

(2011) 06 MAD CK 0243

In the Madras High Court

Case No : Writ Petition No. 37959 of 2005 and O.A. No. 4595 of 2002

G. Murugesan

APPELLANT

Vs

The Principal Dr. Ambedkhar Govt. Law College

RESPONDENT

Date of Decision : 07-06-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2)

Tamil Nadu Government Servants Conduct Rules, 1973 — Rule 14, 14(3)

Citation : (2011) 7 MLJ 1153

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Krishnaswamy, for the Appellant; R. Murali, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—The Petitioner filed Original Application in O.A. No. 4595 of 2002 before the Tamil Nadu Administrative Tribunal challenging the order of removal dated 24.05.2002 of the Respondent.

2. The Tribunal admitted the Original Application and ordered notice. Pending the Original Application, no interim order was granted to the Petitioner though a prayer to that effect was made by him. On notice from the Tribunal, the Respondent has filed a reply affidavit dated 20.01.2003.

3. In view of the abolition of the Tribunal, the matter stood transferred to this Court and was renumbered as W.P. No. 37959 of 2005.

4. Heard the arguments of Prof. S. Krishnaswamy, learned Counsel for the Petitioner and Mr. R. Murali, learned Government Advocate appearing for the Respondent.

5. The facts leading to the termination of the Petitioner are as follows:

(a) The Petitioner was employed as a Last Grade Government Servant in the

Respondent College with effect from 28.02.1970. He completed his probation on 28.02.1971. Subsequently, he was promoted as Record Clerk on 21.12.1977. He was confirmed in the post of Office Assistant on 04.01.1977. Subsequently, he was demoted from the post of Record Clerk to the post of Office Assistant on 12.02.1987.

(b) While he was working as an Office Assistant, a charge memo was framed for violation of Rule 14 of the Tamil Nadu Government Servants' Conduct Rules, 1973. The Petitioner was allegedly found that he became a President of International Rajiv Gandhi Welfare Association and Member of the Vayalur Village Congress Committee, Ponneri Taluk. He had also signed as an acting Member of the said party. Since the Petitioner was shown to be an active Member of a political party, he had contravened Rule 14 of the Tamil Nadu Government Servants' Conduct Rules, 1973.

(c) The said fact was brought to the notice of the Director of Legal Studies by the Government vide letter dated 25.07.2001. Accordingly, the Respondent Principal was directed to initiate disciplinary proceedings against the Petitioner.

(d) The Petitioner was given a show cause notice dated 29.10.2001 asking the Petitioner as to why disciplinary action should not be taken against him. The basis for the said action was the letter addressed by the Petitioner to the then President of India and copies marked to various officers. It was further pointed out that the Petitioner had made abusive remarks against the Office Manager Mr. N.S. Prabhakara Rao.

(e) The Petitioner gave his explanation dated 01.11.2001 and as the explanation was not satisfactory, an enquiry was ordered to be conducted by two Professors viz., Mr. V. Subramanian, Lecturer (Selection Grade) and Mr. J. Vincent Comraj, Lecturer (Senior Grade).

(f) The Petitioner was given an enquiry notice to attend the enquiry on 23.11.2001. In that enquiry, on behalf of the Respondent college, Ms. Saraswathi, an Assistant was examined. Through her, 11 documents were filed and formally marked as exhibits. The Petitioner did not cross examine the said witness. But he had stated that since no witnesses were examined, he may have a barring on the case. On the basis of these materials, the two enquiry officers found that the Petitioner had contravened the Tamil Nadu Government Servants' Conduct Rules, 1973. It was also stated that since the Petitioner did not deny the charges, they were deemed to be proved. The enquiry officers submitted their report dated 04.02.2002.

(g) Based on the enquiry report, the Petitioner's further explanation was called for and he has also submitted his explanation on 03.04.2002.

(h) On receipt of the enquiry report, the Respondent found that since the Petitioner did not deny the charges and the letter sent by him shows that he was a Member of the political party were proved, his final explanation was also highly

unsatisfactory and reprehensible and it does not show any change of art in his side. The Petitioner's continuous presence in Government service is against public interest and therefore, he was ordered to be removed from service.

Challenging the same, the Original Application came to be filed, which was renumbered as the present writ petition.

6. The contention of the Petitioner is that exceeding the limit provided under the Tamil Nadu Government Servants' Conduct Rules, 1973, which cannot result in punishment of removal of service and if a question arose whether the Petitioner's organisation is a political party or it takes part in politics, the decision of the Government shall be final and the organization to which the Petitioner belongs namely International Rajiv Gandhi Welfare Association is not a political party and that he was not a member in any political party. These facts were not appreciated by the Respondent Principal and out of ignorance, the Petitioner was charge sheeted and was also removed from service. The order passed against the Petitioner was contrary to Article 311(2) of the Constitution of India, without prejudice to the same, the punishment given to him is grossly disproportionate to the gravity of the allegations made against the Petitioner.

7. It is in the light of these rival contentions, it has to be seen whether the punishment meted out to the Petitioner was legally justified and even assuming the charges were proved, whether it is grossly disproportionate to the gravity of the allegations made against the Petitioner, no doubt, the Tamil Nadu Government Servants' Conduct Rules, 1973 prohibits the Government servant from holding a membership of any political party. If a particular organisation is a registered political party and recognised by the Election Commission of India, there is no difficulty in arriving at the conclusion that whether a person, in whose allegiance the organisation is functioning and thereby any membership to the said organisation, would amount to taking part in politics and a Government servant is bound to maintain a political neutrality in such circumstances. But in case of any doubt, as rightly contended by the learned Counsel for the Petitioner, the matter will have to be referred to the Government and the Government's decision in that regard alone is final in terms of Rule 14(3) of the Tamil Nadu Government Servants' Conduct Rules, 1973.

8. The Supreme Court in State of Madhya Pradesh Vs. Ramashanker Raghuvanshi and Another, has found that no discrimination can be made in the matter of recruitment of a person into Government service based upon his political ideology. But once he entered into Government service, then the question of his right to engage in any political activities, will be circumscribe by the relevant rules made consistent with the rights guaranteed under Part-III of the Constitution.

9. Excepting referring to the letters sent by the Petitioner, for which an Assistant of the office was examined to formally mark the documents, there is no other evidence against the Petitioner to prove that he was actually a member of a

political party or that he belongs to a political organisation which engaged in political activities. It is no doubt true that the Petitioner did not cross examine the witness on the side of the Department. But even otherwise, a formal evidence could not have spoken anything far or against the issue on hand, considering that the Petitioner was only holding the post of Office Assistant, he should not have done much in the enquiry and he was res-contented to deny the charges leveled against him.

10. It is seen from the original records produced that the two enquiry officers did not go beyond the letters allegedly signed by the Petitioner, so as to record a finding that he was actually a member of a political party, to come within the mischief of Rule 14 of the Tamil Nadu Government Servants' Conduct Rules, 1973. The Petitioner also has not helped in bringing the office bearers of his organisation to speak about the activities of the organisation to which he claims to be the self appointed President. Merely because the organisation functioning in the name of late Prime Minister of India, it does not become automatically a political party. It is also not the case of the Respondents that the Petitioner belongs to a political party or the letter head that he was using in sending representation amounting to political activities. Perhaps the Respondents were really under pressure to take action against the Petitioner because the letter written by him was forwarded by the State Government for an appropriate action and the Director of Legal Studies had also directed the Principal of the Respondent college to conduct an enquiry in that regard. In fact, even the Petitioner's explanation to the enquiry report was also taken exception by the Respondent in inflicting the punishment as can be seen from para 12 of the reply affidavit, which reads as follows:

12. ...In pursuance to the direction given by the Director of Legal Studies, the Principal has sent the enquiry report dated 04.02.2002 to Thiru G. Murugesan, Office Assistant on 2.4.2002 and sought his explanation on the enquiry report within 7 days which was duly received by the applicant Thiru G. Murugesan on 2.4.2002 itself. Instead of giving his explanation to the enquiry report he has sent a presentation to Smt. Sonia Gandhi on 3.4.2002. In this representation, he has stated that the Director of Legal Studies and the Principal should be dismissed from their service and Death Sentence or Sentence of Life Imprisonment should be imposed on them. Further they should be punished as the accused in Rajiv Gandhi Murder Case have been punished. Further he requested that he should be given protection and facilities to continue his political activities without hindrance....

11. On the question of imposition of penalty of ordering removal from service, the Respondent has also not considered the various options open to him consisting with the relevant service rules. The fact that the Petitioner is a Last Grade Government servant, was not considered in the matter of imposition of punishment and on the other hand, in para 27 of the reply affidavit, the Respondent had made the following averment.

27. ... His statements, allegations and requests made in all his letters that his superior officers should be removed from service, punished with imprisonment for a term of 13 years or 13 months, and their properties confiscated and given to him as damages, can never be considered an act of ignorance in any yardstick. This kind of acts amount to a gross misbehaviour and misconduct of a govt servant to which severe punishment is warranted. Therefore, the removal of the applicant is proper, proportionate and justified in the circumstances of the case. The punishment of removal is not excessive....

12. But even in imposing a major penalty, the Respondent had an option of inflicting the compulsory retirement which could have brought him certain terminal benefits though would have kept him away from the work place was not considered by the Respondent. During the pendency of these proceedings, the Petitioner had reached the age of superannuation and the question of his being restored to service will not arise, even if this Court wants to grant any such relief. At the time of filing of the Original Application in the year 2002, it is shown that his age was 52 years and in the normal circumstances, he could have reached the age of superannuation during the year 2008 itself. Therefore, the only question that arises for consideration is whether the Petitioner is entitled for any relief and if so, to what relief that can be granted.

13. The Supreme Court in more than one incident have pointed out that if the punishment imposed is grossly disproportionate, the Court under Article 226 of the Constitution of India can interfere with the punishment and can also order a lesser punishment, if the situation so warrants. It is unnecessary to multiply the decisions and it is enough to refer one or two decisions of the Supreme Court viz., (1) Ranjit Thakur Vs. Union of India (UOI) and Others, and (2) Om Kumar v. Union of India reported in 2001 (2) SCC 386.

14. Though in the normal circumstances in case of disproportionality of punishment, the Court always remits the matter for appropriate consideration. In the present case, since the Petitioner has reached the age of superannuation and this Court also not inclined to restore him to service, and also want the penalty to be on record, the only modification that is possible is that the Petitioner can be allowed to impose with the punishment of compulsory retirement. The punishment of removal from service or compulsory retirement are major penalties under the relevant rules framed and the stand of the Respondent that the Petitioner deserves only order of removal also cannot be accepted.

15. The Supreme Court in B.C. Chaturvedi Vs. Union of India and others, has also held that in a given case this Court can exercise such an extraordinary power.

16. Under such circumstances, the impugned order passed by the Respondent is set aside in so far it relates to the imposition of penalty of removal and it is substituted with the penalty of compulsory retirement.

17. The writ petition is partly allowed to the extent indicated above. The

Respondent is hereby directed to forward the pension proposal of the Petitioner for appropriate sanction of pension and other terminal benefits. This exercise shall be carried out within a period of two months from the date of receipt of a copy of this order. However, the parties are allowed to bear their own costs.