension from August 9, 1984 to August 20, 1984 and ultimately treating 15 days as

extraordinary I leave on loss of pay. This witness would also speak to the details of the suspension order passed by the Magistrate, Mailaduthurai

and ultimately passing of the order in Roc. No. 16/87 A1 dated December 23, 1987 ordering the petitioner's demotion and posting him as night

watchman and would make the concerned remarks in Ex. P. 9. The witness would also state that on December 31, 1987, the petitioner had joined

as the night watchman of the Judicial II Class Magistrate's Court, Tiruvarur.

6. The lone defence witness viz. Rangaiah, then working as the Head Clerk in the Judicial II Class Magistrate's Court at Tiruvarur would depose

that from January, 1988 till July, 1988, the Special executive Magistrate's Court was functioning upstairs the Court building, Tiruvarur; that he was

not intimated about the lodging of the complaint against the petitioner; that no

public lodged any complaint against him; that the Special Executive Magistrate did not conduct any case on January 4, 1988 and January 5, 1988, though he joined duty in the afternoon of January 4, 1988; that only on January 6, 1988, the special Executive Magistrate took some cases on file. This witness would further state that there was no official order directing the petitioner to work in the Special Executive Magistrate's Court, but he was given only oral instructions.

7. After conducting the enquiry with all fairness and with reasonable opportunity and after considering the evidence placed on record, the Enquiry

Officer has ultimately arrived at the conclusion to hold the petitioner guilty of the charge framed against him. Based on the report of the Enquiry

Officer, the Chief Judicial Magistrate, Thanjavur at Kumbakonam had dismissed the petitioner from the civil services of Government of Tamil

Nadu under Rule 20 r/w. Rule 8(8) of the Tamil Nadu Government Servants' Conduct Rules, 1973 by his order passed in Roc. No. 16/88 A1

dated January 9, 1989.

8. Aggrieved against the said finding and dismissal order, the petitioner had preferred an appeal before the appellate authority and the Additional

Registrar (Administration), High Court, Madras and the said appellate authority, remarking that the evidence of P.Ws. 4 to 6, who witnessed the

occurrence, clearly established the guilt of the petitioner, dismissed the appeal preferred by the petitioner by his order dated April 24, 1990 in R.

Dis. No. 558/90. It is only aggrieved against both the above orders passed by the Chief Judicial Magistrate, Thanjavur at Kumbakonam and the

appellate authority and the Additional Registrar (Administration, High Court, Madras, the petitioner has come forward to file the above writ

petition on grounds such as (i) that the charge is based on some letter dated January 11, 1988, alleged to have been given by some advocates

without the date and time of the occurrence; (ii) that there is no iota of evidence to the further charge that the alleged letter dated January 11, 1988

of the Secretary of the Advocates Association, which was based on some representations from the public; (iii) that the copies of the documents

relied on by the Enquiry Officer were not furnished and it vitiates the entire proceeding, since being opposed to the principles of natural justice; (iv)

that the report of the Enquiry Officer was not furnished to the petitioner before

passing the order of dismissal, which had been sent along with the dismissal order; (v) that the witnesses had no personal knowledge of the alleged occurrence; (vi) that the appellate authority relied on the earlier disciplinary proceedings to arrive at his conclusion; (vii) that without furnishing the list of witnesses, the Judicial n Class Magistrate, Tiruvarur has been examined as P.W.8 much against the expectations of Law; (viii) that without serving the copies, Exs. P6 to P9 have been marked on the side of the prosecution, which vitiates the entire proceedings; (ix) that the appeal was disposed of by the authority, not authorised in Law to deal with the same and so the entire proceedings are vitiated and (x) that the lower authorities gave their findings without consideration of the facts and procedures laid down by Law erroneously.

9. During arguments, Mr. S.V.Jayaraman, the learned senior counsel appearing for the petitioner would give the factual details of the case right

from the petitioner joining duty as night watchman on December 31, 1987 till March 22, 1988, when the charge memo was issued to the

petitioner. He would further contend that the Enquiry Officer passed order, without the charge coming to be established to the requirements of

Law and would comment that the appellate authority has failed to consider the facts and circumstances of the case in their proper perspective,

prior to arriving at the conclusion to concur with the Enquiry Officer to the effect that the charge came to be established, thereby dismissing the

appeal preferred by the petitioner. The learned Senior counsel would also draw the attention of the Court to Rule 20 of the Tamil Nadu

Government Servants' Conduct Rules, 1973 and would point out as to what are the ingredients of "integrity" and "devotion to duty". The learned

senior counsel would further contend that Rule 20 of the Tamil Nadu Government Servants Conduct Rules, 1973 deals with the performance of

the official duties but the charge is confined to something outside the Court's work, unconnected to the official duties and would read out the

relevant portions from the evidence of the prosecution witnesses pointing out that P.Ws. 1 to 3 and 8 did not at all witness the occurrence and the

evidence of P.Ws. 4 to 7 is shaky and that the evidence of the sole defence witness is to the effect that there had been no possibility for such

occurrence to take place at all.

10. On the part of the learned Additional Government Pleader, it would be contended that the writ Court cannot appreciate the evidence as a Court of Enquiry or as the Appellate Authority concerned. Nor could this Court, on a writ petition assess the evidence as appellate Court going into the factual details of the case, in appreciation of the evidence. Since the scope of writ Court is restricted by very many judicial pronouncements, especially by that of the Apex Court; that only within the ambit of law, the writ Court can exercise jurisdiction regarding the legality of the case and would ultimately end up saying that both the Enquiry Officer and the Appellate Authority have acted within the bounds of law and the evidence against the petitioner is in abundance leaving no room for doubt to be entertained regarding the guilt of the petitioner to the charge and hence the interference of this is unnecessary and uncalled for.

11. On a thorough study of the oral and documentary evidence made available on either side and on assessment of the entire enquiry proceedings of the Enquiry Officer, it is revealed in no uncertain terms that the procedures established by Law have been thoroughly followed with due opportunity to the petitioner for being heard and no infirmity or inconsistency or lack of opportunity to the petitioner having occurred in the enquiry proceeding instituted, conducted and concluded by the enquiry officer, there is no place for the petitioner to plead on ground of inadequacy or inconsistency of evidence or non-adherence of the high principles of natural justice by the enquiry officer or any serious procedural failure resulting in prejudice caused to the petitioner.

12. Regarding evidence also, sufficient oral evidence has been adduced on the part of the prosecution, well supported by the documentary evidence at every stage of the case. From the evidence of P. W. 8, the Judicial II Class Magistrate, Tiruvarur, it further comes to be known that it was not the first occasion that petitioner had committed that offence, but even earlier in December, 1987, on account of which he was demoted from the rank of Office Assistant to that of night watchman besides being transferred to Tiruvarur from Mayuram. The petitioner has assumed charge on December 31, 1987 and after going on leave, had resumed duty only on January 4, 1988 and on the very same day and the subsequent day, the petitioner came to be accused of having committed the offence of

misconduct involving moral turpitude, thereby not only failing to exhibit utmost integrity and devotion to duty but also acted in the manner unbecoming to the position of a Government, and gesturing at the bathing women.

13. During most part of the arguments, the learned senior counsel appearing for the petitioner was trying to bring out some minor inconsistencies or

contradictions from the evidence of the prosecution witnesses. But, the scope of this Court to go into such questions being very much limited, this

Court cannot go into such details since the law is well settled that the High Court can enter only into decision making process and not the decision

itself. The High Court in writ jurisdiction may not normally interfere with the factual findings of the disciplinary authority or the appellate authority,

unless it comes to be known that the recorded findings were based either on no evidence or that the findings are wholly perverse and legally

untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Moreover, even regarding the

quantum of punishment, the High Court cannot substitute its own discretion for that of the authority which falls exclusively within the jurisdiction of

the competent authority and normally does not warrant interference by the High Court, unless it is either totally unreasonable or arbitrary or

disproportionate, unconscionably shocking to the conscience of the High Court. For the above reasons unless warranted by any of the above

reasons the appropriate punishment also is within the jurisdiction and judgment of the disciplinary authority or the appellate authority, but not that of

the High Court or the Administrative Tribunal. Law is well settled regarding these propositions as propounded in very many decisions, that are

given hereunder; In *State Bank of India and Others Vs. Samarendra Kishore Endow and Another*, the Apex Court held that:

Disciplinary enquiry - Respondent had put false claim in respect of reimbursement of expenditure on shifting his belongings on transfer - High

Court holding that the finding of Enquiry Officer in respect of various charges were based on no evidence - Held that reasoning of High Court was

based on misreading of the findings of the Enquiry Officer - Judgment of the High Court set aside.

Disciplinary inquiry - Imposition of punishment - Removal from service - Whether

punishment is harsh? -Appropriate punishment is within the discretion and judgment of the disciplinary authority - Appellate authority may interfere with the same but not the High Court or the Administrative

Tribunal - Matter remitted to the Appellate authority to impose appropriate punishment.

Article 226 - Jurisdiction of High Court -Power under Article 226 is one of judicial review - In the matter of imposition of punishment or penalty,

which can be lawfully imposed on the proved misconduct of the employee, Tribunal or the High Court has no power to substitute its own

discretion for the Tribunal has no jurisdiction to impose any punishment to meet the end of justice - Supreme Court, exercises the equitable

jurisdiction under Article 136 and the High Court and Tribunal has no such power or jurisdiction.

The above judgment has been followed in U.P. State Road Transport Corpn. and Others Vs. A.K. Parul, wherein it has been held that

Articles 226, 136 - Punishment -Departmental enquiry - Charges proved - Removal from Service - Challenge as to -High Court directing

reinstatement as punishment found to be not commensurate with gravity of offence, though charges held proved. Held that High Court was not

justified in interfering in the order of punishment of disciplinary authority -High Court orders set aside.

Of late, the latest judicial thinking especially that of the Apex Court, as revealed in its recently pronounced judgment is that the High Court cannot

even interfere with the quantum of punishment awarded by the Enquiry Officer or the appellate authority, thus even limiting the powers of the Court

with regard to moulding the relief as seen from the judgment of the Apex Court in Apparel Export Promotion Council Vs. A.K. Chopra, wherein

the following propositions have been established and settled:

High Court normally would not interfere in the findings of disciplinary authority or in the penalty imposed unless findings are perverse or based on

no evidence and punishment is impermissible

In departmental proceedings, the Disciplinary Authority is the sole Judge of facts and in case an appeal is presented to the Appellate Authority,

the Appellate Authority has also the power/and jurisdiction to reappraise the evidence. The High Court in Writ jurisdiction may not normally

interfere with those factual findings unless its findings were wholly perverse and or legally untenable. The adequacy or inadequacy of the evidence is

not permitted to be canvassed before the High Court. Since, the High Court does not sit as an Appellate Authority, over the factual findings

recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its

own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even in so far as imposition of 1 penalty or

permission is concerned, unless the punishment or penalty imposed by the Disciplinary or the Departmental Appellate Authority, is either

impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other

punishment or penalty.

The High Court should not have substituted its own discretion for that of the authority. What punishment was required to be imposed, in the facts

and circumstances of the case, was a matter which fell exclusively within the jurisdiction of the competent authority and did not warrant any

interference by the High Court. The impugned order of the High Court cannot be sustained on this ground alone.

That High Court cannot substitute its-judgment for that of administrative authority. Even though judicial review of administrative action must remain

flexible and its dimension not closed, yet the Court in exercise of the power of judicial review is not concerned with the correctness of the findings

of fact on the basis of which the orders are made so long as those findings are reasonable supported by evidence and have been arrived at through

proceedings" which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decisions was arrived at.

Judicial Review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision making process.

The Court while exercising the power of Judicial Review must remain conscious of the fact that if the decision has been arrived at by the

Administrative Authority after following the principles established by law and the rules of natural justice and the individual has received fair

treatment to meet the case against him, the Court cannot substitute its judgment for that of the Administrative Authority on a matter which fell

squarely within the sphere of jurisdiction of the authority.

14. On the part of the respondents based on the counter affidavit filed on their behalf, the learned counsel for the Additional Government Pleader

has argued that the orders passed by the first and second respondents are perfectly valid and legally substantial. Since the petitioner was afforded

with adequate opportunity to contest the case before the respondents 1 and 2 and as such the orders do not suffer from any irregularity or illegality;

that earlier disciplinary proceedings against the writ petitioner have not been taken for concluding the present case; that only after finding the writ

petitioner guilty of the charges framed for assessing the character and antecedents, the earlier proceedings was considered; that the examination of

witness in the absence of the petitioner took place due to his own fault on account of his deliberate absence and on no fault of the enquiry officer;

that Exs. P.6 to P.9 are only the entries in the service books of the petitioner which facts are known to him and he could have also seen them

during the verification of the documents and moreover they being the service book entries and since the petitioner did not request for the copies,

they were not served on him; that the second respondent has dealt with the enquiry only to the proceedings known to law and not in a prejudicial

manner and the order of the second respondent dated January 9, 1989 does not at all suffer from any irregularity or illegality so as to warrant

interference by this Court of Review; that the first respondent also has only disposed of the appeal itself with (sic) competence and with application

of his mind.

15. Regarding the grounds of the writ petition though ground Nos. (i) to (viii) and (x) have been adequately answered in the counter affidavit and

the arguments of the learned counsel as mentioned supra, it is relevant to focus the attention of ground No. (ix) of the grounds of this writ petition

that the appeal was disposed of by the authority not authorised in law and so the entire proceeding is vitiated meaning thereby that it is only the

Registrar of the High Court and not the Additional Registrar who has passed the orders in the above appeal.

16. So far as the question that is raised on the part of the petitioner to the effect that it is only the Registrar of the High Court who could entertain

and pass orders on appeals preferred in matters of enquiry proceedings

concerned with Judicial Ministerial Staff and not the Additional Registrar, who has no jurisdiction to deal with such appeals are concerned it is clarified that it is the jurisdiction of the High Court that is wielded by the Registrar of the High Court. As per the Business Rules of the High Court, it is the Honourable the Chief Justice of High Court who is empowered by Law to allocate the work whether judicial or executive in nature, so far as the functioning of the High Court is concerned and in exercise of such legal powers, it comes to be seen that the Honourable The Chief Justice of the High Court in various proceedings from time to time has passed orders allotting the subjects to various authorities such as the Registrar, The Additional Registrar (Administration), the Additional Registrar (Judicial) etc. and while allocating the work by such orders right from November 30, 1990, the Hon''ble The Chief Justice has allocated the subjects covering Tamil Nadu Government Servants Conduct Rules any permission under Tamil Nadu Government Servants Conduct Rules relating to Judicial Officers Staff of Subordinate Judiciary and officers and staff of High Court, as per the orders passed by the Honourable Chief Justice, High Court, Madras from time to time in the last one decade as seen below:

- (i) High Court's Proceedings Roc. No. 147/90-Con. B2, dated November 30, 1990.
- (ii) High Court's Proceedings Roc. No. 73/93 - Con.B.2, dated June 14, 1993.
- (iii) High Court's Proceedings Roc. No.73/98-Con.B.2 dated October 16, 1998.

Since the allocation of such work being purely the discretion of the Hon''ble The Chief Justice, High Court, Madras, the allocation of the subject to the Additional Registrar (Admn.) by the Hon''ble the Chief Justice in the above said manner cannot be termed as without legal locus standi, nor could it be said that the Additional Registrar (Admn.) enjoying such powers and disposing the appeals arising out of disciplinary proceedings of the Judicial Ministerial Service Personnel is bereft of jurisdiction as it has been argued on the part of the petitioner. Hence, regarding this question, it is concluded that the additional Registrar (Admn.) as per the allocation of the work by the Hon''ble the Chief Justice, High Court, Madras is within his jurisdiction to dispose of the appeals.

17. In view of the above discussions, we are not able to see grave error of law or

procedural failure or perversity in approach or violation of the principles of natural justice or any other such infirmities or inconsistencies or irregularities or illegalities so as to call for our interference into the above findings of the enquiry officer and the appellate authority. No valid or tangible reason has been assigned on the part of the petitioner within the meaning of the judicial pronouncements warranting interference by this Court. Hence, the disciplinary authority in so far as he found the petitioner guilty of the offence charged and awarding the punishment of dismissal and the appellate authority confirming the same have been done within the bounds of law and the procedures established by law and not in violation of the principles of natural justice. Hence there is a well considered and well merited orders do not call for interference by this Court in exercise of its judicial review.

18. In result the above writ petition fails and the same is dismissed. The orders passed by the second respondent in Roc. No. 16/88/A1 dated

January 9, 1989 and the subsequent order passed by the first respondent in R.Dis. No. 558/90 dated April 24, 1990 are hereby confirmed.

19. However in the circumstances of the case there shall be no order as to costs.