

(1985) 04 MAD CK 0010

In the Madras High Court

Case No : Writ Petition No. 5575 of 1981

E.G. Abdul Dawood

APPELLANT

Vs

Director of Industries and Commerce and Others

RESPONDENT

Date of Decision : 01-04-1985

Acts Referred:

Constitution of India, 1950 — Article 226

Probation of Offenders Act, 1958 — Section 12, 4(1)

Citation : (1986) 1 LLJ 399

Hon'ble Judges : V. Ratnam, J

Bench : Single Bench

Judgement

1. In this writ petition, the petitioner has prayed for the issue of a writ of certiorari to quash the order of the dismissal of the petitioner from service

passed by the first respondent and confirmed by the second respondent. The petitioner, a Commerce Graduate, was appointed on 27th

September, 1961, as the Secretary to the Talainayar Brick Workers Industrial Co-operative Society in Mayavaram Taluk, after having been

selected by the Tamil Nadu Public Service Commission and undergoing training as Supervisor of Industrial Co-operatives. While the petitioner

was discharging his duties in his capacity as Secretary aforesaid, certain charges under Ss. 409 and 477A, I.P.C. were framed against the

petitioner and the President in C.C. Nos. 235 and 236 of 1969 in the Court of the Additional First Class magistrate, mayuram, on the audit party

detecting shortage in the cash for the supply of bricks effected by the Society. The learned Magistrate found that the President as well as the

petitioner were both not guilty of the charge under S. 477A, I.P.C. and acquitted them of that charge. However, the petitioner was found guilty of

the charge under S. 409, I.P.C. and sentenced to undergo rigorous imprisonment for one year and also to a fine of Rs. 500. The petitioner preferred an appeal in C.A. 32 of 1970 before the Sessions Court, East Thanjavur. In that appeal, no argument was addressed on behalf of the petitioner on the merits of the case, but a strong plea was put forth for a reconsideration of the question of sentence. Taking into account the youth of the petitioner, the making good of the entire money lost to the Society by the petitioner, the absence of any previous conviction and the fact that the petitioner had spent a few days in jail and also his running risk of even losing his job, the learned Sessions Judge, while confirming the conviction, directed the petitioner to be released under S. 4(1) of the Probation of Offenders Act, on his executing a bond for Rs. 1,000 with one surety for a like sum to appear and receive assistance whenever called upon during a period of two years and to keep meanwhile peace and be of a good behaviour. The learned Session Judge also observed that the petitioner shall not suffer any disqualification on account of this under S. 12 of the Probation of Offenders Act. Based on the conviction of the petitioner, the departmental authorities arrived at a provisional conclusion to dismiss the petitioner from service and the petitioner was asked to show cause. After examining the reply of the petitioner, he was dismissed from service by order dated 6th April, 1971. The petitioner preferred an appeal to the Government against the order of dismissal and on the advice of the Tamil Nadu Public Service Commission, the Government set aside the order of dismissal of the petitioner and directed the initiation of fresh proceedings. Thereafter, on 8th November, 1975, the petitioner was asked to show cause under R. 17(c)(i)(1) of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules, as to why he should not be dismissed from service. The explanation submitted by the petitioner was examined and found to be not acceptable and again, the petitioner was dismissed from service on 27th January, 1976 against which the petitioner preferred an appeal and the Government set aside the order of dismissal and directed de novo proceedings should be taken on the basis of facts which had resulted in the conviction of the petitioner in the criminal Court. Thereupon, the petitioner was asked to show cause why he should not be dismissed from service on the basis of those facts which led to his conviction on the ground that he had misappropriated the funds of the

Society. The petitioner submitted his explanation and the first respondent, on a consideration of the same, found that the acts of misappropriation

of Society's funds committed by the petitioner were serious and the punishment of dismissal was justified. Accordingly, the petitioner was

dismissed from service with effect from 20th August, 1977. Against that order, the petitioner preferred an appeal to the second respondent. By

G.O.Ms. No. 948 Industries Department, dated 31st August, 1978 the second respondent took the view that there is nothing wrong or illegal in

initiating departmental action against a person who had been released under S. 4 of the Probation of Offenders Act, 1958 and that the dismissal of

the petitioner from service was quite in order and did not merit any interference in appeal. Consequently, the appeal was dismissed as devoid of

merits. It is the order of the dismissal of the petitioner passed by the first respondent and confirmed by the second respondent that is challenged in

this writ petition.

2. The only contention urged by the learned Counsel for the petitioner is that the petitioner had been in the course of the criminal proceedings

released under S. 4 of the Probation of Offenders Act (hereinafter referred to as the Act) with the observation that the petitioner should not suffer

any disqualification under S. 12 of the Act and therefore, the initiation of departmental proceedings against the petitioner leading to his dismissal

from service is not sustainable. Reliance in this connection was placed by the learned Counsel for the petitioner upon the decision reported in Iqbal

Singh Vs. Inspector-General of Police and Others, and certain observations in P. Embaru Vs. The Chairman, Madras Port Trust, . On the other

hand, the learned Additional Government Pleader pointed out that the release of the petitioner on probation does not either obliterate the stigma of

a conviction of preclude the initiation of further departmental proceedings against an erring officer on the basis of the facts leading to the conviction.

Strong reliance in support of this was placed by the learned Additional Government Pleader (writ) upon a decision of the Supreme Court in the

Divisional Personnel Officer, Southern Railway v. T. R. Chellappan 1976-I LLJ 62.

3. Thus while according to the learned Counsel for the petitioner, an order passed under S. 4 of the Act completely washes out and obliterates the

stigma of conviction on which the subsequent departmental proceedings are

based, the learned Counsel for the respondent maintains that it is only a case of substitution of sentence without in any manner affecting the factum of guilt so that the stigma continues to remain as before and a finding of misconduct can undoubtedly be rested on such a conviction. A perusal of the provisions of the Act establishes that the release of an accused person on probation does not in any manner affect the stigma attaching to a conviction. This is well made out by Ss. 3, 4(1) and 9(3) and (4) of the Act. The very order of release on probation springs into existence after the accused is found guilty and convicted of the offence with which he is charged. Indeed, before a person is ordered to be released on probation, a finding that he is guilty of the offence with which he has been charged ought to be recorded and such a finding of guilt cannot be obliterated by the order of release on probation. In other words, the order of release on probation is only in substitution of the sentence to be imposed by the Court and that has been rendered possible by the provisions of the statute. From the provisions of the Act referred to earlier, it is seen that the idea behind the release of youthful offenders on probation is to prevent them from becoming confirmed and hardened criminals and with a view to retain the control of the criminal Court over them so that when such persons break conditions of the bond, they can be reached and punished for the offence with which they had been charged. This being the object of the order for release made under the Act, it cannot be equated to a total wiping out of the factum of guilt of the person charged with the offence. Therefore, the order passed by the Sessions Court releasing the petitioner on probation does not in any manner obliterate or affect the stigma of conviction.

4. The question that next arises is whether S. 12 of the Act will have the effect of obliterating the conviction and wiping out the disqualification attaching to the conviction in respect of an offence with which a person has been charged. S. 12 of the Act runs as follows :

Removal of disqualification attaching to conviction - Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of S. 3 or S. 4 shall not suffer disqualification, if any, attaching to conviction of an offence under such law :

Provided that nothing in this section shall apply to a person who, after his release

under S. 4 is subsequently sentenced for the original offence.

5. The use of the words "attaching to a conviction of an offence under such law" is significant. What is contemplated is a disqualification flowing out

or resulting from a conviction and such disqualification should be provided by some law other than the Act. Besides, the word "disqualification"

occurring in S. 12 is very different in its connotation from the word "misconduct". Unless so provided by the statute, a misconduct does not

automatically result in a disqualification, for, depending upon the facts and the circumstances and on proof of the misconduct, it may or may not

lead to a disqualification. Therefore, S. 12 of the Act can be understood as referring only to such disqualifications mentioned in other enactments

regarding holding of offices or for purposes of contesting elections etc. Indeed, in *R. Kumaraswami Aiyar Vs. The Commissioner, Municipal*

Council and Another, , *Rajagopala Ayyangar J.* as he then was pointed out that the possibility of disciplinary proceedings being taken against a

person found guilty is not a disqualification attaching to the conviction within the meaning of S. 12-A of the Probation of Offenders Act. A Full

Bench of the Punjab and Haryana High Court in *Om Prakash Vs. The Director Postal Services (Posts and Telegraphs Department), Ambala and*

Others, : laid down that the departmental proceedings are not taken and pursued because of the conviction, but against the original misconduct of

the Government servant and that no part of S. 12 is intended to exonerate a Government servant of his liability to departmental punishment for

misconduct. The basis of punishment, according to the Full Bench, is not the conviction, but the misconduct. To similar effect is the decision of a

Full Bench of the Delhi High Court in *Director of Postal Services v. Daya Nand*, 1972 Serv. LR 325 : All the aforesaid decisions and the decisions

of other High Courts as well have been elaborately considered by the Supreme Court in the *Divisional Personnel Officer. Southern Railway v. T.*

R. Chellappan (supra) and it has been pointed out that an order of release on probation does not wash or obliterate the finding of the Court that a

person is guilty. Such a finding is a sine qua non for releasing the offender on probation and further that S. 12 of the Act refers to such kinds of

disqualifications as are expressly referred to in other statutes and it does not bring about an automatic disqualification attaching to the conviction

itself. In view of this clear pronouncement of the Supreme Court, it is not possible to accept the contention of the learned Counsel for the petitioner

that as a result of the release of the petitioner on probation under the provisions of the Act, the stigma got obliterated or that S. 12 of the Act could

be taken advantage of by the petitioner to claim that departmental or disciplinary proceedings ought not to have been initiated and pursued against

him. As pointed out earlier, the departmental enquiry is in respect of the misconduct of the petitioner in having misappropriated the funds of the

Society and the conviction in the Sessions Court did not operate as an automatic disqualification resulting in the dismissal of the petitioner. That

was also the reason why on two former occasions the orders of dismissal of the petitioner from service were set aside and show cause notice was

issued and then the proceedings were initiated and completed against the petitioner. This also establishes that the petitioner had not been

proceeded against on the footing that he had suffered an automatic disqualification as it were. In this view of the matter and in the light of the

decision of the Supreme Court, it is really unnecessary to refer to the decisions relied on by the learned Counsel for the petitioner in *Iqbal Singh v.*

Inspector General of Police, Delhi (supra), and *P. Embaru v. Chairman, Madras Port Trust (supra)*. Suffice it to point out that the decision in *Iqbal*

Singh v. Inspector General of Police (supra) had been overruled by a later decision of the Full Bench of the Delhi High Court in the *Director of*

Postal Services v. Daya Nand, (supra) and the observations in the decision in *P. Embaru v. Chairman, Madras Port Trust (supra)* do not in any

manner support the contention of the petitioner. In any event, those observations cannot be taken advantage of in view of the clear enunciation by

the Supreme Court of the principles applicable in such cases. On a due consideration of the matter, the departmental proceedings against the

petitioner were rightly taken and pursued resulting in his dismissal from service by an order passed by the first respondent which has also been

confirmed by the second respondent. No infirmity attaches to that order which merits correction in the exercise of the powers of this Court under

Act. 226 of the Constitution. Consequently, the rule nisi is discharged and the writ petition is dismissed. There will however be no order as to

costs.