

(1970) 01 MAD CK 0027
In the Madras High Court

E.S. Athithyaraman

APPELLANT

Vs

The Commissioner, Hindu Religious and Charitable
Endowments (Administration) Department

RESPONDENT

Date of Decision : 21-01-1970

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1970) 2 MLJ 614

Hon'ble Judges : M.M. Ismail, J

Bench : Single Bench

Judgement

M.M. Ismail, J.—The petitioner joined the service of the Hindu Religious Endowments Board on 1st April, 1949 . He was confirmed in the cadre of clerk on 10th October, 1960. The post of Inspector also belonged to that cadre. He was promoted to the cadre of Upper Division Inspector on 1st April, 1961, and confirmed in the said cadre of Assistants, including Inspectors, from 1st July, 1966. When the petitioner was functioning as Inspector, Dharapuram, from 5th May, 1958 to 3rd November, 1959, he was alleged to be guilty of certain irregularities in the discharge of his duties. Consequently, on 14th April, 1960, the Assistant Commissioner, Hindu Religious and Charitable Endowments Board (Administration Department), Coimbatore, framed four charges against the petitioner and called upon him to submit his explanation within three weeks from the date of the receipt of the charges on 25th May, 1960, the petitioner submitted his explanation with reference to the said charges. By a . communication dated 6th February, 1961, the said Assistant Commissioner required the petitioner to state within fifteen days from the receipt of the communication whether he desired an oral enquiry or only to be heard in person. Not having received any reply from the petitioner, the Assistant Commissioner sent a reminder on 5th March, 1961 asking the petitioner to acknowledge the receipt of the communication dated 6th February, 1961. On 16th March, 1961 the petitioner acknowledged the receipt of the communication dated 6th February, 1961. Notwithstanding this acknowledgment, the petitioner did not

inform the Assistant Commissioner whether he wanted an oral enquiry or to be heard only in person. Under these circumstances, the Assistant Commissioner on 30th September, 1961, came to the conclusion, as a result of a perusal of the explanation of the petitioner and the records, that the charges framed against the petitioner were established. He was of the view that, as punishment, increment might be stopped for a period of one year with cumulative effect and he also recommended that the Commissioner might be addressed to revert the petitioner as a clerk and never to post him as Inspector in view of the fact that he was thoroughly unreliable. The Assistant Commissioner, Hindu Religious and Charitable Endowments (Administration Department), Tirunelveli, sent a communication dated 19th October, 1961, enclosing a copy of the report of the Assistant Commissioner, Coimbatore, and stating:

The following punishments have been proposed to be awarded:

- (i) To withhold the increment for one year with cumulative effect ;
- (ii) To revert the incumbent as clerk and never to post him as Inspector as he is thoroughly unreliable.

Sri E. S. Athithyaraman, Inspector, Tuticorin, is requested to show cause within one month from the date of receiving this communication why the abovesaid two punishments should not be awarded to him. If no explanation is received within the stipulated time, orders will be passed on materials available.

2. This communication came to be sent by the Assistant Commissioner, Tirunelveli, because at that time the petitioner was working under him as Inspector, Tuticorin. The petitioner sent his explanation on 14th December, 1961, with reference to the findings of the Assistant Commissioner, Coimbatore. Subsequent to this date till August, 1965, the petitioner did not hear anything about the matter. However, during this interval, by an order dated 1st April, 1963, the temporary promotion of the petitioner to the post of Upper Division Clerk was regularised with effect from 1st April, 1961. While so, the petitioner on 25th August, 1965, received a communication, dated 20th August, 1965 from the Assistant Commissioner, Ramanathapuram at Madurai, since the petitioner was at that time working as Inspector, Sivaganga. The said communication is as follows:

Sub : Disciplinary proceedings--against Sri E.S. Athithyaraman former Inspector--Dharapuram Devasthanam--Charges framed--Explanation--Enquiry--Notice Sent.

Re : 1. From the Assistant Commissioner, Hindu Religious and Charitable Endowments, Coimbatore Rc. No. 1903/61-A-1, dated 30th September, 1961,

2. Rc. No. 10931/61-A-5, dated 19th October, 1961, of the Assistant Commissioner, Tirunelveli, issued to Sri E. S. Athithyaraman, former Inspector, Tuticorin.

3. From Sri E. S. Athithyaraman, Explanation dated 14th December, 1961, and

other connected records.

An enquiry into the above matter will be held by the Assistant Commissioner, Ramnad at Madurai at his office, at 9, Gokhala Street, Tallakulam, Madurai-2, at 3 p.m. on 1st September, 1965. Sri E. S. Athithyaraman, now Inspector, Hindu Religious and Charitable Endowments, Sivaganga, is required to appear before the Assistant Commissioner at the time of enquiry on the abovesaid date.

3. The petitioner appeared before the said Assistant Commissioner as required by the said communication, on 1st September, 1965, but no enquiry as mentioned in the said communication was conducted by the Assistant Commissioner. Subsequently by an order dated 5th July, 1966, the Commissioner confirmed the petitioner in the cadre of Assistant (including Inspector) from 1st July, 1966. Thereafter a communication dated 4th November, 1967, was sent by the Commissioner, Hindu Religious and Charitable Endowments (Administration Department), Madras, calling upon the petitioner to show cause why the punishment of reduction from the rank of Assistant (including Inspector) to that of clerk should not be imposed on the petitioner. This communication referred to the finding of the Assistant Commissioner, Coimbatore, dated 30th September, 1961, and the explanation of the petitioner dated 14th December, 1961. On 18th December, 1967, the petitioner sent his explanation. In that explanation he pointed out that inasmuch as the Commissioner had found that all the charges had been proved and as it was unlikely that the Commissioner would arrive at the finding of "not guilty" on repetitious contention, and the opportunity given to the petitioner was also limited in its scope, he was anxious to plead for the reduction in the quantum of punishment proposed. He also stated that he had already submitted his explanation to the charges on 25th May, 1960, and a further explanation on 14th December, 1961, denying the charges categorically and he craved leave of the Commissioner that the said explanation might be read as part and parcel of his representations. He once again pleaded that the charges did not stand scrutiny. After considering this explanation of the petitioner, the Commissioner, on 10th July, 1968, passed an order reducing the petitioner from the rank of Assistant (including Inspector) to that of a clerk. The Commissioner pointed out that the charges had been completely examined by the Assistant Commissioner and after going through the explanation submitted by the delinquent (petitioner herein) the Assistant Commissioner had come to the conclusion that all the charges had been proved. He was, further, of the view that a careful reading of the findings of the Assistant Commissioner, Coimbatore, dated 30th September, 1961, established beyond doubt that the petitioner had not only been negligent in his duties, but, on the contrary, he was submitting reports without any reference to the real facts and that he was also suppressing facts. It is to quash this order of the Commissioner the present writ petition under Article 226 of the Constitution of India has been filed.

4. The learned Counsel for the petitioner primarily relied upon two circumstances and grounds in support of this writ petition. The first circumstance is that prior to

the arrival of the provisional conclusion by the Assistant Commissioner, Tirunelveli, there was no enquiry conducted by the said Assistant Commissioner into the charges levelled against the petitioner. The second circumstance is, as I pointed out already, that the petitioner was called upon to show cause against the proposed punishment by a communication dated 19th October, 1961, and the petitioner sent his explanation dated 14th December, 1961. ; subsequently for a period of more than three and a half years nothing was heard about the matter by the petitioner, when on 25th August, 1965, he received a communication dated 20th August, 1965, from the Assistant Commissioner, Ramanathapuram at Madurai, to the effect that an enquiry would be conducted at 3 p.m. on 1st September, 1965 ; even when the petitioner was present for the enquiry, no enquiry was actually conducted by the Assistant Commissioner, and thereafter the next thing the petitioner heard was the communication of the Commissioner dated 4th November, 1967, proposing to impose the penalty of reduction in rank on the petitioner. With reference to these facts the contention of the petitioner is that, as between 14th December, 1961, when he submitted his explanation to the show cause notice against the proposed punishment and 20th August, 1965, the date of the communication from the Assistant Commissioner of Ramanathapuram at Madurai, stating that an enquiry would be held, more than three and a half years had elapsed ; even subsequently no enquiry was held and more than two years had elapsed between the said communication dated 20th August, 1965, of the Assistant Commissioner of Ramanathapuram at Madurai and the notice of the Commissioner dated 4th November, 1967, proposing a punishment of reduction in rank. These circumstances clearly show that there had been an inordinate delay on the part of Department to proceed with the matter and in the circumstances of the case, this delay, coupled with certain other features to which I shall refer immediately, showed that his explanation dated 14th December, 1961, must be deemed to have been accepted by the Assistant Commissioner, and, therefore, of time. I proceedings were dropped and could not be revived after a long lapse the entire shall deal with these contentions immediately.

5. As far as the first contention is concerned, as I pointed out already, admittedly there was a communication dated 6th February, 1961, sent by the Assistant Commissioner, Coimbatore calling upon the petitioner to state whether he desired an oral enquiry or only to be heard in person. Notwithstanding the acknowledgment of the receipt of this communication, the petitioner did not send any reply to that communication and, therefore, the Assistant Commissioner proceeded to deal with the matter without conducting an enquiry, on going through the files and on going through the explanation of the petitioner, dated 25th May, 1960. The petitioner's contention is that, whether he wanted an enquiry or not, it was the duty of the Assistant Commissioner to have conducted an enquiry, though it may be an ex parte enquiry, but no such enquiry was actually conducted in this case. The learned Counsel wanted to reinforce this contention by reference to the fact that the Assistant. Commissioner,

Coimbatore, in his report dated 30th September, 1961, had relied on his own personal knowledge with regard to certain explanation offered by the petitioner and in that context it was certainly the duty of the Assistant Commissioner to have given an opportunity to the petitioner by conducting an enquiry. I see considerable force in this submission of the learned Counsel. But that is not all. Whether the petitioner wanted an enquiry or not, at the stage when the Assistant Commissioner called upon him to state whether he wanted an oral enquiry or only to be heard in person, admittedly on 20th August, 1965, the Assistant Commissioner of Ramanathapuram at Madurai, offered to conduct an enquiry into the matter and pursuant to this notice, dated 20th August, 1965, the petitioner was present for the enquiry on 1st September, 1965, but no enquiry was actually held. Therefore, irrespective of the whether the petitioner wanted enquiry or not, the departmental officers themselves offered to conduct an enquiry, and once they had made that offer, there was absolutely no justification whatever to go behind that offer and not to conduct an enquiry. There is no explanation whatever on the part of the respondent as to why an enquiry was not conducted in spite of the fact that on 20th August, 1965, an offer was made by the Assistant Commissioner of Ramanathapuram at Madurai to conduct an enquiry, I have extracted that notice in full so that it may be seen from that notice that the enquiry referred to was a general one and not confined to the quantum of the punishment. Therefore, the contention of the learned Counsel for the petitioner that no enquiry was conducted and that vitiated the impugned order of the respondent is well-founded in the circumstances of this case. Hence, I uphold the contention of the petitioner in this behalf.

6. As far as the second contention is concerned, admittedly there had been a delay of more than three and a half years in between 14th December, 1961, when the petitioner sent his explanation to the show cause notice against the proposed punishment and the notice dated 20th August, 1965, of the Assistant Commissioner of Ramanathapuram at Madurai, offering to conduct an enquiry. There is no explanation whatever in the counter affidavit for this delay of more than three and a half years. Even after the petitioner appeared for the enquiry on 1st September, 1965, for more than two years, nothing was heard about the matter, when suddenly on 4th November, 1967, the Commissioner sent a notice to the petitioner calling upon him to show cause against the proposed punishment. Such a long delay in this matter, coupled with certain other circumstances, clearly leads to the conclusion that the respondent must be deemed to have dropped the entire proceeding.

7. The other circumstances to which I want to refer are : (i) even after the charge was framed against the petitioner, on 24th March, 1961, the petitioner was promoted temporarily to act as Upper Division Clerk with effect from the forenoon of 1st April, 1961, under Rule 39 (a) (i) of the Madras State and Subordinate Services Rules. Subsequently after the petitioner had sent his explanation dated 14th December, 1961, an order was passed on 1st April, 1963 regularising the temporary promotion of the petitioner with effect 1st April, 1961.

It must be noticed that when this order dated 1st April, 1953, was passed, the petitioner had already submitted his explanation dated 14th December, 1961, to the show cause notice against the proposed punishment and, notwithstanding, that, this order did not say that the regularisation was subject to the result of the disciplinary proceedings pending against the petitioner. Secondly on 5th July, 1966, the petitioner was confirmed in the cadre of Assistant (including Inspector) from 1st July, 1966. Even this order did not state that the confirmation was subject to the result of the disciplinary proceedings pending against the petitioner. These two orders, coupled with the long delay and the absence of any explanation whatever for the long delay, will lead to a reasonable inference that the petitioner was entitled to proceed on the basis that his explanation dated 14th December, 1961, was accepted by the Department and, therefore, the entire proceedings were dropped. It is needless for me to point out that, in matters of disciplinary proceedings against a Government servant, whether the Government servant is kept under suspension or not, the proceedings must be concluded as expeditiously as possible and should not be permitted to hang as Damocles sword over his career so that suddenly one day after a lapse of several years the Government servant may be told that as a result of the disciplinary proceedings his service conditions have been affected adversely to him. In this case in between 14th December, 1961, and the final order dated 10th July, 1968, there had been a lapse of nearly seven years and during that period the petitioner had been acting in the post of Upper Division Inspector to which post he had been first temporarily appointed and subsequently regularised and still subsequently confirmed. Consequently I am of the view that the most elementary precaution of concluding the disciplinary proceedings against a Government servant as expeditiously as possible has not been taken in this case and there is no acceptable explanation whatever for the inordinate delay between the explanation of the petitioner dated 14th December, 1961, and the final order passed on 10th July, 1968. The counter-affidavit attempted to state that in 1964 the Government passed orders as to who should be the competent authority to pass orders in such matters, but even that order of 1964 does not explain the delay between 1961 and August, 1965, when the Assistant Commissioner of Ramanathapuram at Madurai issued the communication to the petitioner offering to conduct an enquiry. Therefore, I am satisfied that, with reference to the facts and circumstances of this case, the petitioner is entitled to contend that his explanation dated 14th December, 1961, must be deemed to have been accepted by the Department and the proceedings against the petitioner must be deemed to have been dropped and therefore there was no justification thereafter to revive the same and pass the impugned order after such a long lapse of time.

8. This conclusion derives support from a judgment of the Mysore High Court in *Andrews v. District Educational Officer, Bangalore* (1968) Lab. I.C. 756. In that case certain charges were framed against the Government servant concerned in the year 1961 to which the petitioner sent his explanation. Thereafter in March,

1964, charges were again framed against the petitioner, these charges being substantially the same as those that were framed against him in 1961. In that context the Mysore High Court pointed out:

If after the production of this explanation, the disciplinary proceeding was not continued, what should reasonably follow is that the disciplinary authority was satisfied with the explanation and dropped the charges. The strength of that inference receives reinforcement from the fact that it was only after a period of 3 1/2 years that the charges were once again revived. The great and inordinate delay in the revival of those charges and the antecedent discontinuance of the earlier disciplinary proceeding over a long tract of time can have no other meaning than that the disciplinary authority was satisfied with the explanation offered by the petitioner on 24th October, 1961, and that in consequence the proceedings against him were discontinued and abandoned. If that was how the earlier disciplinary proceeding terminated, it was not within the competence of the disciplinary authority to exhume those charges and to make them the subject-matter of another disciplinary proceeding, as late as in the year 1964.

We do not say that it is not permissible for a disciplinary authority to discontinue a disciplinary proceeding and start another in respect of the same matter, if there be a defect or other analogous reason for the discontinuance of one proceeding and for the commencement of another. But that was not what happened in the case before us.

9. These observations of the learned Judges of the Mysore High Court are clearly to the point in the present case and, therefore, I am of the view that the impugned order in this case cannot be sustained. I may make it clear that, if there had been an acceptable explanation for the long delay involved in the case and the petitioner during that interval had been told that the disciplinary proceedings were kept alive and had not been dropped, the position may be different. I have already pointed out that subsequent to the framing of the charges, the petitioner was temporarily promoted with effect from 1st April, 1961 and subsequent to the receipt of the explanation of the petitioner, dated 14th December, 1961 the petitioner's service as Upper Division Inspector was regularised, and lastly as late as in 1966 the petitioner's promotion as Upper Division Inspector was confirmed. From these circumstances a reasonable inference can certainly be drawn that the explanation of the petitioner, dated 14th December, 1961 was accepted and the disciplinary proceedings against the petitioner were dropped.

10. One of the contentions put forward in the counter-affidavit in answer to the claim of the petitioner is that the petitioner has an alternative remedy by way of appeal to the Government. Certainly the existence of an alternative remedy is a matter to be taken note of by the Court in the exercise of its discretion under Article 226 of the Constitution. However, in view of the facts of this case, which are glaring, I do not think that the existence of an alternative remedy should stand in the way of the petitioner getting the relief to which he is entitled to in

this writ petition.

11. Consequently, this Writ Petition is allowed, and the impugned order of the Commissioner is quashed. There will be no order as to costs.