
(1949) 01 MAD CK 0024
In the Madras High Court

M.S. Ramayya

APPELLANT

Vs

The District Board

RESPONDENT

Date of Decision : 21-01-1949

Acts Referred:

Citation : (1949) 1 MLJ 422

Hon'ble Judges : Satyanarayana, J

Bench : Division Bench

Judgement

Satyanarayana, J.—The plaintiff is the appellant. He was the Headmaster of the Board Higher Elementary School, Kamakarai, run and managed by the respondent, the District Board of Coimbatore. On certain charges framed against him and proved, the District Board by its order dated 19th November, 1941, reduced the salary of the plaintiff permanently from Rs. 30 to Rs. 25. Against this order of the District Board he preferred an appeal to the Director of Public Instruction and along with his appeal petition he enclosed a Photostat copy of a letter addressed by one Mayana Gowda to the Deputy Inspector of Schools, one Mr. Sundara Rao and dated 21st April, 1941, to establish that there was a conspiracy between one of his subordinates, Mari Gowda, whose relation was Mayana Gowda, and the Deputy Inspector of Schools, Mr. Sundara Rao. The Director of Public Instruction modified the order of the District Board debaring the plaintiff from being Headmaster at any time but reducing his pay to Rs. 25 for one year only instead of permanently. The Director of Public Instruction wanted a copy of the report of the result of the investigation which the President of the District Board represented to the Director of Public Instruction that he intended to conduct in order to find out how the plaintiff managed to get the Photostat copy of the said letter. The President of the District Board took up the enquiry and framed charges which were communicated to the plaintiff on 3rd February, 1944. The plaintiff was asked to submit his explanation and also to answer a questionnaire enclosed with the letter of the President dated 3rd February, 1944. The plaintiff never appeared before the President, even though the District Board undertook to meet his traveling expenses and evaded giving

any explanation to the charges and submitting the answers to the questionnaire. The President therefore found him guilty of the charges that were framed against him and the plaintiff was dismissed from service with effect from 7th February, 1944. Ex. P-27 dated 17th March, 1944, contains the proceedings of the President of the District Board, Coimbatore.

2. The plaintiff instituted the suit out of which this second appeal arises to set aside the order of dismissal and for re-instatement. The plaintiff alleged that the charges framed against him were baseless and that the punishment inflicted upon him was mala fide. The Courts below dismissed the plaintiff's suit on the ground that he had failed to establish that the enquiry by the President was not legal and that the charges were unfounded. The lower appellate Court found that notwithstanding the offer of the District Board to meet the traveling expenses of the plaintiff and his witnesses he had refused to be present at the enquiry and refused to disclose the source from which he obtained the Photostat copy of the letter. According to the opinion of the learned Subordinate Judge, the several replies sent by the plaintiff to the President of the District Board in answer to the charges that were communicated to him were not only impertinent but were even provocative. It was also found that the procedure laid down was properly followed and that there was no violation of any of the rules laid down for an enquiry. In the result, he agreed with the District Munsiff in dismissing the suit.

3. In this second appeal, the learned advocate for the appellant placed before me the correspondence and the evidence about the charges. I have no hesitation in agreeing with the conclusion of the learned Subordinate Judge that the attitude of the plaintiff throughout was highly impertinent, if not provocative. There is no ground for complaint so far as the enquiry before the President of the District Board is concerned. The plaintiff never submitted any explanation as to how he was able to obtain a photostate copy of a letter which should have been in the hands of the Deputy Inspector of Schools. He examined P.W. 1, a karnam, to prove that he showed the letter to him (the plaintiff) and that he took a photostat copy of that letter. But the Deputy Inspector of Schools gave evidence to the effect that he never received that letter. From this evidence it follows that the letter was somehow intercepted by the plaintiff or P.W. 1 or both and that a Photostat copy was taken and sent to the Director of Public Instruction along with the memorandum of appeal. Such therefore is the conduct of the plaintiff and from the evidence on record the only conclusion possible is that not only was he impertinent in his replies to the President of the District Board, but that he is guilty of underhand methods to obtain possession of a letter to the Deputy Inspector of Schools. I therefore agree with the finding of fact that no mala fides in the conduct of the enquiry has been established by the plaintiff and that the charge is well founded.

4. It is next argued on behalf of the appellant that the charge was defective in that notice of the proposed action was not given in that charge to the plaintiff and that therefore the dismissal was illegal. u/s 240(3) of the Government of

India Act, it has been provided in the case of a member of the civil service that he should not be dismissed from the service or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken against him. This section has now been authoritatively interpreted by the Privy Council as requiring that along with the charge a member of the civil service should also be informed of the particular action that was proposed to be taken against him, viz., whether it was proposed to dismiss him or reduce him in rank. It is not enough merely to indicate that one or other of the punishments would be awarded to him if the charges were established. The language of the rule under which an enquiry is to be held in the case of the servants of the District Board is different. Rule 5 of the rules relating to the appointment and punishment of officers and servants of the Local Boards framed by the Provincial Government under Sections 70, 72 and 199 of the Madras Local Boards Act states:

No order of dismissal, of removal, of reduction, of suspension not being one pending inquiry or withholding increments or promotion, including stoppage at an efficiency bar shall be passed on an officer or servant of a local board (other than an order based on facts which have led to his conviction in a Criminal Court) unless he has been informed in writing of the grounds on which it is proposed to take action and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case....

The rest of the rule is not relevant. It will be seen on a comparison of the language of Section 240(3) of the Government of India Act with the language of Rule 5 that all that is required to be done under the latter rule is to inform in writing the grounds on which it is proposed to take action and such grounds should be reduced to writing and communicated to the person concerned. The rule does not require that the proposed action should be intimated. What is required to be communicated is that it is proposed to take action and not the nature of the punishment. The distinction between the expression " proposed to take action " and the expression " the action proposed " was noticed by the Privy Council in *High Commissioner for India v. I.M. Lall* (1948) 2 M.L.J. 55 : L.R. 75 IndAp 225 : 1948 F.L.J. 23 (P.C.). Under Rule 55 of the rules framed u/s 96(b) of the Government of India Act, 1919, in the case of an enquiry into the conduct of civil servants it was there provided that the grounds on which it is proposed to take action should be reduced to writing and as under Rule 5 (Madras Local Boards Act) the grounds on which it was proposed to take action should also be communicated. While discussing the effect of Section 240(3), their Lordships of the Judicial; Committee pointed out in *High Commissioner for India v. I.M. Lall* (1948) 2 M.L.J. 55 : L.R. 75 IndAp 225 : 1948 F.L.J. 23 (P.C.):

In their opinion, Sub-section 3 of Section 240 was not intended to be, and was not, a reproduction of Rule 55 which was left unaffected as an administrative rule. Rule 55 is concerned that the civil servant shall be informed "of the grounds on which it is proposed to take action ", and to afford him an adequate opportunity of defending himself against charges which have to be reduced to writing; this is in marked contrast to the statutory provisions of "a reasonable opportunity of showing cause against the action proposed to be taken in regard to him." In the opinion of their Lordships, no action is proposed within the meaning of the Sub-section until a definite conclusion has been come to on the charges, and the actual punishment to follow is provisionally determined on.

Under Section 240(3), therefore, it is incumbent upon the person who is charged with the duty of conducting the enquiry to make up his mind even at the time of settling the charges the punishment intended to be awarded if the charges are established and he should along with the charges intimate the punishment also. In other words, the proposed action to be communicated should contain not only the charges but the punishment for those charges intended to be awarded if proved. Under Rule 55 of the old rule relating to civil servants, the language of which is analogous to Rule 5 framed by the Local Government under the Local Boards Act, it is not necessary for the person conducting the enquiry to make up his mind regarding the action, that is, the punishment proposed to be awarded if the charges are established. All that is required to be communicated to the person about whose conduct it is proposed to enquire, is the grounds on which the action is proposed to be taken. I am therefore unable to agree with the contention that the charge in the present case is defective because the punishment of dismissal which was ultimately awarded to the plaintiff was not mentioned in the charge and communicated to him even at the outset. The point that the charge was defective was not raised in the Courts below; but as it is a pure question of law appearing on the face of the charge, I allowed it to be argued.

5. It is urged on behalf of the appellant that the punishment awarded is severe. Sitting in second appeal it is not open to me to consider and interfere with punishment alone if there is no other error of law. The punishment under the rules is left to the discretion of the President of the District Board and even if I feel that the punishment is excessive, I have no power to interfere with it. It is however for the President, District Board, to consider, if the plaintiff applies to him whether the ends of justice will not be met by awarding a lesser sentence than dismissal. It may be possible for the District Board, if on re-consideration they think fit to re-entertain the plaintiff, to transfer him to a place free from factions.

6. The second appeal is dismissed with costs.

7. Leave to appeal is refused.