

(2004) 09 MAD CK 0084

In the Madras High Court

Case No : Writ Petition No. 22676 of 2004

M.A. Perumal Raja, Manager (Purchase) Tamil Nadu Textile Corporation Ltd.

APPELLANT

Vs

The Managing Director, Tamil Nadu Textile Corporation Ltd.

RESPONDENT

Date of Decision : 01-09-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 4 MLJ 331

Hon'ble Judges : A.K. Rajan, J

Bench : Single Bench

Advocate : K. Rajkumar, for the Appellant; S. Manikumar, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Rajan, J.—The prayer in the writ petition is to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the Managing Director, Tamil Nadu Textile Corporation Limited, the respondent herein, made in Ref.No.IA/3/3/04-05, dated 27.7.2004, quash the same and direct the respondent herein to revoke the Order of suspension and pay all the arrears of salary and continue the petitioner as Manager (Purchase) in Tamil Nadu Textile Corporation Limited.

2. By consent, the main writ petition itself is taken up.

3. In the affidavit it is stated that the Suspension Order passed by the respondent is arbitrary and contrary to the Service Regulations. The petitioner was appointed as Factory Manager in the year 1983 and promoted as Manager (Purchase) in the year 2000. As per Government Letter No.184, H.H. & T.K. Department, dated 26.8.1994, the Board or Managing Director has no power to appoint Manager or impose any penalty on such persons. The post of Managing Director is presently held by the District Revenue Officer. When the petitioner was working as Administrator in Pudukottai District Co-operative Spinning Mills,

he was transferred to the Head Office as Manager (Purchase) during February, 2004, and continuing there. While so, by Order dated 27.7.2004, the petitioner was placed under suspension. The Order of suspension proceeds as if the petitioner has been placed under suspension pending enquiry. It also reads that the charge sheet will be issued separately. Therefore, there is no question of pending enquiry. Hence, the Order passed is vitiated due to non-application of mind. The Order also bad-in-law due to mala fides.

4. The impugned Order reads as follows:

" Thiru M.A.Perumal Raja, Manager (Purchase) of Tamil Nadu Textile Corporation is placed under suspension in the interest of the public as well as administration, pending enquiry, under Rule 7.3(1) of the Administrative Manual of the Corporation with effect from the afternoon of 27.7.2004 for the irregularities, malpractice, misconduct, etc. committed by him in connection with the tenders of Uniform Scheme 2003-2004 in the capacity of Manager (Purchase).

Charge sheet will be issued to him separately."

From the reading of the impugned Order it is seen that the Order is issued "pending enquiry". It also says that "Charge sheet will be issued separately". Only when the Order is issued, it can be said that the enquiry is pending. Since the Order itself says that the enquiry cannot be said to be pending on the date when the impugned order is issued, therefore, the Order is bad-in-law for non-application of mind.

5. The learned counsel for the petitioner submitted that the typed set of papers filed by the respondents contains the communication, dated 26.7.2004; from the Commissioner, Handlooms & Textiles. In that, the Commissioner has directed the Managing Director to place the petitioner under suspension; and only because of this direction, the petitioner has been placed under suspension. The impugned order has not been passed by the Authority, who suspends the petitioner, on his own, but it is passed on the direction given by the Superior Officer, and hence the Order is bad-in-law. In support of his contention, the learned counsel for the petitioner relied upon the judgment of this Court in DORAISAMY v.. THE COMMISSIONER, THIRUVANNAMALAI PANCHAYAT UNION 1997 WLR 554, where there is an observation -

" It is not proper on the part of the first respondent to have simply passed orders on the direction of the second respondent. Even the suspension order has been passed on the direction of the 2nd respondent. The first respondent should act independently and not on the instruction of the 2nd respondent. In the circumstances, this Court is inclined to interfere and quash the impugned proceedings."

But, in this case, the petitioner was suspended for the alleged lapse on his part leading to theft; charges were framed, and order of suspension was revoked and thereafter reinstated. There was no further proceedings. No final Orders have

been passed on the charges framed. But, suddenly an Order was passed for recovery of Rs.27,000/- from the petitioner. That was challenged in the writ petition. While disposing of the writ petition, the Court has held as follows:

" This Court would have normally directed the Writ Petitioner to prefer appeal before the 2nd respondent ? Appellate Authority. But in the present case, the 1st respondent had failed to pass orders independently but he had passed the orders on the directions of the 2nd respondent as well. It is not proper on the part of the 1st respondent to have simply passed orders on the direction of the 2nd respondent. Even the suspension order has been passed on the direction of the 2nd respondent. The first respondent should act independently and not on the instruction of the 2nd respondent. In the circumstances, this Court is inclined to interfere and quash the impugned proceedings."

The ratio of this decision is that the Order of recovery without passing final orders in a departmental enquiry is bad-in-law. The ratio is not that the suspension cannot be ordered on the direction of the Superior Officer.

6. The learned counsel for the petitioner also relied upon the judgment in M.SRIDEVI v.. THE SYNDICATE BANK, MANIPAL 1995 LAB.I.C. 173 (KANT.). In this case, the Karnataka High Court has held that the suspension Order without serving charge sheet is null and void. On the basis of this decision, the learned counsel for the petitioner submitted that in this case also, since the charge sheet has not been served, the order is null and void. With due respect, I am unable to accept the views expressed by the learned Judge. It is not necessary that suspension order shall be made only when simultaneously charge sheet is also served. Therefore, this judgment is not helpful to the petitioner.

7. The learned counsel for the petitioner relied upon another judgment of this Court in DHANAPALAN v.. THE STATE OF TAMIL NADU 1984 W.L.R. 460. This judgment has no relevance for the facts of the present case. In this case, the Government Servant did not join the place to which he was transferred. But, he went on medical leave. When that was challenged as misconduct, the Court held otherwise. Therefore, this decision also has no relevance to the point in issue.

8. The learned counsel for the petitioner also relied upon the judgment of the Bombay High Court in TUKARAM YESHWANT PAWAR v.. BHAGWANTRAO GAIKWAD 1988 (2) LLN 700, wherein it has been held, on the merits of that case, that the suspension of the petitioner was unwarranted. Hence, this decision also does not help the case of the petitioner.

The learned counsel for the petitioner next relied upon the judgment in DY. SECRETARY TO GOVERNMENT, PROHIBITION & EXCISE DEPARTMENT v.. A. BAPPU (1995) 29 ATC 147. This decision also has no relevance to the point before this Court.

9. On the other hand, the learned counsel for the respondent relied upon the decision in UTHIRAKUMARAN v.. THE GOVERNMENT OF TAMIL NADU [1998 WLR

229], where a Division Bench of this Court has held -

" With regard to suspension pending enquiry, it is certainly not punitive in character. In such a case, it means the relationship of Master and Servant remains in abeyance for a temporary phase. It is an action in order to maintain purity of service when an employee is awaiting an enquiry in regard to his suspected misconduct....."

Further it has been held -

" Suspension pending or in contemplation of disciplinary enquiry does not amount to temporary removal from service and does not attract Art. 311 of the Constitution..... Thus it would follow that suspension pending a departmental enquiry or a criminal charge is a different matter altogether."

Therefore, the Order of suspension cannot be challenged, as it is not punitive in nature and it is done only on contemplated enquiry.

10. The learned counsel for the respondent also referred to the judgment of the Supreme Court in Secretary to Government and another Vs. K. Munniappan, , where the Supreme Court has held that actual pendency of enquiry is not a pre-condition to suspend an Officer.

11. The learned counsel for the respondent also relied upon the judgment of the Supreme Court in Punjab National Bank Vs. D.M. Amarnath, . In this case, the Supreme Court has held that -

" In our opinion, the law does not require that the suspension order must on its face disclose that any criminal offence was under investigation, inquiry or trial."

12. The learned counsel for the respondent referred to the judgment of the Supreme Court in State of Madhya Pradesh and Others Vs. Shardul Singh, wherein an enquiry was initiated by the Superintendent of Police, against the Sub-Inspector, who was appointed by the Inspector-General of Police. The Supreme Court has held that Article 311 of the Constitution did not in terms require that the authority, empowered under that provision to dismiss or remove an official, should itself initiate or conduct the enquiry preceding the dismissal or removal of the officer or even that that enquiry should be done at its instance.

13. The above decisions, referred to by the learned counsel for the respondent, clearly show that it is not necessary that only the Authority, who is competent to remove the petitioner from service, shall initiate departmental enquiry, and that initiation of departmental enquiry by an Officer below the rank of the appointing authority is not invalid. Therefore, the first argument of the learned counsel for the petitioner that since the Order of suspension has been issued by an Officer inferior to the rank of appointing authority vitiate the suspension order, is not acceptable. and hence, it is rejected.

14. The contention of the learned counsel for the petitioner that the suspension order issued on the direction given by the Superior Officer is also not factually

correct. The Communication dated 26.7.2004 refers the report sent by the Managing Director. It also refers to a preliminary enquiry report submitted by the Commissioner and this letter only directed the Managing Director to take action in accordance with Rules. Further, the impugned Order of suspension does not reveal that the Order was passed on the direction given by the Superior Officer. It is an order passed by an independent authority. Therefore, this cannot be construed that the authority, who issued the order of suspension, had followed the direction issued by the Superior Officer. Hence, this argument has no force and it is rejected.

15. The next argument that the charge sheet should have been filed along with the suspension order is not acceptable for the reasons stated above.

16. For these reasons, all the arguments raised by the petitioner are not acceptable. Hence, the writ petition is dismissed. No costs. Consequently, WPMP No.27414/04 and WVMP No.1540/04 are closed.