
(2010) 09 MAD CK 0437
In the Madras High Court
Case No : Writ Petition No. 14368 of 2003

K. Mani

APPELLANT

Vs

The Chennai Metro Water Supply and Drainage Board

RESPONDENT

Date of Decision : 24-09-2010

Acts Referred:

Chennai Metropolitan Water Supply and Sewerage Board Employees (Discipline and Appeal) Regulations, 1978 — Regulation 22, 6(12), 6(13), 6(14), 6(31)

Citation : (2010) 09 MAD CK 0437

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : W.M. Abdul Majeed, for the Appellant; B. Shantha Kumar for CMWSSB, for the Respondent

Final Decision : Allowed

Judgement

T.S. Sivagnanam, J.—The prayer in the writ petition is for issuance of writ of Certiorarified Mandamus to quash the proceedings of the respondent dated 06.11.2002 and to direct the respondent to reinstate the petitioner in service with all attendant benefits.

2. The petitioner was employed as a sewage worker(manhole cleaner) in the respondent board and the challenge is to an order of dismissal from service. The case of the petitioner is that the Overseas Manpower Corporation Limited, a government concern, requested the respondent board for sanction of deputation of 11 manhole cleaners to the foreign country, Aden Covernarate P.D.R. Yemen. The petitioner's name was in serial No. 5 of the said communication. This request made by the Overseas Manpower Corporation Limited was approved by the respondent board subject to certain conditions, vide resolution dated 25.11.1985 and communicated by proceedings of its Managing Director, dated 06.12.1985. It appears that the petitioner left for Yemen on 12.11.1985 and when he was working at Yemen, there was a civil war, and the petitioner could return to India during 1987 and on his return, the petitioner reported before the

respondent board on 15.12.1987, requesting that he may be permitted to join duty. As, this request was not favourably considered, the petitioner filed a writ petition in W.P. No. 2774 of 1993, for a direction to the respondent to give posting orders to the petitioner. The writ petition was disposed of by order dated 29.09.2000 directing the Managing Director or General Manager of the respondent to conduct a fresh enquiry and pass orders within a period of three months. After the direction was issued by this Court, the respondent issued a charge memo dated 17.01.2001 alleging that the petitioner was unauthorizedly absent from 12.11.1985 and that he left the services of the board without permission. The petitioner submitted his explanation on 24.01.2001 and an enquiry officer was appointed and the enquiry officer submitted his report on 02.03.2001 stating that the petitioner admitted his guilt. Based on the finding rendered by the enquiry officer, the respondent by the impugned order dismissed the petitioner from service. The petitioner being aggrieved by such order, filed a statutory appeal which was dismissed by order dated 06.11.2002. Aggrieved by such order, the petitioner has filed this writ petition.

3. The learned Counsel appearing for the petitioner after setting out all the factual details would contend that the impugned order is vitiated on the ground of malafide, since the Managing Director, who filed counter affidavit in the earlier writ petition was the deciding authority and he has passed the order of dismissal. It was further contended that the manner in which appeal has been disposed of is contrary to the Chennai Metropolitan Water Supply and Sewerage Board Employees, (Discipline and Appeal) Regulation 1978, (hereinafter referred to as the "Regulations") namely, Regulation No. 22, which gives the procedure as to the manner in which the appeal petition has to be considered. Therefore, it is contended that the order passed by the appellate authority is unsustainable apart from being devoid of reason. The learned Counsel would further submit that the disciplinary authority proceeded on the assumption that the petitioner admitted his guilt, when infact there was no such admission. Further, it is not a case, where no permission was granted to the petitioner to go to Yemen but, the petitioner was permitted by the board and the deputation itself was on the recommendation made by the Overseas Manpower Corporation Limited and the salary to be paid to the petitioner was only as per the scale of pay, which he was drawing in the board service and therefore, it is not a case of unauthorised absence. Therefore, the learned Counsel would submit that the impugned order is unsustainable.

4. Per contra, the learned Senior standing counsel appearing for the board by producing the original files would submit that disciplinary action was initiated against the petitioner after the order passed by this Court in the earlier writ petition and the petitioner participated in the domestic enquiry and it was admitted that the petitioner had deserted the post from 08.11.1985 without permission or without any satisfactory cause and never reported for duty and that the petitioner though was one of the 11 employees, who were recommended for deputation and granted no objection for obtaining passport, the petitioner

had already obtained the passport and without proper order of deputation, it is not known how the petitioner left in India and therefore, the disciplinary authority was fully justified in passing the order of dismissal. Further, it is contended that there is no malafide, since the Managing Director of the respondent Board is a different officer and not the officer, who signed the counter affidavit in the earlier writ petition. Therefore, the learned Counsel would submit that the writ petition is devoid of merits.

5. I have considered the submissions on either side and perused the materials available on record as well as the original file relating to the disciplinary proceedings.

6. Before proceeding to consider the factual and legal contentions raised in the writ petition, one fact which has to be taken note of is that the petitioner was a sewage cleaner (manhole cleaner) in the respondent board and was approved to be sent on deputation as a manhole cleaner to Yemen on the same salary as drawn by him in the board. The sum and substance of the allegation against the petitioner is that he was unauthorisedly absent, the period of absence is stated to be from 08.11.1985 to December 1987.

7. From the file produced by the respondent, it is seen that admittedly, the petitioner was one among the 11 sewage cleaners, whose name was recommended for deputation to Yemen to do the same work of getting into the manhole at Yemen. The recommendation of the Overseas Manpower Corporation Limited dated 28.10.1985 is admitted by the respondent. Thereafter, the recommendation of the Overseas Manpower corporation was placed for the consideration of the board and the board after taking note of all the factors approved the names of 11 candidates in which the petitioner name also found place. This decisions was taken in the board resolution dated 25.11.1985 and communicated through the Managing Director on 06.12.1985. The true copy of the decision is available in page No. 81 of the file. It is to be noted that the approval for deputation was subject to seven conditions of which, condition Nos. 5 & 6 would be relevant and for better appreciation it is extracted as hereunder:

5. The deputationists who are members of M.M.W.B.S.B will continue to be such members for the purpose of M.M.W.S.S. Board Discipline & Appeal Regulation notwithstanding that their services are placed at the disposal of Government of Yemen. If they commit any not, or omission which renders them liable to any penalty specified in the said rules, the authority who competent to deal with their cases according to the said rules shall be competent to institute disciplinary proceedings against them and to impose on them such penalty specified in the rule, as it thinks fit and the foreign employer which they are serving at the time of institution or such proceedings shall be bound to render all reasonable facilities to the MMWSS Board in conducting such proceedings.

6. The deputationists should not accept any higher emoluments/promotions under the Government of Yemen without prior concurrence of M.M.W.S.s. Board.

8. Thus, it is to be seen that during the period of deputation, the petitioner and other persons continue to remain as staff of the respondent board and they were not entitled to higher emoluments/promotions under the Government of Yemen without concurrence of the respondent. Thus, the lien of the petitioner continued to remain with the board. Therefore, it is not in dispute that permission has been granted to the petitioner to work at Yemen as manhole cleaner on deputation.

9. The gravamen of the charge is that the petitioner left earlier, before board approved such proposal, as the petitioner left for Yemen on 12.11.1985 and the board approved such deputation only on 25.11.1985. The further allegation is that the petitioner even prior to issuance of no objection certificate had obtained a passport. In the above stated background, the petitioner was charged of having violated Regulations No. 6(12), 6(13) and 6(37) of the Regulations.

10. The above referred Regulations states that leaving the post or duty without permission, accepting services in any other establishment other than the board shall be deemed to be a misconduct. The petitioner submitted his explanation and the authorities not being satisfied, appointed an enquiry officer to conduct a domestic enquiry. According to the enquiry officer's report dated 02.03.2001, the petitioner has admitted his guilt and therefore the enquiry officer held that the charges are proved. The copy of the minutes of the enquiry are found in page 167 of the file and when a question has been posed to the petitioner as to whether he is aware of the charge against him, his reply was that he has requested his son to read the charge and from that he became aware of its contents. The signature of the petitioner found in the enquiry proceedings itself amply demonstrates his illiteracy. Therefore, in my view, the answers, which have been elucidated by the enquiry officer could hardly be taking to be admission of guilt. I have gone through the minutes of the proceedings and 18 questions have been posed to the petitioner and the response, which has been recorded does not in any manner suggest any admission of guilt as observed by the enquiry officer. Thus the finding of the enquiry officer is perverse.

11. Ultimately, the matter came up for consideration of the disciplinary authority and the disciplinary authority after narrating the three charges and the sequences of events, which have been taken place discussed the case in paragraph 6 of the impugned order, and the disciplinary authority came to a conclusion, since the enquiry officer has held that the charges are proved, he is inclined to accept the findings and decided to impose maximum penalty and dismissed the petitioner from service. The petitioner's appeal petition also came to be rejected by a cryptic order, though the Regulation No. 22 prescribes manner in which the appeal has to be decided, the appellate authority has ignored the regulation.

12. On considering the entire facts and circumstances of the case, it is to be seen that the disciplinary proceedings itself came to be initiated under the above said Regulation, that is to say as if the petitioner left on his own volition to a foreign country and therefore, he was termed a deserter. The facts, which have been

stated above proves otherwise. The Overseas Manpower Corporation Limited requested the respondent board to sanction the deputation of the petitioner as a manhole cleaner to work in Yemen and this was processed the board and a letter granting no objection certificate for obtaining passport was issued and the board subsequently approved the deputation subject to conditions. Therefore, it can hardly be stated to be a case of desertion of employment.

13. Regulation 6(12) would be attracted only if the petitioner leaves the post without permission. It is not the case of the respondent that no permission was granted, but if there case, that the petitioner left India prior to the resolution of the board. It is to be noted that even prior to the resolution that on 01.11.1985 itself the board in principle permitted the petitioner and two other employees to obtain passport to enable them to be deputed as manhole cleaners in Yemen. Therefore, it is not a case where, there was no permission but, the administrative process has taken its own time. It has been projected as if the petitioner ran away from the country, whereas the petitioner had been sent for Overseas employment only through the Overseas Manpower Corporation Limited, which is also a government concern. Thus, I am convinced that the petitioner cannot be termed a deserter of the service of the respondent. Clause 6(31) of the regulation would be attracted only when, the member of the board's service accepts employment in other establishment. As stated above, the terms of deputation are clear and the petitioner continues to remain as the member of the board's service and a deputationist on foreign service cannot be stated to have accepted service in other establishment. Therefore, Regulation 6(31) is also not attracted.

14. The other allegation against the petitioner is that he had obtained the passport, even prior to the no objection being granted by the respondent. It is true that the government servant without prior permission cannot obtain a passport. However, one fact which has to be taken note is that the deputation of the petitioner and other had been processed through a Government company much earlier and it is not in dispute that the petitioner's name found place in list of such persons, who were taken up for consideration. Therefore, considering the fact that the petitioner was a manhole worker, an illiterate, could hardly be stated to have deliberately violated the board's instructions and secured a passport. The need for the petitioner to obtain a passport is only on account of he being considered for deputation by the respondent to a foreign country. It is not the case of the respondent that the petitioner had travelled abroad even earlier with the passport. Thus, the allegation made against the petitioner as if he has committed a very serious misconduct cannot be accepted, more so, considering the facts and circumstances of this case.

15. Thus, viewed from any angle, the action of the respondent was wholly unjustified. Admittedly, the petitioner returned to India in December 1987, his explanation is that due to civil war, he could not come earlier and the fact that there was a civil war is not disputed by the respondent. Infact in the file, it is

seen that due to the civil war, (page 7 of the note file), Overseas Manpower Corporation could not send the other persons on deputation on account of civil war. On his return to India, the board refused to give employment, which necessitated the petitioner to approach this Court by way of a writ petition. This Court while disposing of the writ petition considered the issue as to whether the petitioner could be termed as deserter and held that the period of six months stipulated under the regulation to hold a person deserter was by way of amendment to the regulation and it cannot be applied retrospectively, the regulation as it stood prior to amendment stated that if a person is absent without permission for a period of five years would be termed as deserted. As this stage, it is benefited to extract the findings rendered by this Court:

By pointing out the above said provisions, it is stated that inasmuch as the petitioner had deserted his post from 08.11.1985, without permission or without any satisfactory cause and reported for duty, no direction need be given for posting him as sewage thozhilali in the respondent metro water. The said amendment to the existing Regulations 6(14) of the MMWSSB employees service (Discipline and Appeal) Regulations came into effect from 22.10.1998, as per the amended regulations, if an employee continuously absented from duty without permission and without satisfactory cause for more six months, it is deemed that the employees had deserted the post and it is open to the Board, to take appropriate action. Inasmuch as the said amendment, came into force only from 22.10.1998 which is not retrospective effect, the period of six months provided under the amendment, cannot be applied to the case of the petitioner. Since even according to the Board, the petitioner had deserted his post from 08.11.1985, at the relevant times, as per the regulations too, absence without permission or without satisfactory cause for a period of 5 years, would amount to desertion. According to the interpretation and the stand taken by the respondent in paragraph 5 of the counter affidavit cannot be accepted. (emphasis supplied)

16. Despite the order passed by this Court, the petitioner was further harassed by issuance of a charge memo, which has ultimately resulted in the impugned order. The facts of the case clearly establish that the punishment imposed on the petitioner is grossly disproportionate to the allegations against him. The Hon'ble Supreme Court in several decisions held that the Courts and Tribunals can interfere with the decision of the disciplinary authority only when, they are satisfied that the punishment imposed by the disciplinary authority is shockingly disproportionate to the gravity of the charges alleged and proved against a delinquent employee and not otherwise. In this regard, reference may be made to the decision of the Hon'ble Supreme Court in Jagdish Singh Vs. Punjab Engineering College and Others, . The said case, related to a sweeper in an engineering college, who remained absent and in the domestic enquiry, the charge against the sweeper was held to be proved and based on such finding, the disciplinary authority imposed the penalty of dismissal from service. While, considering the scope of interference as well as proportionality of the punishment imposed on the said employee, their Lordships of the Hon'ble Supreme Court

held thus:

8. The Courts and the Tribunals can interfere with the decision of the disciplinary authority, only when they are satisfied that the punishment imposed by the disciplinary authority is shockingly disproportionate to the gravity of the charges alleged and proved against a delinquent employee and not otherwise. Reference can be made to the decision of this Court in the case of V. Ramana Vs. A.P.S.R.T.C. and Others, , wherein it is stated:

The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

To put it differently unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed.

9. The other principle that requires to be kept in view, is the observation made by this Court in Kerala Solvent Extractions Ltd. Vs. A. Unnikrishnan and Another, , wherein it is stated:

In recent times, there is an increasing evidence of this, perhaps well meant but wholly unsustainable tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability.

10. The instant case is not a case of habitual absenteeism. The appellant seems to have a good track record from the date he joined service as a sweeper. In his long career of service, he remained absent for 15 days on four occasions in the month of February and March 2004. This was primarily due to sort out the

problem of his daughter with her in-laws. The filial bondage and the emotional attachment might have come in his way to apply and obtain leave from the employer. The misconduct that is alleged, in our view, would definitely amounts to violation of discipline that is expected of an employee to maintain in the establishment, but may not fit into the category of gross violation of discipline. We hasten to add if it were to be habitual absenteeism, we would not have ventured to entertain this appeal.

17. The above dictum of the Hon''ble Supreme Court squarely applies to the facts and circumstances of the case, one other fact, which has to be taken note of in this writ petition is that the deputation of the petitioner was approved by the Board and there is no denial of the same. Thus, it cannot be stated that it was a case of unauthorised absent. In the preceding paragraphs, I have discussed as to how the petitioner has not contravened the regulations, more particularly Regulation Nos. 6(12) and 6(13). In view of the above, I am of the clear view that the punishment imposed on the petitioner is grossly disproportionate to the allegation against him in the charge memo.

18. It is not disputed that the petitioner had initially joined the services of the Madras Corporation as a manhole cleaner during 1968 and thereafter transferred to the respondent board and rendered more than 18 years of blemishless service and has been thrown out of employment and denied even the meager salary. It is stated by the learned Counsel for the petitioner that the petitioner has since attained the age of superannuation. The manner in which the petitioner has been dealt with has distributed the conscience of this Court, especially considering the fact, the petitioner was a manhole cleaner and went on deputation to a foreign country to do the same job of getting into the manhole at Yemen.

19. Therefore, for all the above reasons, the petitioner is entitled to succeed. Accordingly, the writ petition is allowed and the impugned order is set aside and the respondent is directed to notionally reinstate the petitioner into service and pay all monetary benefits with continuity of service, bacwages and all admissible allowances. The respondent is directed to comply with the above direction within a period of three months from the date of receipt of a copy of this order and report compliance to this Court. No costs.