

(2012) 02 MAD CK 0350

In the Madras High Court

Case No : W.P (MD) No. 1451 of 2007 and M.P (MD) No. 1 of 2007

Chocklingam

APPELLANT

Vs

The Superintendent of Police, Madurai District, Madurai

RESPONDENT

Date of Decision : 02-02-2012

Acts Referred:

Constitution of India, 1950 — Article 311, 311(1), 311(2)

Penal Code, 1860 (IPC) — Section 240(1), 240(2), 294, 352, 353

Citation : (2012) 02 MAD CK 0350

Hon'ble Judges : K. Ravichandra Baabu, J

Bench : Single Bench

Advocate : T. Lajapathy Roy, for the Appellant; V. Pandi, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K. Ravichandra Baabu

1. The prayer in this writ petition is challenging the order passed by the respondent in Na.Ka.No.B1/24790/06, dated 14.08.2006, wherein and whereby the petitioner was dismissed from part time service.

2. The case of the petitioner is as follows:

(i) The petitioner was appointed on 07.05.1989 as a part time Sweeper in the Melur Prohibition Enforcement Wing Unit. He was dismissed from service by the Superintendent of Police, Prohibition Enforcement Wing, Madurai Zone, through his proceedings, dated 23.12.1994, on the ground that he was involved in a criminal case in Crime No.785 of 1994. He was only a prosecution witness in the said case and not an accused and his superior officer under the mistaken impression passed the order of dismissal. The said criminal case also ended in acquittal on 24.12.1999 on the ground that the prosecution did not prove the case beyond all the reasonable doubt. Thereafter, the petitioner approached the respondent for reinstatement into service and by an order dated 09.09.2003, the

respondent reinstated the petitioner in service as part time Sweeper in Melur Prohibition Enforcement Wing Unit, without back wages.

(ii) There was a family dispute between the petitioner and his wife and therefore, his wife gave a complaint to the respondent and same was forwarded to the Inspector of Police, All Women Police Station, Melur. Further, a case was registered in crime No.333 of 2006, u/s 352 and 294(b) IPC on the allegation that the petitioner on 20.07.2006, had restrained Women Constables, attached to All Women Police Station, Melur and abused them with filthy language, while they were enquiring into the complaint made by his wife. Based on the said criminal complaint registered against the petitioner, in Crime No.333 of 2006, the respondent passed the impugned order in this writ petition, dated 14.08.2006, terminating the petitioner's service, without any notice or enquiry. Therefore, the present writ petition was filed by the petitioner, challenging the order of the respondent, dated 14.08.2006.

3. Notice of motion was ordered by this Court on 22.02.2007. The respondent entered appearance through the learned Government Advocate and filed a counter affidavit.

4. It is stated by the respondent that the writ petitioner was terminated from the part time service as he had involved in the criminal case and his service being a temporary one, he can be terminated on the merits of the case and no enquiry need to be conducted as per the existing rules. His service was a temporary one and he was getting Rs.900/-per month. According to the respondent, the procedure adopted by the respondent is in accordance with rules. It is also stated that criminal case pending against the petitioner ended in acquittal on 04.04.2008. The temporary service of the writ petitioner has not been regularized and the termination order passed by the respondent is not attaching any stigma on the service of the petitioner. The petitioner did not come under any prescribed service rules and hence, there is no necessity to conduct any enquiry in respect of persons, who are getting daily wages, i.e., in temporary service as part time Sweeper. Therefore, the respondent seeks dismissal of the writ petition.

5. I heard the learned Counsel appearing for the petitioner and the learned Government Advocate appearing for the respondent.

6. The learned Counsel appearing for the petitioner contended that though the petitioner was appointed as a part time Sweeper, the impugned order passed by the respondent is bad in law on the ground that the same was passed in violation of principles of natural justice. It is also contended by the learned counsel that the impugned order created stigma in the petitioner's service and therefore, without conducting an enquiry, the respondent cannot pass an order of dismissal. He has submitted further that the criminal case pending against him was also ended in acquittal on 04.04.2008.

7. In support of his contention, the learned Counsel for the petitioner cited the

decisions Jagdish Mitter Vs. The Union of India (UOI), in the matter of Babu Lal Vs. The State of Haryana and others, in the matter of Babulal vs. State of Haryana and an unreported decision of the Division Bench of this Court made in W.A (MD) No. 240 of 2007, dated 24.09.2007.

8. On the other hand, the learned Government Advocate has contended that the acquittal in S.C.No.334 of 2006 of the petitioner on 04.04.2008 was based on the benefit of doubt given in favour of the accused and not an honourable acquittal. The learned Government Advocate has also contended that the petitioner was only a part time daily waged employee receiving Rs.30/-per day and he was not a Government servant and therefore, prescribed service rules are not applicable to him. Based on the above said submissions, the learned Government Advocate appearing for the respondent contended that there is no necessity for conducting any enquiry and as such, the order passed by the respondent is perfectly valid and does not warrant interference by this Court.

9. I have considered the rival submissions.

10. The petitioner was originally dismissed from service on 23.12.1994 on the ground he was involved in a criminal case in crime NO.785 of 1994. A perusal of the Judgment made in SC.No.181 of 1996 in Crime No.785 of 1994 shows that one Jayaprakash was the accused and the petitioner herein was only P.W.1. The petitioner was reinstated into service on 09.09.2003 by the proceedings of the respondent herein in Na.Ka.No.B1/23677/03, wherein it is stated that the petitioner will be given a consolidated pay of Rs.900/-per month as salary. From the reading of the order dated 09.09.2003, of the respondent, it is seen that the petitioner was not only reinstated into service and also paid a consolidated pay of Rs.900/-per month from 09.09.2003 onwards. Therefore, the contention of the respondent that the petitioner was a daily waged employee is liable to be rejected.

11.The petitioner was terminated by the impugned order in on 14.08.2006, which reads as follows:-

12. A perusal of the impugned order passed by the respondent undoubtedly drives this Court to come to a conclusion that the said order of dismissal is not an order of termination simplicitor but on the reason that a complaint was pending against the petitioner in Malur Police Station in crime NO.333 of 2006 under Sections 353 and 294(b) IPC and that the petitioner was arrested on 22.07.2006 and that the case was under investigation.

13. It is also an admitted case that there was no notice given to the petitioner and no enquiry was conducted by the respondent before passing the impugned order. The Hon''ble Supreme Court and this Hon''ble Court in various decisions rendered, have categorically held that when an order of termination was passed casting stigma, it is necessary for the authority to hold an enquiry.

14. At this juncture, it is useful to refer to the decision rendered by the Hon''ble

Supreme Court in the case of Jagdish Mitter Vs. The Union of India (UOI), , wherein it has been held as follows:-

7. The true legal position in regard to the scope and effect of the provisions of Article 311 in respect of persons employed in civil capacities under the Union or a State on a temporary or probationary basis is now fairly well established. It is, however, necessary to state the said legal position briefly before dealing of with the merits of the dispute between the parties in the present appeal.

8. Having regard to the legislative history of the provisions contained in Article 311, the words "dismissed", "removed" and "reduced in rank" as used in Article 311(1), have attained the significance of terms of Article. As has been observed by Das, C.J. in Parshotam Lal Dhingra v. Union of India, "both at the date of the commencement of the 1935 Act and of our Constitution the words "dismissed", "removed" and "reduced in rank" as used in the service rules, were well understood as signifying or denoting the three major punishments which could be inflicted on government servants. The protection given by the rules to the Government servants against dismissal, removal or reduction in rank, which could not be enforced by action, was incorporated in sub-section (1) and (2) of Section 240 to give them a statutory protection by indicating a procedure which had to be followed before the punishments of dismissal, removal or reduction in rank could be imposed on them and which could be enforced in law. These protections have now been incorporated in Article 311 of our Constitution". It is thus clear that every order terminating the services of a public servant who is either a temporary servant, or a probationer, will not amount to dismissal or removal from service within the meaning of Article 311. It is only when the termination of the public servant's services can be shown to have been ordered by way of punishment that it can be characterised either as dismissal or removal from service.

9. It is also now settled that the protection of Article 311 can be invoked not only by permanent public servants, but also by public servants who are employed as temporary servants, or probationers, [vide Parshotam Lal Dhingra case1 (p. 858)], and so, there can be no difficulty in holding that if a temporary public servant or a probationer is served with an order by which his services are terminated, and the order unambiguously indicates that the said termination is the result of punishment sought to be imposed on him, he can legitimately invoke the protection of Article 311 and challenge the validity of the said termination on the ground that the mandatory provisions of Article 311(2) have not been complied with. In other words, a temporary public servant or a probationer cannot be dismissed or removed from service without affording him the protection guaranteed by Article 311(2).

15. In another decision rendered by the Hon"ble Supreme Court in the case of Babu Lal Vs. The State of Haryana and others, it has been held as follows:-

8. Moreover, from the sequences of facts of this case the inference is irresistible

that the impugned order of termination of the service of the appellant is of penal nature having civil consequences. It is well settled by several decisions of this Court that though the order is innocuous on the face of it still then the court if necessary, for the ends of fair play and justice can lift the veil and find out the real nature of the order and if it is found that the impugned order is penal in nature even though it is couched with the order of termination in accordance with the terms and conditions of the order of appointment, the order will be set aside. Reference may be made in this connection to the decision of this Court in *Rajinder Kaur v. State of Punjab* in which one of us is a party. It has been held that: (SCC HN)

The impugned order of discharge though stated to be made in accordance with the provisions of Rule 12.21 of the Punjab Police Rules, 1934, was really made on the basis of the misconduct as found on enquiry into the allegation behind her back. Though couched in innocuous terms, the order was merely a camouflage for an order of dismissal from service on the ground of misconduct. This order had been made without serving the appellant any charge-sheet, without asking for any explanation from her and without giving any opportunity to show cause against the purported order of dismissal from service and without giving any opportunity to cross-examine the witnesses examined. The order was thus, made in total contravention of the provisions of Article 311(2) and was therefore, liable to be quashed and set aside.

16. In another unreported Judgment rendered by the Hon''ble Division Bench of this Court in W.A. (MD) No. 240 of 2007, dated 24.09.2007, in paragraph 7, it has been held as follows:-

7. On the other hand, since the order of termination was passed casting stigma, it was necessary for the University to hold enquiry. That apart, the order which was purportedly passed by the Vice Chancellor had not been placed before the Syndicate within the stipulated time.

17. The categorical decision of Hon''ble Supreme Court in *Jagdish Mitter Vs. The Union of India (UOI)*, in the matter of *Jagdish Mitter vs. Union of India* makes it clear that the protection of Art. 311 can be invoked not only by permanent public servants, but also by public servants, who are employed as temporary servants, or probationers. In the said decision, the Hon''ble Supreme Court has also observed that a temporary public servant or a probationer cannot be dismissed or removed from service without affording him the protection guaranteed by Art. 311(2).

18. In this case, the impugned order passed is not an order of termination simplicitor. A perusal of the same undoubtedly show that it is an order attaching stigma on the petitioner's service. While that being the position the petitioner ought to have been given an opportunity of hearing and the respondent should have conducted an enquiry before passing the impugned order. Admittedly, it is not done in this case. It is also stated by the respondent in the counter affidavit

that the criminal case pending against the petitioner in S.C.No.334 of 2006 has also ended in acquittal on 04.04.2008 i.e., subsequent to the filing of the writ petition.

19. Therefore, the contentions raised by the respondent, are liable to be rejected and consequently, the impugned order passed by the respondent is liable to be set aside on the sole ground of violation of principles of natural justice. Accordingly, it is set aside. Consequently, the respondent is directed to reinstate the petitioner without any back wages within a period of four weeks from the date of receipt of a copy of this order. It is open to the respondent to conduct a fresh enquiry, by affording an opportunity of hearing to the petitioner in a manner known to law, by taking note of all the subsequent developments taken place, including the acquittal in S.C.NO.334 of 2006 on 04.04.2008.

20. In the result, the writ petition is allowed and the impugned order of the respondent in Na.Ka.No.B1/24790/06, dated 14.08.2006, is set aside. Consequently, the connected miscellaneous petition is also closed. No costs.