
(2014) 03 MAD CK 0117
In the Madras High Court
Case No : Writ Petition No. 28971 of 2013

M. Durairajan

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 24-03-2014

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (2014) 4 MLJ 404

Hon'ble Judges : N. Paul Vasantha Kumar, J; Meenakshi Sundaram Sathyanarayanan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

N. Paul Vasanthakumar, J.—This writ petition is filed to set aside the order made in O.A. No. 250/2012, on the file of the Central Administrative Tribunal, dated 16.7.2013, wherein the petitioner has challenged the order of termination dated 22.12.2011, and prayed for reinstatement in service with all attendant benefits including back-wages. The Tribunal having dismissed the original application, the petitioner has preferred this writ petition. According to the petitioner, he was appointed as a Casual Labourer in the year 1982 and he was conferred with temporary status with effect from 1.1.2001. Based on a complaint regarding theft of postal article and handing over to other agencies, by order dated 7.7.2003, he was removed from service. He was also arrested by police in connection with C.C. No. 705/2003 filed against him and two others before the Judicial Magistrate Court, Alandur. The criminal Court acquitted the petitioner on benefit of doubt and his request for reinstatement having not been considered in spite of representation submitted on 20.1.2005, after the acquittal order was passed, he filed O.A. No. 494/2006 before the Central Administrative Tribunal praying to consider his representation dated 20.1.2005. The said original application was ordered with a direction to consider the representation and pass orders on merits. Thereafter, an order was passed on 5.1.2008, rejecting the request of the petitioner seeking reinstatement. Aggrieved by the said order, the

petitioner again filed O.A. No. 382/2008, which was dismissed on 20.6.2008, against which the petitioner filed W.P. No. 12974/2009 before this Court. The said writ petition was allowed with a direction to the respondents to reinstate the petitioner in service with effect from the date of acquittal, with 50% of the back-wages and continuity of service from the date of representation dated 20.1.2005, till the order of reinstatement and the petitioner was also entitled to get all consequential service benefits. Against the said order, the Department filed a Special Leave Petition, which was dismissed by the Hon"ble Supreme Court on 17.6.2011, and the petitioner was reinstated with 50% of back-wages from 20.1.2005 till 20.6.2011.

2. On 25.11.2011, a show cause notice was issued giving 7 days time to submit explanation stating that the petitioner misbehaved with a person in charge of Bag Office by misusing the Rest Room at Tambaram Railway Station Bag Office premises and when enquired, he used unparliamentary words and thereby, affecting the official work of Bag Office. The said show cause notice was issued pursuant to the preliminary enquiry conducted in this regard. In the show cause notice dated 25.11.2011, it is stated that there is a prima facie case in the complaint and the petitioner was directed to give explanation. He gave an explanation on 1.12.2011, and denied the charge levelled against him.

Thereafter, an order was passed on 22.12.2011, stating that the explanation submitted by him was not satisfactory and the Departmental Enquiry also proves the charge levelled against him and hence he was ordered to be terminated from service with immediate effect. The said order was challenged in O.A. No. 250/2012 before the Central Administrative Tribunal and the same having been dismissed, the petitioner has filed this writ petition contending that he being a temporary staff from 1.1.2001 and he having been proceeded by departmental action for committing the delinquency based on the preliminary enquiry report without conducting regular enquiry, the Department cannot terminate his service. The preliminary enquiry was held for prima facie case and a show cause notice was issued and the petitioner having denied the allegation, the department ought to have conducted the regular enquiry and substantiated the charge before terminating the service of the petitioner and the said procedure having not been followed, the termination order passed is in violation of Article 311(2) of the Constitution of India.

3. In support of the said submission, the learned Counsel for the petitioner has relied on the judgments of the Supreme Court reported in (2006) 9 SCC 167 (Hari Ram Maurya v. Union of India and Others) and Kamal Nayan Mishra Vs. State of Madhya Pradesh and Others, and the judgment of the Division Bench of this Court reported in The President, Sadayanenthal Village Panchayat, Kamuthi Union Vs. Mr. Baskaran, The District Collector, Ramanathapuram District, Ramanathapuram and The Block Development Officer (Village Panchayats) Kamuthi Panchayat Union, .

4. In reply to the said submission, the learned Central Government Standing

Counsel appearing for the respondents 1 and 2, submitted that the petitioner is only a temporary employee and as per Casual Labourers (Grant of Temporary status and Regularisation) Scheme, no enquiry is contemplated and therefore, the order of termination, which was confirmed by the Central Administrative Tribunal, is valid and no interference is required.

5. We have considered the rival submissions and perused the documents and the decisions cited.

6. The charge alleged against the petitioner was that the petitioner called the Incharge of Bag Office by his name in a louder manner and also used harsh words against him and thereby failed to maintain decorum of the Office by calling Superior Officer by name in a loud manner and using hard words against him amounting to misbehaviour and misconduct. It is not in dispute that the petitioner was given temporary status from 1.1.2001. In the Scheme referred by the learned Central Government Standing Counsel for the respondents 1 and 2 namely Casual Labourers (Grant of Temporary status and Regularisation), it is stated in Clause 11 that if a labourer with temporary status commits a misconduct and the same is proved in an enquiry after giving him reasonable opportunity, his services will be dispensed with. In this case, after issuing the charge memo dated 25.11.2011, stating that prima facie case is made out, admittedly, no regular enquiry was conducted even though the petitioner denied the allegation levelled against him. On 22.12.2011, the termination order was passed, wherein the enquiry referred about, is only the preliminary enquiry and the statements recorded during the preliminary enquiry. The petitioner having denied the allegation after the issuance of regular charge memo, the department is bound to conduct enquiry and only after proving the charge in a manner known to law, the termination order can be passed. The said issue is settled by the judgments of the Supreme Court reported in (2006) 9 SCC 167 and Kamal Nayan Mishra Vs. State of Madhya Pradesh and Others, . In the latter judgment, it has been held that even a temporary employee is entitled to protection under Article 311(2) of the Constitution of India. The department having not conducted any enquiry after issuing a regular charge memo in spite of denying the allegation by the petitioner, the order of termination in terms of conditions stipulated in the Scheme as referred above, is bad in law.

7. The Supreme Court in the decision reported in *Nirmala J. Jhala Vs. State of Gujarat and Another*,

(*Nirmala J. Jhala v. State of Gujarat and Another*), held that statements recorded during preliminary enquiry cannot be relied on in regular enquiry as no opportunity of cross-examination was given to delinquent. In paragraphs 25 to 27, the Supreme Court held thus:

25. The preliminary enquiry may be useful only to take a prima facie view, as to whether there can be some substance in the allegation made against an employee which may warrant a regular enquiry.

26."A prima facie case, does not mean a case proved to the hilt, but a case which can be said to be established, if the evidence which is led in support of the case were to be believed. While determining whether a prima facie case had been made out or not, the relevant consideration is whether on the evidence led, it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence". (Vide: Martin Burn Ltd. Vs. R.N. Banerjee,).

(See also: The Management of the Bangalore Woollen Cotton and Silk Mills Co. Ltd. Vs. B. Dasappa, M. T. represented by the Binny Mills Labour Association, ; V.C. Shukla and Others Vs. State (Delhi Administration), ; Dalpat Kumar and Another Vs. Prahlad Singh and Others, ; and Cholan Roadways Limited Vs. G. Thirugnanasambandam,).

27. The issue, as to whether in the instant case the material collected in preliminary enquiry could be used against the appellant, has to be considered by taking into account the facts and circumstances of the case. In the preliminary enquiry, the department placed reliance upon the statements made by the accused/complainant and Shri C.B. Gajjar, advocate. Shri C.B. Gajjar in his statement has given the same version as he has deposed in regular enquiry. Shri Gajjar did not utter a single word about the meeting with the appellant on 17.8.1993, as he had stated that he had asked the accused/complainant to pay Rs. 20,000/- as was agreed with by Shri P.K. Pancholi, advocate. Of course, Shri C.B. Gajjar, complainant, has definitely reiterated the stand he had taken in his complaint. The charge-sheet served upon the appellant contained 12 charges. Only first charge related to the incident dated 17.8.1993 was in respect of the case of the complainant. The other charges related to various other civil and criminal cases. The same were for not deciding the application for interim reliefs etc.

8. Thus the termination order passed without conducting regular enquiry and relying on the statement recorded during preliminary enquiry is illegal and the order of the Central Administrative Tribunal, affirming the order of termination, is liable to be set aside. In fine, this writ petition is allowed and the order of termination as confirmed by the Central Administrative Tribunal, is set aside and the respondents 1 and 2 are granted liberty to proceed afresh by conducting enquiry from the stage where the petitioner denied the allegation, by appointing Enquiry Officer and complete the enquiry and pass final orders in accordance with law. If the Department is inclined to proceed as directed, the entire exercise is ordered to be completed within a period of three months from the date of receipt of copy of this order. No costs.