

(1994) 09 MAD CK 0031

In the Madras High Court

Case No : Writ Appeal No"s. 915 to 918 of 1993

Colonel 'Q' and Another

APPELLANT

Vs

G. Ravindran Pillai

RESPONDENT

Date of Decision : 05-09-1994

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Tamil Nadu Shops and Establishments Act, 1947 — Section 1, 2, 4, 41

Citation : (1995) 2 LLJ 592

Hon'ble Judges : K.A. Swami, C.J.;Somasundaram, J

Bench : Division Bench

Judgement

K.A. Swami, C.J.—All these writ appeals are directed against the common order dt. 13-7-1993 passed by the learned single Judge in

W.P. Nos. 18464 of 1991 and 2472 to 2474 of 1992.

2. W.P. No. 18464 of 1991 was filed by tow persons by names Babian and U. Nathan and W.A. No. 918 of 1993 arises out of the said writ

petition W.P. Nos. 2472 to 2474 of 1992 were preferred by G. Ravindran Pillai, D. Rajkumar and A. Naziruddin respectively and W.A. Nos.

915, 917 and 916 of 1993 respectively arise out of these writ petitions. As the writ petitions have been decided against the respondents therein, it

is they who have preferred all these appeals.

3. In W.P. No. 18464 of 1991, the petitioners sought for quashing the order dated 16-12-1991 bearing Ref. No. 4011/7/MQ2 (EMP) passed by

the Lt. Col, Officer General Col. "Q", terminating with immediate effect i.e. from 17-12-1991 the services of the two petitioners, and they were

also relieved of their duties immediately and paid one month"s salary each. In the other writ petitions, the three separate orders dated 15-2-1992

are challenged by which the services of the petitioners were terminated with effect from 15-2-1992 on the ground that during the surprise check some malpractices/deficiencies were detected.

4. The case of petitioners in these writ petitions is that their services have been terminated without holding an enquiry, that they have been serving in the CSD canteen. Tamil Nadu and Kerala sub Area, for several years; as such, their services could not have been terminated without holding due enquiry, that the canteen in question is part of the Defence organisation; as such it answers the definition of "State" as occurring under Article 12 of the Constitution of India and, therefore, they are entitled to all the protections that are available to the Central Government servants and that the orders terminating their services without holding enquiry are bad in law. Even otherwise, it is contended that such termination is not in accordance with the procedure prescribed by the Standing Operating Procedure Sub Area/ Station Canteens under HQ, Atnkk and G. Area.

5. On the contrary, it is the case of the respondents that the canteen is not a State or part of the Defence Department of the Central Government; it is only a voluntary association intended to cater to the needs of the Army officials and that it is maintained by the Army Officers and for the purpose of proper running. Paragraphs 584 and 585 of the Defence Service Regulations are followed and these Regulations have no statutory force; as such the petitioners are not entitled to maintain the writ petitions and seek the relief sought for. Even on merits, it is their case that the petitioners in W.P. Nos. 2472 to 2474 of 1992 are found guilty of misappropriation of certain articles as recorded in the surprise check conducted on 12-2-1992 and admitted by one of them by name A. Naziruddin. As regards the petitioners in W.P. No. 18464 of 1991 viz. Babian and U.

Nathan, they being temporary employees they have been terminated with one month's wages.

6. In the written arguments submitted on behalf of the respondents, it has been categorically stated that the Sub Area and Station Canteen is established under the Headquarters of Atnkk and G. Area from time to time and the establishment and the staff members of these canteens are governed by the Standing Operating Procedure, promulgated under the Defence Service Regulations which are not statutory in character. It is also

stated that the canteen is controlled by a Committee headed by the respective Sub-Area-Station Commander and the provisions are purchased

and supplied to the entitled persons as per clause (9) of the Standing Operating Procedure. It is further stated that the provisions in these stores will

be available only to the Defence personnel, Ex-Servicemen and Civilians paid from defence Budget and outsiders are not entitled to have the

benefits of the Canteen. It is also stated that the organisation does not come within the definition of "State" and the service is governed by the

contract. In respect of the reasons for termination of the petitioners in W.P. Nos. 2472 to 2474 of 1992, it has been specifically submitted in the

written arguments as follows :-

It is relevant to note that one of the items that is easily made available to the Defence Personnel through the Canteen is liquor. This is an item in

which malpractice could easily be resorted to having regard to the rate at which it is available in the Canteen, unless the person-in-charge of the

Canteen is sincere, honest and trustworthy. In the present case the Board of Inquiry after being fully satisfied about the lapses committed by the

persons concerned, passed orders terminating their services. The recommendations of the Board are worth noticing.

(a) 6 bottles of Shiva Rum which was confiscated by the Canteen Officers must be taken on Wine Ledger Charge.

(b) The liquor found deficiency costing Rs. 295.30 must be recovered from the liquor store holder Shri Ravindran Pillai.

(c) Lapses in the Canteen was attributed to Sri Ravindran Pillai, Mr. Ravikumar and Shri Naziruddin.

Hence, as a result of loss of confidence in the staff of the canteen, the services of the concerned employees have been terminated.

Just as in the case of an enquiry by a Court Martial, the Board of Inquiry has gone into the matter and found the employees guilty of lapses.

The conditions of employment for these Ex-servicemen do not contemplate an enquiry for termination. On the other hand it provides for

termination by one month's notice or payment of salary thereof. The Board of Enquiry therefore has acted in accordance with the terms of

employment and in the circumstances the jurisdiction of this Hon"ble Court under Art. 226 cannot be invoked.

7. Learned single Judge has accepted the contention of the respondents in the writ petition that the canteen in question is not a State, nor it is a part

of Defence Establishment of the Government. However, the learned single Judge has taken the view that as the Organisation, though a voluntary

one, serves, a public purpose, the jurisdiction under Article 226 of the Constitution in the light of the decision of the Supreme Court in *Andi Mukta*

Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, can be exercised

even in respect of any Authority other than Statutory or State Authorities endowed with a public duty, and that the facts of the case also deserve

exercise of such jurisdiction. Learned single Judge has also found that the termination of the services of the petitioners has been effected without

holding any enquiry whatsoever, and in this regard, it has been observed by him as follows :

If the facts of the case are looked at, I have no hesitation to hold that the termination orders against persons who put in a service of several years,

which are impugned in these cases, have got to be set aside, as I am of the view that the monstrosity of the situation and other exceptional

circumstances of these cases necessitate the issuance of writ in these cases.

In the light of the observations contained in *Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others*, the learned Judge held as follows :

If the impugned order are tested at the backdrop of the dicta laid down by the Supreme Court cited *supra*, there cannot be any doubt that the

minimum requirement of principle of natural justice has not been followed in these cases.

More so, I do not think that the respondents can escape by saying that (sic) is purely contractual in nature and that no writ can issue. When the

petitioners have been in service for a very long number of years, as I have stated above to throw them out of employment without any enquiry with

the aid of para 36 of the Standing Operating Procedure, in my view, is wholly arbitrary and against public policy. The view I take, I do not think it

is necessary to consider all the decisions cited by the learned Additional Central Government Standing Counsel, both in his arguments as well as in

the written submissions. As such, the impugned orders are set aside and the writ petitions shall stand allowed. If the respondents want to pursue

the action, it is open to them to take action afresh, after calling for explanation and held enquiry if they so desire. However, there will be no order

as to costs in these writ petitions.

8. Before us, it is not contended that the Organisation in question which is running the canteen in which the petitioners were employed is a State or

part of the Defence Department of the Government of India. It is also not the case of the respondents in the appeals viz. petitioners in the writ

petitions. However, the case of the petitioners is that as the canteen is run by the Organisation of the Officers of the Defence Department for the

benefit of the Defence Officials, it is amenable to writ jurisdiction and the learned single Judge is justified in exercising the jurisdiction. If it is not a

part of the Defence Department of the Government of India, nor it is a State or Statutory Body, and it is only a voluntary organisation constituted

for the purpose of serving the needs of the Defence Official, the Canteen run by such Associations cannot be held to be one either established or

controlled by the State or Union Government. Therefore, during the course of the arguments, a specific question arose and for that purpose the

hearing of the case was also adjourned to find out whether the establishment in question does or does not come under the Tamil Nadu Shops and

Establishments Act, 1947, hereinafter referred to as "the Act."

9. After examining the provisions contained in the Act, it was submitted that the organisation in question does not fall under the exempted

categories as enumerated in Section 4 of the Act. If that be so and if the canteen in question comes within the definition of "establishment" as

defined in the Act, there will be no difficulty in holding that the canteen will be governed by the Act. The Act applied to the whole of Tamil Nadu

and by a notification u/s 1(3)(a) of the Act, the City of Madras has also been brought under the purview of the Act. The canteen in question is

situated within the limits of the city of Madras. The expression "establishment" has been defined under S. 2(6) of the Act as follows :-

"establishment means a shop, commercial establishment, restaurant, eating house, residential hotel, theatre, or any place of public amusement or

entertainment and includes such establishment as the State Government may by notification declare to be an establishment for the purposes of this

Act;

From the aforesaid definition, it is clear that the Canteen in which articles required for Defence Officials are sold is a shop which comes within the meaning of "establishment". If that be so, the employees of the establishment can be removed only as per the provisions contained in Section 41(1)

of the Act which reads thus :

41. Notice of dismissal. - (1) No employer shall dispense with the services of a person employed continuously for a period of not less than six

months, except for a reasonable cause and without giving such person at least one month's notice or wages in lieu of such notice, provided

however, that such notice shall not be necessary where the services of such person are dispensed with on a charge of misconduct supported by

satisfactory evidence recorded at an enquiry held for the purpose.

Section 41(2) provides for appeal to the Authority.

10. Therefore, the question for consideration is as to whether in the light of the provisions contained in the Act, the order passed by the learned

single Judge can be sustained. As the petitioners in the writ petition have a right of appeal against the order of termination or dismissal of a person.

In the case of the petitioners in W.P. No. 18464 of 1991, respondent in W.A. No. 918 of 1993, the termination of their services is termination

simpliciter without any reason given therefore and by paying one month's wages. Section 41, says that the services of a person who had been

employed continuously for a period of not less than six months, shall not be dispense with, except for a reasonable cause and without payment of

one month's wages in lieu of one month's notice. That they have been paid one month's wages is not in dispute. No doubt, in the order or

termination, no reason has been given for terminating their services, but in the counter-affidavit it has been stated that the petitioners did not make

the security deposit of Rs. 300/- and execute the personal bond for Rs. 5000/- in favour of the Manager, Sub Area Canteen, that as per the

Standing Operating Procedure, security bond must be executed by the employer and if he fails to execute, he becomes a defaulter. It is also further

contended that their services were temporary. Thus, the legality or illegality of the order of termination of the petitioners in W.P. No. 18464 of

1991 is a matter which has to be investigated by the Appellate Authority.

11. As far as the petitioners in W.P. Nos. 2472 to 2474 of 1992 are concerned,

the orders of termination specifically say that they were guilty of certain misconduct; therefore, their services were terminated. In such a case, in the light of what has been observed by the learned single Judge and also in view of the specific provisions contained in Section 41(1) of the Act, that no notice is necessary where the services of any person are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an enquiry held for the purpose, whether it would be necessary to drive them to approach the Appellate Authority by preferring appeals has to be considered. No doubt, alternative remedy is always considered a circumstances to be taken into consideration for denying relief under Article 226 of the Constitution or declining to exercise the jurisdiction under Article 226, but it is never a bar for exercise of that jurisdiction in deserving case. In a case where on the face of it, it is noticed that the order of termination on the ground of misconduct has been issued without recording any evidence and without holding any enquiry and without giving any opportunity to the employee and the aggrieved persons, namely the petitioners have filed writ petitions and are waiting for a long time, to direct them to approach the Appellate Authority would be unjust and would result in denying justice. At the same time, it would not also be just and proper to close the enquiry against them. Therefore, the interests of the employer and the employee can be protected in such a case, if on quashing the orders of termination, the employer is given liberty to hold an enquiry afresh and decide the misconduct alleged against the employee.

12. For the reasons stated above, these writ appeals are disposed of in the following terms :

(i) The common order dated 13-7-1993 passed by the learned single Judge in W.P. Nos. 18464/91 and 2472 to 2474 of 1992, in so far as it relates to the petitioners in W.P. No. 18464 of 1991, is set aside. W.A. No. 918 of 1993 is allowed. The petitioners in W.P. No. 18464 of 1991 are permitted to file appeal before the Appellate Authority under the Act within a period of 30 days from today i.e., 5-9-94. If they file appeals within the aforesaid period, the Appellate Authority shall entertain the appeal and decide it on merits and in accordance with law, and without going into the question of limitation. All the contentions of both sides are left open.

(ii) The common order dated 13-7-1993 in so far as it relates to the petitioners

in W.P. Nos. 2472 to 2474 of 1992 for the reasons stated by us is confirmed. W.A. Nos. 915 to 917 of 1993 are dismissed. However, liberty is reserved to the appellants/respondents in the writ petitions to hold an enquiry against these writ petitioners in accordance with law and in the light of the observations made in this judgment.

(iii) There will be no order as to costs.

13. Order accordingly.