

(2008) 01 MAD CK 0193
In the Madras High Court
Case No : Writ Petition No. 29917 of 2004

K.V. Perumal

APPELLANT

Vs

Tamil Nadu Administrative Tribunal and Others

RESPONDENT

Date of Decision : 04-01-2008

Acts Referred:

Citation : (2008) 01 MAD CK 0193

Hon'ble Judges : P.K. Misra, J;K. Chandru, J

Bench : Division Bench

Advocate : Balan Haridoss, for the Appellant; M. Dhandapani, Special Govt. Pleader for Respondents 2 to 4, for the Respondent

Judgement

P.K. Misra, J.—Heard the learned Counsels appearing for the parties.

2. The petitioner has prayed for issuing a writ of Certiorarified Mandamus for quashing the order dated 2.12.2003 in O.A. No. 1053 of 1992 and directing the State Government to pay full backwages from 20.3.1987 till 30.9.1991, the normal date of superannuation and other consequential benefits including terminal benefits.

3. The petitioner had joined Tamil Nadu Government service on 1.5.1958 as Senior Inspector of Co-operative Societies. In course of time he was promoted first as Co-operative Sub-Registrar in 1965 and ultimately as Deputy Registrar of Co-operative Societies in 1986. Thereafter, the petitioner was subjected to frequent transfers. At that stage, the petitioner availed Earned Leave on medical grounds from 9.2.1987 to 4.3.1987. However, the third respondent, namely, the Registrar of Co-operative Societies, referred the matter relating to leave to the Medical Board which called the petitioner for examination on 7.3.1987 vide letter dated 3.3.1987. The Medical Board found that the petitioner was not fit to join duty and recommended for further leave. However, even thereafter the petitioner prayed for extension of leave and his case was again referred to the Medical Board. The petitioner requested that medical examination may take place in his

own house on the ground that his health condition did not permit him to go to Cuddalore for attending the Medical Board. At that time, he had shifted to Trichirapalli for taking treatment and was praying for extension of leave as per medical advise. He had also protested about the frequent transfers. While the matter stood thus, the petitioner was placed under suspension for the period from 9.2.1987 to 20.9.1991 with intermittent breaks. It is asserted that subsistence allowance was not paid. A charge memo dated 3.11.1987 was issued containing two charges to the effect that the petitioner had disobeyed the orders of the superior officers in not joining the new post after the period of leave was over and by not attending the Medical Board and the second charge was to the effect that the petitioner stayed away from duty without submitting any leave application from 16.9.1987. The petitioner challenged the order of suspension by filing W.P. No. 10960 of 1987 which was transferred to the State Administrative Tribunal as T.A. No. 141/1990. Ultimately, the Tribunal, while not interfering with the order of suspension, directed that disciplinary proceedings should be finalised. The petitioner furnished explanation as to why he could not attend the Medical Board and rejoin duty and had also given details of various leave applications from time to time. Ultimately, by order dated 20.9.1991, the order of punishment was imposed by removing the petitioner from service, just a few days before the normal date of superannuation. The petitioner challenged such order of punishment by filing O.A. No. 1053 of 1992 raising several contentions including non-supply of several documents. The Tribunal quashed the punishment by judgment dated 4.1.1993, on four grounds, namely, (i) charges were vague (ii) appointment of the enquiry officer was illegal as the enquiry officer himself was a witness (iii) failure to supply documents required by the delinquent which amounted to violation of the principles of natural justice; and (iv) charges had not been established. The State Government, however, filed Civil Appeal No. 9229 of 1996 (arising out of SLP [Civil] No. 23367 of 1994) before the Supreme Court. The Supreme Court, however, observing that reasonings given by the Tribunal were unsustainable relating to grounds (i) (ii) and (iv), remitted the matter to the Tribunal for fresh disposal to consider the question relating to failure to supply documents. Thereafter, the Tribunal reheard the matter only on the above aspect and rejected the contention of the present petitioner and observed that no prejudice had been caused and ultimately the Original Application was dismissed. The petitioner has challenged the said order in the present writ petition.

4. Even though the petitioner has raised the contention relating to non-furnishing of documents, at the time of hearing, the learned Counsel has confined his submission to the question of disproportionate nature of the punishment imposed on the petitioner. He has submitted that the earlier records of the petitioner did not reflect any blemish in the service career of the petitioner and the entire trouble started only in 1987, when the petitioner perceived that he was being subjected to frequent transfers rather unfairly and to make the matter worse for him his health condition deteriorated. He has therefore submitted that keeping in

view the above background, the punishment of termination from service, particularly when the petitioner was about to superannuate, was grossly disproportionate to the nature of delinquency, more particularly when alleged insubordination and refusal to join duty had been triggered to great extent by frequent transfers.

5. Learned Counsel appearing for the State, on the other hand, submitted that even though there appears to be no other blemish records in his service, the petitioner had deliberately refused to attend the Medical Board and join the posting. Learned Counsel further submitted that at any rate the Supreme Court had remanded the matter to consider only the question of effect of non-supply of documents and, therefore, the question as to whether there was disproportionality in the punishment imposed does not arise for consideration.

6. Having heard the learned Counsels for the parties at length and bestowed our anxious consideration to the contentions raised, we find that in the peculiar facts and circumstances of the present case the punishment of termination from service appears to be greatly disproportionate to the nature of delinquency. Instead of deciding the punishment to be imposed, in normal course, we would have remitted the matter to the Government for fresh consideration on the question of punishment as such imposition of punishment is essentially a matter of discretion. However, we desist from doing so on account of peculiar facts and circumstances of the present case. It is apparent that the period of delinquency was about two decades back. The petitioner had been kept under suspension and during the period of suspension no subsistence allowance had been paid. In fact during the departmental proceedings and thereafter, the petitioner had raised the question of payment of subsistence allowance, but that had been given short shrift and only the appellate authority directed for payment of subsistence allowance. There have been several rounds of litigation right upto the Supreme Court.

7. Having regard to such long lapse of time and the fact that the age of the petitioner is more than 75, we feel interest of justice would be served by finalising the matter in order to avoid any prolonged controversy hereafter.

8. The main question is regarding the punishment to be imposed. It is no doubt true that the petitioner had not attended the Medical Board on the second occasion and had remained absent. The materials on record indicate that the petitioner was keeping ill-health for quite sometime. While there cannot be any dispute that transfer is an incidence of service and therefore a Government servant is expected to obey any order of transfer, the explanation of the petitioner that he was mentally disturbed by frequent transfers which ultimately led to his deteriorating health cannot be brushed aside lightly in the peculiar facts and circumstances of the present case. Moreover, the petitioner's assertion that he has otherwise an unblemished service record has also not been disputed.

9. Having regard to these aspects, we feel that the order of termination from

service which would have the effect of depriving the petitioner the normal fruit of getting pension is required to be modified and instead of passing the order of termination, we feel interest of justice would be served by directing that the petitioner is deemed to have been compulsorily retired with effect from the date of punishment, namely, 21.9.1991. The period of suspension should be treated obviously as such. On the aforesaid basis, the terminal benefits may be quantified and be paid to the petitioner. Keeping in view the age of the petitioner, such exercise should be completed by the respondents within a period of four months from the date of receipt of the present order. The writ petition is accordingly allowed in part to the extent indicated above. There would be no order as to costs.