

(1997) 02 MAD CK 0104

In the Madras High Court

Case No : Writ Petition No. 20788 of 1993

Jagadeesan D.

APPELLANT

Vs

Tamil Nadu Water Supply and Drainage Board and Another

RESPONDENT

Date of Decision : 03-02-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 2 LLJ 1024 : (1997) 2 MLJ 87

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : R. Muthukumaraswamy, for the Appellant; R.M. Kannappa Rajendran, for the Respondent

Judgement

1. Aggrieved by the orders of Respondents 1 and 2 whereby the petitioner's service has been terminated has approached this Court for quashing the same as well as for reinstatement with all attendant benefits.

2. The case of the petitioner as seen from the affidavit filed in support of the above writ petition is briefly stated hereunder.

The petitioner entered into the service of the Government as a Junior Engineer in the Public Health and Municipal Engineering Service in the year 1970. The Tamil Nadu Water Supply and Drainage Board (TWAD Board) was constituted in the year 1971 and the petitioner came to be transferred to the TWAD Board under the Provisions of the TWAD Board Act. The petitioner was redesignated as Assistant Engineer in the TWAD Board and he was promoted as Assistant Executive Engineer in the year 1978. Since then the petitioner has been holding the post of Assistant Executive Engineer at various stations. While such is the position the petitioner was served with a charge memo 25 November 15, 1990 under Rule 9(B) of the TWAD Board Employees (Discipline and Appeal) Regulations, 1972 to the effect that he had failed to obtain previous sanction for the purchase of certain properties. After submitting his explanation an enquiry was also conducted. While so, according to the petitioner, when he had worked

as Assistant Executive Engineer, Villupuram was transferred to Cuddalore and he was relieved on February 22, 1991. While so, according to the petitioner, a Ministerial staff came to his house on February 26, 1991 and sought to serve an order of suspension dated February 23, 1991. He requested the said Ministerial staff to deliver the sealed cover through his superiors. Thereafter the petitioner got a telephone message from the Deputy Superintending Engineer to come to the office and accordingly the petitioner went to the office, where he was served the order of suspensions which was received by the petitioner. The petitioner submitted that the earlier proceeding initiated by charge memo dated November 15, 1990 had already been enquired into and there was no other matter which was either pending or under contemplation warranting the order of suspension. The petitioner thus questioned the propriety and bona fides of the respondents in passing the order of suspension. The two charges that were referred to in the charge memo, dated March 18, 1991 which was served on the petitioner on October 12, 1991 were :-

(i) The petitioner failed to obey the lawful is orders of the Chairman and Managing Director placing him under suspension by his failure to receive the said order on February 25, 1991 at the Board's office.

(ii) The petitioner had violated Regulation 21(5) of the TWAD Board Officers and Servants' Conduct Regulations, 1972, as he had refused to receive the orders when it was served in his house.

3. The petitioner further submitted in his affidavit that a reply denying the charges have been sent. An enquiry was conducted by the Chief Engineer, in which three persons were examined. It is also submitted that all the persons who were examined by the respondents belonged to Establishment Section of the Board Secretariat at Madras, who were acting to the dictates of their superiors. According to the petitioner, the charges were baseless and motivated by the aforesaid three witnesses. On consideration of the matter, the Enquiry Officer held Charge No. 1 alone was proved and Charge No. 2 as not substantially proved.

4. It is further averred that the disciplinary authority issued a memo dated September 23, 1992 to the petitioner enclosing the report of the Enquiry Officer and requiring the petitioner to show cause against the finding of the Enquiry Officer in respect of the first charge and the findings of the respondent in respect of the second charge to the effect that the charge also stands proved. The petitioner submitted an explanation for the above charges. According to the petitioner, notwithstanding the explanation the Managing Director passed an order dated February 3, 1993 dismissing the petitioner from service.

5. Aggrieved against the said order of dismissal, the petitioner preferred an appeal before the first respondent. The first respondent appears to have forwarded to the Sub Committee which appears to have passed the resolution to the effect that the punishment meted out to the petitioner is in order and the

first respondent Board in turn agreed to the recommendations of the Sub-Committee that punishments meted out to the petitioner is in order and rejected the said appeal on September 8, 1993.

6. Aggrieved against the said orders of dismissal and aggrieved against the orders of the first respondent, the petitioner, has filed the present writ petition on various grounds.

7. On behalf of the respondents, Managing Director TWAD Board has filed a counter affidavit denying contra averments made by the petitioner in his affidavit. Taking into account, various charges levelled on earlier occasion, the second respondent felt that suspension of the petitioner from service was justifiable. On February 23, 1991 a telex message was sent to the Superintending Engineer, South Arcot District TWAD Board, Cuddalore to instruct the petitioner to attend Board Secretariat, Madras on February 25, 1991 without fail. When the petitioner attended Board's office on February 25, 1991, the Section Officer, Establishment Section had served on him the orders placing him under suspension as directed by the Chairman and Managing Director. It is further averred in the counter-affidavit that on going through the proceedings the petitioner bluntly refused to receive the orders and abruptly left the office. The petitioner has thereby exhibited utter insubordination in refusing to receive a lawful order of the superior officer which amounts to misconduct under Regulation 7(1) of the TWAD Board (D & A) Regulations, 1972. Subsequent efforts to serve the suspension order at his residence at Cuddalore met with resistance from the petitioner. One R. Sankaran, Assistant Section Officer, TWAD Board Secretariat was deputed by the Chairman and Managing Director to serve the order on the petitioner. For this also, the petitioner refused to receive the orders and did not allow Thiru R. Sankaran, A.S.O. to affix the suspension order on the door of his residence. He was also reported to have commented by passing some unwarranted remarks about the Chairman and Managing Director. It was only after this the help of the police was sought for to affix the suspension order on the door of the residence of the petitioner. This demonstration of disrespectful behaviour and expression of disloyal sentiments of the petitioner have to be condemned. This act also constituted a violation of Regulation 21(5) of the TWAD Board Officers' and Servants' Conduct Regulations, 1972. With these factual particulars the following charges were framed 5 against the petitioner :-

"CHARGE No. I : that he failed to obey the lawful order of the Chairman and Managing Director, TWAD Board placing him under suspension, by his failure to receive the said order and thereby committed a misconduct under the Regulation, 6(i) of TWAD Board Employees (D & A) Regulations, 1972.

CHARGE No. II : that he had violated the provisions of Regulation 21(5) of TWAD Board Officers' and Servants' Conduct Regulations, 1972, by his representation-irresponsible behaviour when the order was sought to be served on him at his residence in Cuddalore."

8. It is further contended in the affidavit that the charge memo, dated March 18, 1991 sent to the Superintending Engineer, South Arcot Circle for serving on the petitioner was sent by Registered Post to his residential address at Cuddalore. This was redirected to Trichy which was fixed as the Headquarters of the petitioner during the period of suspension, but it was returned undelivered. Thereafter several letters were sent through the Superintending Engineer, South Arcot Circle, Cuddalore and Executive Engineer, P.F. Division, Cuddalore to be served on the petitioner, but the efforts were in vain. All the communications addressed to him at the residential address given by him at Cuddalore were returned undelivered. Finally nearly six months later, charge memo dated March 18, 1991 was received by him on October 21, 1991. He had remained incommunicado for more than six months. Since the disciplinary authority after satisfaction with the unassailable evidence both oral and documentary came to the conclusion, both the charges were proved, dismissed the petitioner from service with immediate effect.

9. The appellate authority viz., TWAD Board on the basis of the consideration by the Sub-Committee after accepting the report of the Sub-Committee confirmed the order of dismissal and dismissed the appeal preferred by the petitioner. According to the respondents, the order of the dismissal of the petitioner from Board's service is based on oral and documentary evidence and they have followed the provisions of the Act as well as the Regulations of the Board.

10. I have heard Mr. R. Muthukumarasamy, learned counsel appearing for the petitioner and Mr. R. M. Kannappa Rajendran, learned counsel appearing for the respondents.

11. Since I have already extracted the case of the petitioner as well as the respondents I am not once again repeating the same. The first charge is that the petitioner failed to obey the lawful order of the Chairman and Managing Director of TWAD Board placing him under suspension on failure to receive the said order and thereby committed a misconduct under Regulation 6(i) of the TWAD Board Employees' (D&A) Regulations, 1972. Before going into the facts leading to the first charge it is useful to see Regulation 6 sub-clause (i) of TWAD Board Employees' (D&A) Regulations, 1972 :-

"Acts and Omissions constituting misconduct :- (1) Wilful insubordination or disobedience, whether alone or in combination with another or others, of any lawful and reasonable order of a superior."

12. It is the case of the petitioner that he was not present in the Board's office on February 25, 1991 as alleged and that he was on leave for transfer between February 22, 1991 to February 29, 1991. According to him, there is no evidence whatsoever to prove that the petitioner was intimated about the telephone message by the Superintending Engineer to attend the Board's office on February 25, 1991. Alternatively, the learned counsel appearing for the petitioner submits that even assuming that the petitioner was present at Board's Office on

February 25, 1991 eventhough the first charge itself is misconceived and does not amount to misconduct within the meaning of Regulation 6, sub-Clause (i) of the Discipline and Appeal Regulations, since there is no material to show that what was the lawful order of the Chairman which was disobeyed by the petitioner which had constituted misconduct. The learned counsel further elaborated the only allegation which is found in the charge memo is about lawful order of Managing Director, which is the order of suspension. According to him, the petitioner was not disobeyed the said order of suspension in any manner nor has he been shown to have d-isobeyed, such order of suspension in the proceedings. At this juncture, the learned counsel very much relied on the disobedience alleged by the charge memo is failure to receive the said order and not refusal or disobedience of the lawful order. The petitioner was not required on the disciplinary authorities own showing that he was called to the Board's office to receive the order of suspension. Hence, mere failure to receive a communication viz., the suspension order would not constitute disobedience of the suspension order and the allegation contained in the charge memo itself does not amount to misconduct much less warranting a conclusion of guilt and penalty.

13. With regard to the said charge (first 9 charge) the learned counsel appearing for the respondent brought to my notice, the prosecution witnesses examined by the second respondent on the side of the second respondent viz., Thiru Ignitius, Section Officer, Thiru R. Sankaran, S. Gr.A.S.O., Thiru T. Selvanesan, Assistant Section Officer, Thiru S. Gurumurthy, Confidential Steno-typist and A. S. Sivagnanamani, Assistant Section Officer. He has also brought to my notice that an opportunity to cross-examination was given to the petitioner by the Enquiry Officer, the petitioner had stated that there is no necessity to cross-examine them. Even though the petitioner was given an opportunity to cross examine those witnesses, the petitioner had not cross-examined them, but allowed their statements to go on record as such. In these circumstances the Enquiry Officer has therefore taken cognizance of ge view and concluded that the Charge No. 1 was held to be proved. The appellate authority on the basis of the report of the sub-committee confirmed the said finding. In those circumstances I am unable to accept the argument of the learned counsel appearing for the petitioner that the conclusion reached with regard to Charge No. 1 is perverse and cannot be accepted. This Court is neither an appellate. authority nor a revisional authority to go into the factual findings of the Enquiry Officer, Disciplinary Authority as well as the Appellate Authority.

14. The second charge relating to the violation of Regulation 21 sub-clause (5) of TWAD Board Officers" and Servants" Conduct Regulations, 1972, the said charge has been framed on the ground that when the order of suspension 3, was served on him at his residence at Cuddalore, he refused and resisted the Board's servant and behaved in an irresponsible manner. In order to appreciate the said charge it is useful to refer Regulation 21 sub-clause(5) of the TWAD Board Officers" Servants" and Conduct Regulations 1972 and the same is extracted hereunder :-

"Taking part in Politics and Elections : (5) Seditious propaganda or the expression of disloyal sentiments by an employee shall be regarded as sufficient ground for dispensing with his service. In the case of such conduct by a pensioner, the Board reserves to itself the right of withholding or withdrawing a pension or any part of it."

15. No doubt, the Enquiry Officer has found that with regard to Charge No. 11 there was no acceptable evidence found in favour of the petitioner. However, the disciplinary authority considered the matter in detail according to law. In the light of the statement of one R. Sankaran, Assistant Section Officer and with reference to unwarranted remarks made against the Managing Director and also Board's staff who had accompanied the said Sankaran, considered the matter in detail and disagreed with the conclusion reached by the Enquiry Officer. At this stage, it is pointed out by the respondents, in spite of several steps taken by the Board to serve the suspension order they could not succeed and after failing in all the earlier attempts, one R. Sankaran, A.S.O. was directed to go and serve the said suspension order on the petitioner at his residence. The evidence of R. Sankaran was considered by the disciplinary authority and the manner in which the petitioner resisted the said officer from serving the order of suspension made the disciplinary authority to hold that the expression of disloyal sentiments by the petitioner is sufficient ground for dispensing with his service. The said conclusion was confirmed by the Board.

16. Here again though the petitioner has received the said order of suspension on the next working day in his office, it is the contention of the respondents that for the last six months the petitioner evaded service of notices sent to his Headquarters address at Tilchy have been returned as unserved. In view of the tactics adopted by the petitioner, the second respondent has directed one of the Section Officers to go and serve the suspension order in person at Cuddalore. Even though the day happened to be a holiday, nothing wrong in receiving the said suspension order or even if he has any grievances he could have simply requested the officer to go and serve in his office on the next working day and there is no need to make any unnecessary remarks against the Board or its Managing Director. In this regard the disciplinary authority has considered the evidence of R. Sankaran, A.S.O. As already stated the appellate authority has also approved the action of the second respondent.

17. Finally, Mr. Muthukumarasamy, after taking me to both the Regulations as referred above submitted that both the alleged actions of the petitioner would not amount to misconduct. He relied on the decision reported in B.C. Chaturvedi Vs. Union of India and others, .

18. In support of his contention, in view of the vehement argument rif the learned counsel appearing for the petitioner, in the light of the factual position prevailing in our case, I have carefully considered the entire judgment of the Apex Court referred above. After reading the said decision I am of the view that the said decision is not in favour of the petitioner's case. As per the said decision

judicial review under Art. 226 of the Constitution is not an appeal from a decision, but a review of the manner in which the decision, is made, power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an enquiry is conducted on charges of misconduct by public servant, the Court is concerned to determine whether the inquiry was held by a competent officer or whether rules of justice are complied with. Whether the findings or conclusion are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceedings. It is also clear from the above decision of the Supreme Court that when the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. However as per the said decision, this Court may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court may interfere with the conclusion and finding and mould the relief so as to make it appropriate to the facts of each case. It is also made clear that in the said decision, the disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant, adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court. At this juncture it is useful to refer decision in Union of India (UOI) Vs. H.C. Goel, wherein the Apex Court has held at p. 44 :

"If the conclusion upon consideration of the evidence reached by the disciplinary authority is perverse or suffers from patent error as on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

19. In the light of the above referred decision of the Apex Court, I am unable to interfere with the conclusion arrived by the disciplinary authority as well as the appellate authority. However, as far as the penalty, namely, dismissal, from service, it is not proportionate to the misconduct as found by the respondents. It is true that both the charges are held as proved. Even though he refused to receive the order of suspension when it was sought to be served at the head office and also at his residence at Cuddalore, the fact remains he received the same on the next working day in his circle office. It is the case of the petitioner that he joined in service as Junior Engineer in the Public Health and Municipal

Engineering Service in the year 1970 and he came to be transferred to the respondents Tamil Nadu Water Supply and Drainage Board immediately after formation in the year 1971. Thus, he had rendered service of more than 20 years in the respondents Board. In this back so ground we have to consider whether the punishment namely, dismissal from service is proportionate to the misconduct as found earlier. Regulation 5 of the Tamil Nadu Water Supply and Drainage Board Employees" (Discipline and Appeal) Regulations, 1972 deals with penalties. Regulation 5 contains nine penalties. Even though the disciplinary authority and Board considered that the action of the petitioner attracts Regulation 5(a)(viii) this Court is of the view that the said punishment is disproportionate. As already stated, if this Court satisfies that considering the various aspects beginning from the intimation of the disciplinary proceedings ending with the ultimate order of the disciplinary authority it is open to this Court either to remit the matter to the authority concerned for passing appropriate punishment or in extraordinary case, after giving sufficient reasons this Court is empowered to interfere in the order penalty or punishment. After carefully analysing the charges and the conclusions reached by the disciplinary authority as well as the appellate authority and after perusing Regulation 5 as stated above, I am of the firm view that the penalty of dismissal from service is certainly disproportionate to the charges.

20. In these circumstances, I confirm the order of the disciplinary authority as well as the Appellate Board with regard to the conclusion reached on the two charges framed against the petitioner, however, in view of my earlier discussion, I hold that the penalty of dismissal from service of the Board is disproportionate to the charges. Hence, I remit the matter to the disciplinary authority (second respondent) to consider and impose appropriate penalty as provided under Regulation 5. Accordingly, the writ petition is allowed in part and the matter is remitted to the second respondent as stated above. The second respondent is directed to pass orders within a period of eight weeks from the date of receipt of a copy of this Order. Subject to the order to be passed the benefits available to the petitioner as per the Regulations of the TWAD Board may be considered immediately thereafter. No costs.