
(2003) 04 MAD CK 0149

In the Madras High Court

Case No : Writ Petition No. 11777 of 2002, WPMP No. 15868 of 2002 and WVMP No. 695 of 2003

M. Sigamani

APPELLANT

Vs

The Management of Central Institute of Plastics Engineering and Technology

RESPONDENT

Date of Decision : 30-04-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) WritLR 638

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

Bench : Single Bench

Advocate : Fredrick Castro, for the Appellant; A. Thirumurthy, for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—The facts giving rise to the present writ petition are as follows :

Petitioner was working under the respondent as Senior Technical Officer. It is asserted that the employees of the respondent are covered by various rules of the Government of India such as Fundamental Rules, CCS CCA Rules, etc. The respondent has framed certain rules contained in the Administrative Manual, wherein it is indicated "These Rules are framed for the effective functioning and administration of CIPET. Wherever CIPET rules are silent on any subject, Central Government rules on the subject are applicable". It is stated that in the year 1999, an enquiry was started against one Karupusamy, a Senior Technical Officer with regard to certain irregularities committed by him. In course of enquiry, to a question put by the Management, the aforesaid Karupusamy gave answer that the students had paid the course fee to him and he had given the same to the present petitioner. On the basis of said enquiry, aforesaid Karupusamy was imposed with punishment of stoppage of 5 increments with no promotion for 5 years, but retained in Chennai. An order of transfer dated 10.10.2000 was issued

to the present petitioner transferring him from Chennai to Bhopal. At that stage, the petitioner made a representation indicating that he should not be subjected to transfer as a measure of punishment. The respondent then issued a charge-sheet against the petitioner and initiated departmental enquiry. Ultimately, the enquiry officer submitted a report accepting the charges against the petitioner. On the basis of the said report, the Director General has passed the order dated 28.3.2002 to the following effect :

" . . . I have gone through your explanation dated 7.1.2002 submitted by you in response to the Memorandum dt.2.1.2002. I have also perused in detail the inquiry proceedings and other related files. I do not find any mitigating reasons to absolve you from the charges framed against you. Again in the interest of fair justice you have been given the opportunity of personal hearing on 11.03.2002 and the same was postponed to 28.03.2002 at your behest. You have been heard personally by me on 28.03.2002.

I am of the view that the findings of the Inquiry Officer is in order and the misconduct committed by you is grave in nature warranting serious consideration with severe punishment. As a responsible Officer one has to act prudently in the interest of the organisation. The way in which you have conducted yourself and responded to the proceedings shows your easy going attitude and non-committed to the profession and to the Institute. During personal hearing also your reply is not convincing enough.

Even though the misconduct committed by you warrants severe proportionate punishment, considering your age and your career prospects, a lenient view is taken and you are transferred to CIPET Bhopal with immediate effect. You have to report for duty at Bhopal on or before 15th April 2002. . . ."

2. The above order is being challenged by the petitioner on the ground that transfer is not one of the punishments contemplated under Rule 60 of the CIPET Administrative Manual and therefore, transfer should not have been imposed as a punishment.

3. Rule 60 is to the following effect:

" 60. The following are the penalties which may be imposed on CIPET employees:

Minor Penalties

i. Censure

ii. Withholding of promotion

iii. Recovery from pay of the whole or part of any pecuniary loss caused by an employee to the institute by breach of orders or by negligence.

a. Reduction to a lower stage in the time scale of pay for a period not exceeding 3 years without cumulative effect.

iv. Withholding of increments of pay.

Major Penalties:

v. Save as provided for in Clause (iii) (a), reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the employee will earn increments of pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay.

vi. Reduction to lower time scale of pay, grade, post or service which shall not ordinarily be a bar to the promotion of the employee to the time scale of pay, grade, post or service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or service from which the employee was reduced and his seniority and pay on such restoration to that grade, post or service.

vii. Removal from service which shall not be a disqualification for further employment elsewhere.

viii. Dismissal from service which shall ordinarily be a disqualification for future employment elsewhere.

ix. Compulsory retirement."

4. A perusal of the aforesaid rule clearly indicates that the transfer is not a punishment to be imposed.

5. In the present case, from the impugned order, which has been extracted, it is apparent that the order of transfer has been passed as a measure of punishment. Since the penalty which can be imposed had been enumerated and transfer is not one of the penalties, it is obvious that the order passed by the Managing Director is not contemplated under the relevant rules governing the field and such an order cannot be sustained and in normal course, such an order is liable to be quashed.

6. Learned counsel for the respondent has however submitted that the transfer is being an ordinary incident of service, the order of transfer, even if violation of instructions, cannot be challenged in a court of law as there is no legally enforceable right. For the aforesaid purpose, the learned counsel has placed reliance upon the decision reported in Union of India and Others Vs. S.L. Abbas, . He has also placed reliance on the subsequent decision of the Supreme Court in Chief General Manager (Telecom), N.E. Telecom Circle and another Vs. Rajendra Ch. Bhattacharjee and others, .

7. A perusal of the aforesaid decisions makes it clear that ratio in those cases is not applicable. In all those cases, the order of transfer had been effected for administrative reason and not as a measure of punishment, whereas in the present case, the order itself indicates as if transfer order has been passed as a measure of punishment. As already indicated, the rules relating to imposition of penalty do not contemplate transfer as a punishment.

8. For the aforesaid reasons, the writ petition is allowed. No costs. Consequently, the connected miscellaneous petitions are closed.