

(2001) 01 MAD CK 0019

In the Madras High Court

Case No : Writ Petition No. 20522 and W.M.P. No. 32089 of 1993

Muruganandam P.

APPELLANT

Vs

State Industries Promotion Corporation and Others

RESPONDENT

Date of Decision : 10-01-2001

Acts Referred:

Citation : (2001) 2 LLJ 1657

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : S. Venkataraman, for the Appellant; A.L. Somayaji and P. Rajagopal, for the Respondent

Final Decision : Dismissed

Judgement

E. Padmanabhan, J.—The petitioner prays for the issue of a writ of certiorarified mandamus calling for the records relating to the

proceedings No. E3/MISC/76/92 dated May 31, 1993 of the first respondent, as confirmed by the second respondent's proceedings No.

E3/MISC/ 76/93, dated August 10, 1993, quash the same and consequently direct the first respondent to reinstate the petitioner in service with all

consequential benefits.

2. Heard Mr. S. Venkataraman, learned counsel appearing for the petitioner and Mr. A.L. Somayaji, learned senior counsel for Mr. P. Rajagopal

appearing for the respondents.

3. The factual matrix could be summarised briefly. The petitioner who joined the first respondent-Corporation as Junior Assistant during the year

1980 came to be promoted as Assistant Officer. During 1987, the petitioner suffered a punishment of reversion for a period of two years.

Aggrieved by the said reversion, the petitioner filed W.P.No. 7475 of 1990 and the said writ petition came to be dismissed, pending the present

writ petition. In other words, the order of reversion has become final.

4. The third respondent was the Managing Director of the first respondent-Corporation. The third respondent accompanied by the General

Manager and Superintendent inspected the Industrial Complex at Manamadurai on April 13, 1992. The petitioner who claims that he was the

General Secretary of the SIPCOT Employees Union has to be away at Madras in connection with an industrial dispute. The petitioner had left

casual leave letter on April 30, 1992 enclosing a telegram received from his advocate at Madras. The petitioner though he was intimated of the

inspection by the Chairman-cum-Managing Director had left the place. The petitioner had in fact left the leave application with the Assistant of the

Complex and not with the Project Officer, The third respondent placed the petitioner under suspension pending enquiry into grave charges. On

July 18, 1992 the petitioner was served with a memorandum of charges.

5. The petitioner alleges that the third respondent with a view to wreak vengeance had initiated proceedings. The third respondent issued the

memorandum of charges and the petitioner filed W.P.No. 14510 of 1992 to quash the same as the first respondent alone is the competent

disciplinary authority to frame the charges and not the third respondent. This Court initially granted stay and ultimately allowed the said writ petition

on November 6, 1992, while giving liberty to the first respondent to initiate proceedings de novo.

6. The petitioner also challenged the order of suspension by filing W.P.No. 7049 of 1992. This Court issued certain directions directing the

respondent to pay subsistence allowance and also held that there is no justification to deny or delay payment of subsistence allowance.

7. After dismissal of both the writ petitions the first respondent framed charges on December 21, 1992 to which memorandum of charges, the

petitioner submitted his objections. Thereafter Mr. M. Pandey, the General Manager was appointed as the Enquiry Officer and Mr. C. Mohan

Deputy Manager was appointed as the Management Representative. The petitioner was called upon to appear before the Enquiry Officer on

February 11, 1993 at the Central Office at Madras. The petitioner sent a telegram

seeking postponement of the enquiry, as February 11, 1993

happened to be a holiday. The Enquiry Officer proceeded with the enquiry and marked documents but posted the matter to February 18, 1993.

On February 17, 1993, the petitioner had sent a telegram seeking for permission to have the assistance of a legal practitioner to defend himself and

to cross examine the Chairman-cum-Managing Director. On February 18, 1993 the petitioner appeared before the enquiry officer in person and

made a representation requesting for subsistence allowance. The Enquiry Officer while declining to grant permission to the petitioner to have the

assistance of a legal practitioner and while stating that the enquiry officer is not concerned with the payment of subsistence allowance, required the

petitioner to appear for enquiry. The petitioner's request for subsistence allowance had not been complied with and the enquiry officer posted the

enquiry to March 4, 1993. The petitioner on March 3, 1993 sent a telegram to the enquiry officer intimating that subsistence allowance had not

been paid for the last three months and due to non payment of subsistence allowance the petitioner is unable to attend the enquiry. The enquiry

officer proceeded with the enquiry on March 4, 1993 ex parte. Once again, the petitioner sent a telegram on March 15, 1996 stating that due to

non payment of subsistence allowance he is disabled from attending the enquiry. However, the enquiry officer proceeded with the ex parte enquiry

on March 18, 1993 and submitted his findings.

8. The first respondent communicated a copy of the enquiry officer's report and called upon the petitioner to state his objections if any, The

petitioner submitted his objections on May 6, 1993 pointing out that the holding of ex parte enquiry is illegal as he had been prevented from

attending the enquiry due to non-payment of subsistence allowance. The petitioner further pointed out that the enquiry is vitiated.

9. The first respondent proceeded further, imposed the punishment of dismissal on May 31, 1993 on which date the third respondent retired from

the Government Service. It is alleged that the third respondent had vindictively and out of malice had passed such an order of dismissal. Aggrieved

by the said dismissal the petitioner preferred an appeal before the appellate authority, the second respondent, who had also dismissed the appeal.

Being aggrieved, the present writ petition has been filed.

10. Mr. S. Venkataraman, learned counsel for the petitioner confined his contentions in respect of the following two points and also added that he

is not advancing any other contention as the petitioner had to succeed or fail on the two points -

(i) The order of dismissal is vitiated and violative of principles of natural justice as the petitioner had been disabled from attending the enquiry due.

to non payment of subsistence allowance.

(ii) The order of dismissal is vitiated by mala fides on the part of the third respondent.

11. Per contra, Mr. A.L. Somayaji, learned senior counsel appearing for the respondents 1 and 2 filed a detailed counter leading to the framing of

charges, conducting domestic enquiry, communication of enquiry officer's report, consideration of the detailed representations submitted by the

petitioner and the ultimate order passed by the Original Authority, the first respondent as well as the 5 appellate authority, the second respondent in

confirming the order of dismissal. According to the respondents 1 and 2 there has been no violation of principles of natural justice and that on the

facts of the case the contentions raised by the petitioner cannot be sustained as the petitioner was at Madras on the dates of enquiry and it is not as

if he was living in penury and it is obvious that the petitioner had deliberately with a calculated motive and to prepare ground for appeal or writ

petition had absented himself. It is pointed out that there is no violation of principles of natural justice on the facts of the case and the petitioner

having been at Madras on the crucial dates could have easily taken part in the proceedings and on the facts of the case non payment of subsistence

allowance will not vitiate the enquiry proceedings, nor it is in violation of principles of natural justice.

12. It is further contended that some of the charges are grave in nature and the petitioner had not challenged the enquiry proceedings, nor the

findings reported by the enquiry officer and in fact had submitted a detailed explanation before the framing of charges and also submitted his

objection to the enquiry officer's report. Therefore according to the respondents 1 and 2 there are sufficient materials and legal evidence to hold

the petitioner guilty of the imputations and consequently all the charges stand established against the petitioner. The third respondent had filed a

separate counter-affidavit controverting the allegation of mala fides alleged in the affidavit.

13. The third respondent had specifically stated that after the framing of charges by the first respondent and the de novo proceedings he has

nothing to do with the disciplinary proceedings initiated against the petitioner and the allegations are baseless and groundless and it is an attempt to tarnish the image of the third respondent.

14. In this writ petition the following two points arise for consideration?

(i) Whether the disciplinary proceedings commencing from initiation, imposing of punishment of dismissal and the confirmation of the same by the appellate authority are vitiated by mala fides?

(ii) Whether the non payment of subsistence allowance on the facts of the case for a period of three months had disabled the petitioner from taking part in the domestic enquiry proceedings and whether non payment of subsistence allowance had resulted in violation of principles of natural justice vitiating the enquiry proceedings?

15. Taking up the first point for consideration, except making allegations against the third respondent, no material has been placed by the petitioner to substantiate such allegations. Per contra, the third respondent who had been impleaded in his individual capacity has filed a detailed counter-

affidavit denied the allegations contending that the third respondent had nothing to do with the disciplinary proceedings initiated de novo as well as

the ultimate order of dismissal imposed by the first respondent. The third respondent had denied all the allegations made against him as false and

baseless besides stating that he had not acted vindictively. The third respondent had also denied the allegation of wrecking vengeance. Though Mr.

S. Venkataraman, learned counsel for the petitioner contended that the order impugned had been passed with the approval and only with a view to

satisfy the third respondent, this Court on a perusal of the file finds that the disciplinary authority namely the first respondent had not placed the file

before the third respondent either on May 31, 1993 or on any other date prior thereto. This Court had the benefit of note file as well as the original

file commencing from the framing of charges de novo, the conduct of the enquiry proceedings and the final order and this Court is satisfied that the

third respondent did not have any role nor he has anything to do with the de

novo proceedings or the ultimate orders of punishment or the order passed by the appellate authority who succeeded the third respondent. Hence the first contention namely that the order is vitiated by mala fides deserves to be rejected. The wild allegation as well as the contention put forward by the petitioner against the third respondent in this respect is without any basis and the conduct on the part of the petitioner has to be deprecated. Absolutely there is no ground at all to hold that the order is vitiated by mala fides on the part of the third respondent. Nor there is anything to show that the order impugned had been passed to satisfy the third respondent. The petitioner had made wild allegations against the third respondent which are groundless and baseless. The conduct of impleading third respondent on the facts of this case is totally unwarranted. Hence this Court has to award cost to the third respondent.

16. As regards the second point it is vehemently contended by Mr. S. Venkataraman that non payment of subsistence allowance for a period of three months had disabled the petitioner from attending the enquiry at Madras as the headquarters of the petitioner had been fixed at Manamadurai and this has resulted in violation of principles of natural justice and therefore the entire enquiry proceedings is vitiated and liable to be quashed.

17. Per contra, it is contended that the petitioner is not an ordinary workman but he was holding the post of Assistant Officer. Following the earlier order of this Court for a substantial period subsistence allowance was being paid but as the petitioner had violated the order of suspension, by leaving Manamadurai, he had forfeited his right to the payment of. subsistence allowance. Further, it is also pointed out by Mr. A.L. Somayaji, learned senior counsel appearing for respondents that the petitioner was in fact at Madras and he had sent a telegram from Madras seeking for adjournment. of the enquiry on the ground of non payment of subsistence allowance and the origin of telegram is also from Madras. In other words, it is contended that the petitioner had deliberately stayed away from the enquiry after having come down to Madras and ruse to defeat and delay the disciplinary action want of funds is sought to be suggested as an after thought while in fact the petitioner was at Madras on the relevant dates as seen from the telegram sent by the petitioner. The objection raised by the counsel for the respondent cannot be brushed aside. It is well

settled that non payment of subsistence allowance at times results in violation of principles of natural justice if it disabled the delinquent from

attending the. enquiry and as a consequence the enquiry may get vitiated.

18. In the present case, the delinquent was placed under suspension as early as April 30, 1992. This Court by order dated November 20, 1992

directed the respondents to pay full subsistence allowance as per the rules from June, 1992 onwards and continue the same until the final disposal

of the writ petition. The direction issued by this Court in W. M. P. Nos. 10148 and 26286 of 1992 in W.P.No. 7048 of 1992 reads thus:

The writ petition is directed against an order of suspension. There is serious controversy as to whether the competent authority had imposed the

order of suspension. Actually, the order of suspension was passed on April 30, 1992 and given effect to on May 4, 1992. The petitioner has filed

this writ petition on May 18, 1992 and notice was ordered on May 21, 1992. In view of these circumstances, I am not inclined to stay the order of

suspension pending disposal of the writ petition. However, there is an application W.M.P. No. 26286 of 1992, seeking directions to the

respondent for payment of the subsistence allowance from June, 1992. The learned counsel for the respondents says that the petitioner did not

comply with the direction, in the order of suspension, regarding his headquarters. On this ground, I do not think that the petitioner can be denied

payment of subsistence allowance. However, I direct the petitioner to conform to the directions to remain in the Headquarters and seek permission

if he wants to move out of the Headquarters. Subject to these directions, the respondents are directed to pay full subsistence allowance as per

rules from June 1992, onwards and continue the same until the final disposal of the writ petitions. The arrears of subsistence allowance shall be

paid on or before November 30, 1992.

19. It is fairly admitted that subsequently arrears of subsistence allowance aggregating to substantial sum had been paid before the date fixed for

enquiry and the charge memorandum dated December 21, 1992 had been served on the petitioner which reached the petitioner on December 26,

1992 to which the petitioner had submitted his explanation. The enquiry officer was appointed by proceedings dated January 21, 1993 while

pointing out that the petitioner had not resubmitted the questionnaire with

necessary statement, nor the petitioner had taken steps to peruse the documents. Accordingly, Mr. M, Pandey, General Manager was appointed as the enquiry officer by proceedings of the first respondent dated January 21, 1993. By notice of enquiry dated February 1, 1993, the enquiry officer required the petitioner to attend the enquiry on February 11, 1993 at 11.00 a.m., at the Central Office at Madras. The petitioner who came to Madras on February 10, 1993 had sent a telegram seeking for postponement of the enquiry to some other date as February 11, 1993 was declared as a holiday. However, on February 11, 1993 the enquiry officer adjourned the enquiry to February 18, 1993 while intimating that if the petitioner fails to attend the enquiry he will proceed ex parte. Even though the enquiry is posted to February 18, 1993, the petitioner had submitted a letter dated February 17, 1993 addressed to the second respondent requesting that he may be permitted to take assistance of a legal practitioner to defend himself in the enquiry proceedings as he has to examine the third respondent, who is the Chairman-cum-Managing Director. On the same day, the petitioner had also submitted a representation in person stating that arrears of subsistence allowance had not been paid for the months of August, 1992 to November, 1992 and the non payment of subsistence allowance caused much agony and requested for payment of entire arrears prior to the enquiry proceedings. The petitioner also made another request for furnishing the list of documents.

20. On February 18, 1993 the petitioner attended the enquiry at Madras and submitted a letter dated February 17, 1993 requesting for permission to have the assistance of a legal practitioner and also payment of arrears of subsistence allowance. The petitioner insisted for a reply to his letter dated February 17, 1993 submitted by him before starting of the enquiry proceedings. The enquiry officer while enclosing a list of documents connected with the enquiry proceedings and intimating that the petitioner may peruse the records conveyed to the petitioner that the non payment of subsistence allowance shall not be linked with the conduct of the enquiry and the request for assistance of legal practitioner on the facts of the case and in the nature of charges is not necessary. A list of management witnesses has also been communicated to the petitioner. The petitioner was called upon to attend the domestic enquiry on March 4, 1993 at 11.00 a.m.,

besides putting him on notice if the petitioner fails to attend the enquiry, the enquiry officer has to necessarily proceed ex parte. On March 4, 1993, the enquiry officer decided to proceed further and on which date the exhibits were produced before the enquiry officer by the Management. The petitioner who came to Madras on three hearings was interested in adopting delaying tactics. As the petitioner had failed to appear on that date namely, March 4, 1993, the enquiry officer with a view to afford another opportunity adjourned the hearing to March 18, 1993. In the meanwhile on March 3, 1993, the petitioner had sent a telegram. On March 15, 1993 once again the petitioner had sent a representation to the first respondent as well as the enquiry officer referring to his telegram dated March 3, 1993 and stated that subsistence allowance has not been paid for the past three months and due to poverty he is unable to attend the enquiry on March 18, 1993, Such a letter has been sent on March 15, 1993. The petitioner failed to appear for enquiry despite receipt of enquiry notice. Thereafter the management examined four witnesses. After recording the evidence and after marking the documents the enquiry officer submitted his report finding the delinquent guilty of the charges. On April 17, 1993 while forwarding a copy of the enquiry report, the first respondent called upon the petitioner to state his objection. On May 6, 1993 the petitioner had submitted his objections to the enquiry officer's report running to 19 pages on merits. Thereafter the first respondent after considering the objections imposed the punishment of dismissal by proceedings dated May 31, 1993. As seen from the said proceedings of the first respondent dated May 31, 1993 concedingly subsistence allowance had been paid up to November 30, 1992 and as the petitioner failed to conform to the conditions imposed in the suspension order, the petitioner has not been paid subsistence allowance. It is also further pointed out that the petitioner had submitted detailed representation and objections with respect to the charges and therefore the final orders are being passed on merits.

21. As against the order of dismissal the petitioner had also preferred an appeal and the Appellate Authority had confirmed the order of dismissal by proceedings dated August 10, 1993 after elaborate consideration. The Appellate Authority had also considered the main contentions namely

withholding of subsistence allowance and in that context the appellate authority concluded that non payment of subsistence allowance on the facts

of the case beyond November, 1992 i.e. for a period of three months would not vitiate the proceedings as the petitioner had failed to reside at the

headquarters and that he had come to Madras on the crucial dates and therefore he cannot put forward a plea that the petitioner had suffered due

to non payment of subsistence allowance.

22. In other words, it is the contention of the respondent that non-payment of subsistence allowance for a period of three months alone while

admitting payment of subsistence allowance for a period from April 30, 1992 to November 30, 1992, had not in any manner prejudiced the

petitioner who is well placed in life and that he had been to Madras on the crucial dates of enquiry and therefore the petitioner had not been

prejudiced due to non payment of subsistence allowance, which non payment also was a result of his own conduct.

23. There is no quarrel nor it is the contention of the petitioner that the findings are not supported by any evidence much less legal evidence and it is

not as if there is no material at all for the enquiry officer to submit his findings. It is not the case of the petitioner that the petitioner had not been

served with the notice of enquiry. It is true that the petitioner had been served with the enquiry notice and the petitioner had been gaining time as a

calculated move. In fact the petitioner had been to Madras on the crucial dates of enquiry and had adopted a delaying tactics. On the third day as

the petitioner had persistently failed to take part, the enquiry officer proceeded ex parte.

24. At the risk of repetition it has to be pointed out that the petitioner is not an ordinary factory worker but he was an Assistant Officer, who had

been placed under suspension and only for a period of three months subsistence allowance was not paid. But just before the said period he had

received substantial payment as arrears. Though the petitioner persistently pleaded that due to non payment of subsistence allowance he was

disabled from attending enquiry at Madras, factually, such a plea cannot be sustained at all on the facts of the present case as out of the three dates

he had been to Madras on the first date of hearing and sent a telegram from Madras and he had also appeared on the second date of enquiry and

also on the third date only he had sent such a telegram and absented himself deliberately to delay the proceedings. Such absence, as rightly pointed

out is not due to want of funds but as a calculated design and prepare a round for further writ proceedings.

25. On the earlier three occasions, the petitioner had been to Madras, and it was not the case of the petitioner that due to non payment of

subsistence allowance he could not leave Manamadurai. Factually the petitioner was at Madras definitely on more than two days when the enquiry

officer called upon him to appear before him. On the first occasion he came to Madras from Manamadurai; on the second occasion he appeared

before the Enquiry Officer and made certain representations for which a reply had been sent. On the third occasion of enquiry namely, the final

date of hearing, the petitioner had sent a telegram as if he had been disabled from leaving Manamadurai due to non payment of subsistence

allowance. Such a stand though attractive cannot be sustained on the facts of the case. On the earlier occasion since the petitioner was at Madras

he could have very well taken part in the proceedings. But after having come to Madras from Manamadurai on all crucial enquiry dates he had

delayed the proceedings and it is a deliberate attempt on the part of the petitioner and only on the last occasion he had sent a telegram as if he was

prevented due to non payment of subsistence allowance. On the facts of the case, it cannot be stated that the petitioner was living in penury and it

is not as if he is a labourer but he was an Assistant Officer of a particular level, who had received substantial arrears just before the said period.

26. It may be that the respondents had not issued a show notice before withholding payment of subsistence allowance, yet, on the facts of the

case, it is clear that the petitioner had deliberately absented himself and the reason assigned is only a ruse and it cannot be accepted, nor it could

be factually sustained by the petitioner. The non payment of subsistence allowance for a period of three months in the present case on facts had not

in any manner prejudiced or affected or prevented the petitioner from attending the enquiry and that too after collecting substantial sum as arrears

of subsistence allowance just before the enquiry.

27. It is well settled that non payment of subsistence allowance would result in violation of principles of natural justice and the delinquent official

may be disabled from participating in the enquiry proceedings. The learned counsel for the petitioner placed reliance on the decision of the Apex

Court in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, : Jagdamba Prasad Shukla Vs. State of U.P. and Others, : in support

of his contention. There is no quarrel with the legal submission. But the question which would arise on the facts of the present case is whether

actually the petitioner was disabled or prevented from taking part in the proceedings. Admittedly, the petitioner came to Madras on the crucial

dates and his object was to delay the proceedings by sending some representation or other. If the petitioner was really living in penury he would

not have come to Madras at all on several occasions. Only on the last date and at the last moment he sent a telegram that he was prevented by non

payment of subsistence allowance.

28. On the facts, as already stated the petitioner who had received substantial amount of arrears of subsistence allowance for the earlier period and

who had visited Madras more than thrice in connection with the enquiry after receipt of enquiry notice, and on the date of enquiry deliberately

managed for postponement. It is rather extraordinary on the part of the petitioner to advance the plea that due to non payment of subsistence

allowance he was prevented from taking part in the proceedings. On the facts it is clear that the petitioner had deliberately absented himself and

allowed the proceedings to proceed ex parte even after receipt of notice. The petitioner had been admittedly served with notice of enquiry on all

occasions and on most of the occasions he was at Madras and he appeared before the enquiry officer and presented representations and only on

the last occasion such a telegram was sent and therefore there is every justification for the respondent to have proceeded ex parte by recording ex

parte evidence and the enquiry officer is well justified in submitting an ex parte report.

29. After receipt of the enquiry report the petitioner had submitted his objections running to 18 pages on merits and those 18 pages of objections

would show that the petitioner had all the material on hand and had submitted the objections. Therefore it cannot be stated that the petitioner was

prevented from taking part in the proceedings, nor it could be stated that the petitioner did not have the materials with him to defend himself. The

petitioner had deliberately absented himself and he finds a ruse for his absence, which ruse cannot be true at all and this Court is of the considered

view that the enquiry officer had rightly proceeded ex parte. There was legal evidence before the enquiry officer and the enquiry officer is well

justified in submitting a report finding the petitioner guilty of the charges. The pronouncements relied upon by the learned counsel for the petitioner

are distinguishable on facts that they have no application to the facts of the present case as in my considered view I the petitioner had come out

with a false case as if he was prevented from taking part in the domestic enquiry due to non payment of subsistence allowance while in fact on most

of the dates he had come down to Madras from Manamadurai and he was present at Madras. In the circumstances, on the facts of the case, this

Court holds that the petitioner had deliberately and with a scheme had chosen to avoid the enquiry. His plea that non payment of subsistence

allowance had caused prejudice to him or he was prevented by such non payment cannot be sustained at all. The second contention also fails.

30. No other contention has been advanced by the learned counsel for the petitioner, as according to the learned counsel he is bound to succeed

or fail on the only two points urged, and that he is not advancing any other contention, As this Court finds that the petitioner had deliberately

absented himself and the enquiry officer had proceeded ex parte for justifiable reasons and when there is sufficient material to sustain the findings

reported by the enquiry officer, this is not a fit case where this Court would be justified in interfering with the said findings reported by the enquiry

officer or with the ultimate order of punishment of dismissal imposed by the first respondent on the gravamen of charges established as confirmed

by the second respondent.

31. In the result the writ petition is dismissed, but with costs to third respondent alone, which cost is fixed at Rs. 3,500/-. Consequently, connected

W.M.Ps. are also dismissed.