
(1961) 06 MAD CK 0007
In the Madras High Court

P. Embaru

APPELLANT

Vs

The Chairman, Madras Port Trust

RESPONDENT

Date of Decision : 26-06-1961

Acts Referred:

Madras Probation of Offenders Act, 1937 — Section 4(1)
Penal Code, 1860 (IPC) — Section 420

Citation : (1961) 74 LW 775 : (1962) 2 MLJ 85

Hon'ble Judges : Veeraswami, J

Bench : Division Bench

Judgement

Veeraswami, J.—This is a petition under Article 226 of the Constitution to quash the order of the respondent, the Madras Port Trust, dated October 13, 1959, dismissing the petitioner from service with effect from July 20, 1959. The petitioner entered the service of the respondent in April, 1928, as an apprentice and was promoted in 1948 as a fitter. The Presidency Magistrate at George Town, Madras, by his order, dated July 20, 1959, convicted the petitioner of an offence u/s 420 of the Indian Penal Code, the actual offence being that the petitioner cheated one Venugopal, the Chargeman, Foundry Shop inside the Madras Harbour, by inducing him to deliver a gun metal rod to him. But the learned Magistrate, instead of awarding punishment consequent upon the conviction, directed the petitioner u/s 4(1) of the Madras Probation of Offenders Act, 1937, to be released on his own bond with a surety, to appear and receive sentence when called upon during a period of one year, and in the meantime to keep the peace and be of good behaviour. A criminal revision against this conviction was unsuccessful. On October 13, 1959, the Chief Engineer of the Madras Port Trust, by his memorandum of that date, informed the petitioner that he was dismissed from service with effect from July 20, 1959, as he was convicted by the Presidency Magistrate on that date of the offence already referred to. The respondent, in making the order, purported to act under Rule 17 (a) (ii) of the Standing Orders for the Port of Madras. It is this order which the petitioner challenges in this petition.

2. The main ground on which the order of dismissal is impugned is based upon Section 12A of the Madras Probation of Offenders Act under which, it is claimed, the petitioner, in view of the probation order, has immunity from dismissal or any other punishment. On that basis, the further contention is that the procedure prescribed for making an order of dismissal under Rule 42 of the Standing Orders has not been followed, and that being the case, the order of dismissal is vitiated and should be set aside.

3. In order to appreciate the argument, it is necessary to notice the relative provisions in the Standing Orders as well as Section 12A of the Madras Probation of Offenders Act Sub-rule (ii) of Rule 17 (a) provides that should a case against a workman result in his conviction and such conviction remained in force, the workman might be dismissed from service from the date of conviction. It is not disputed that if this provision stood by itself, the order of dismissal would not be open to question. Rule 42 prescribed the procedure for dismissal of a workman in cases other than a conviction by a competent criminal Court, the procedure laid down being that there should be an enquiry held against the workman by framing charges and giving him an opportunity to answer the same and to defend himself. Section 4(1) of the Madras Probation of Offenders Act provides for release of certain offenders on probation of good conduct and Section 12A of the Act defines the effect of a probation order and runs:

Any person who is found guilty of an offence and is dealt with under the provisions of this Act shall not suffer any disqualification attaching to a conviction for the offence.

In view of this statutory provision, it is argued that Rule 17(a)(ii) of the Standing Orders is not applicable to the case of the petitioner. If this is so, there can be no question that the order of dismissal would be improper.

4. The question, therefore, is whether Section 12A can be construed in the manner suggested on behalf of the petitioner. The effect of an order of probation u/s 4(1) is not one of acquittal. The probation order itself is based upon a conviction being operative. Section 4(1) merely provides for postponement of sentence during good behaviour. Section 7 states that if a condition of the release of Section 4(1) was not complied with, the Court, after holding the necessary enquiry, could impose upon the person concerned the appropriate sentence, and this is also clear from the Proviso to Section 12A. I cannot, therefore, accept the contention that the effect of Section 12A is that there is no conviction at all by reason of an order u/s 4(1).

5. It is no doubt true that the object of Section 12A is that a person on conviction and release on probation u/s 4(1) shall be free from any disqualification attaching to a conviction for the offence concerned. But, in my opinion, this does not mean that a probation order is a bar to an order of dismissal from service. This dismissal is not one attaching to a conviction and it does not automatically flow from it. It is only a consequence which is attaching to or flows from a

conviction that is within the ambit of Section 12A, and not any result which may be based upon a conviction, be it after or without an enquiry. The words " any disqualification " by themselves may perhaps be wide enough to cover a case of dismissal. But the scope of these words has to be interpreted in the context of the word " attaching " . Unless the disqualification is necessarily annexed to or flows from a conviction without anything more, the section can afford no protection.

6. Rule 17(a)(ii) of the Standing Orders does not provide an automatic dismissal of a person from service on his conviction. The rule leaves a discretion and it would be open to the authority concerned to decide not to dismiss a person from service by reason of a conviction. That being the case, the rule which merely reserves a discretion to the authority is in no way affected by Section 12A. It would be another matter if the rule had stated that on a conviction the person concerned would stand automatically dismissed from service. But that is not the rule. All that the rule contemplates is that where a person has been convicted of an offence and the conviction is in force, it would be competent for the authority to proceed under that rule and dismiss the person from service without any further enquiry. To such a case, the procedure prescribed by Rule 42 has no application.

7. I find that the construction I have placed upon Section 12A is supported by the view taken by this Court in R. Kumaraswami Aiyar Vs. Commissioner, Tiruvannamalai Municipality and Others, . Dealing with the scope of that section, it was observed in that case thus:

In my view, Section 12A is incapable of the construction sought to be put upon it on behalf of the petitioner. What the section says is "shall not suffer any disqualification attaching to a conviction" and there is a vital distinction between a disqualification attaching to a conviction and the taking of proceedings consequent upon such a conviction. If, for instance, the petitioner is dismissed from service because he has been found guilty of an offence involving moral turpitude, it cannot be said that he is suffering from a disqualification attaching to a conviction. What Section 12A has in view is a automatic disqualification flowing from a conviction and not an obliteration of the misconduct of the accused. In my judgment, the possibility of disciplinary proceedings being taken against a person found guilty is not a disqualification attaching to the conviction within the meaning of Section 12A of the Probation of Offenders Act.

With respect, I am in entire agreement with these observations. I hold, therefore, that the impugned order is valid.

8. Both the grounds urged by the petitioner fail and the petition is dismissed. But, in the circumstances, there will be no order as to costs.