
(1990) 03 MAD CK 0002
In the Madras High Court
Case No : Writ Petition No. 14488/89

P. Muthusami

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

Date of Decision : 22-03-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1990) 03 MAD CK 0002

Hon'ble Judges : Bakthavatsalam, J

Bench : Single Bench

Advocate : S. Vijayarangan, for the Appellant; T.P. Arivudainambi, Government Advocate and Mr. S. Jayaraman, for the Respondent

Judgement

Bakthavatsalam, J.—When the miscellaneous petitions came up for hearing, by consent of both parties, the main writ petition itself is taken

for final disposal. The prayer in the writ petition is as follows:

. . .to issue a writ of certiorarified mandamus or any other writ or order of direction in the nature of a writ calling for the records of the second

respondent in his order No. P.S.S. No. 2191 dated 12-10-1989 and to quash the same to reinstate the petitioner in service and also to direct the

respondents to pay the petitioner difference in pay, bonus, Pongal gift, etc. in pursuance of the petition given by the petitioner to the second

respondent on 24-7-1989. . .

2. The brief facts are: The petitioner herein was serving as a driver in the second respondent Corporation. He was involved in a murder case and

he was charge-sheeted. The petitioner herein was sentenced and convicted by the learned District Judge, Q.M. District, at Dindigul in a Sessions

Case No. 65 of 1985, to undergo imprisonment for life. Against the said

judgment of the learned District Judge, Q.M. District, the petitioner herein has preferred a Criminal Appeal in C.A. No. 713 of 1985 before this Court and the same is pending. The petitioner herein was granted a conditional bail by this Court, The allegation of the petitioner is that after the date of the said occurrence on 10-11-1984, he was in service till 27-8-1985. The petitioner alleges that the learned Sessions Judge, Q.M. District convicted him on 28-8-1985 for the charge of murder and after that date, he was not in service from 28-8-85 to 27-9-1985, but he was in service from 28-9-1985 to 22-11-1985. It seems that in view of the conviction imposed on him, the petitioner was placed under suspension from 23-11-1985. It is stated in the affidavit filed in support of the petition that he was reinstated by the second respondent Corporation by order dated 25-2-1988, that while he was working he applied on 24-7-1989 to the second respondent to treat his period of suspension as on duty, to pay (his salary for) the entire period of suspension, to pay bonus, pongal gift etc. At this stage, a show cause notice dated 2-9-1989 was issued on him on 6-9-1989 calling for his explanation to show why he should not be dismissed from service. It is alleged in the affidavit that he has submitted an explanation on 12-9-1989 stating that the Criminal Appeal No. 713 of 1985 filed by him is pending before this Court and that he has been on bail without any condition. It is alleged that on 12-10-1989 the impugned order has been passed by the respondent Corporation dismissing him from service.

3. It is alleged in the affidavit that the respondents have ignored the fact that the petitioner has preferred a Criminal Appeal against the judgment and sentence of the District Judge, Dindigul, that the fact that he has been on bail without any condition and that he has got a fair chance of success in the said appeal and that he should not be removed from service during the pendency of the said Criminal Appeal. It is also stated in the affidavit that there is no moral turpitude involved in the said conviction that he was falsely implicated in the alleged murder that took place in the village on account of some family dispute, and that the show cause notice issued by the second respondent dated 2-9-1989 itself is liable to be set aside as it is a mala fide and it has not taken into consideration, the pendency of the Criminal Appeal. It is further alleged that the second show cause has

been issued by the second respondent Corporation without properly understanding the purport of a criminal appeal and without knowing the fundamentals of Criminal law. It is also alleged in the affidavit that the suspension of sentence on appeal would mean stay of operation of the conviction and sentence of the order of the learned Sessions Judge and as such the reason given in the impugned order that he has not obtained stay is not correct. It is also alleged in the affidavit that the respondent Corporation has not understood the effect of the pendency of the Criminal Appeal and the fact that the petitioner was on bail without any condition. It is also stated that he was in service even after the order of the learned District Judge, Dindigul. With these allegations, the petitioner has come up before this Court with the prayer as stated supra.

4. A counter affidavit has been filed by the second respondent, the Corporation. The facts are not disputed in the counter affidavit. It is also stated that the petitioner herein was originally employed as a driver in the Pandian Roadways Corporation, that the erstwhile employer of the petitioner by its communication dated 21-11-1985 suspended the writ petitioner from service, that in the meantime the Pandian Roadways Corporation was bifurcated into Pandian Roadways Corporation and Rani Mangammal Transport Corporation, the second respondent herein, that the persons who gave their options to serve under the second respondent herein have become the employees of the second respondent and the petitioner is one among them. It is further claimed in the counter affidavit that when the petitioner made a representation on 8-6-1987 to the management of the second respondent herein with regard to the payment of subsistence allowance and re-employment of service, the second respondent Corporation after considering his representation thought it fit to re-employ him into service, subject to the result of the Criminal Appeal filed by the petitioner before this Court and an order was issued on 25-2-1988. It is also claimed in the counter affidavit that on 24-7-1989, the petitioner herein wrote a letter to the Management of the second respondent herein seeking for subsistence allowance arrears, increments and bonus etc. and that on 2-9-1989 the management of the second respondent issued a show cause to give explanations and after obtaining an explanation from the petitioner herein, on 12-9-1989 an order was passed by the respondent Corporation, which is impugned in this writ petition, dismissing the petitioner from

service. It is further claimed in the counter affidavit that merely because a criminal appeal has been filed as against the judgment of the Sessions

Judge, it does not mean that a punishment of conviction ceased to exist, that there is a dispute between the workmen and the management of the

Transport Corporation with regard to the fixation of the quantum of bonus for the year 1981-82 is pending before the Industrial Tribunal, that the

second respondent Transport Corporation had filed an application under S. 32(2) (b) of the Industrial Disputes Act, that the said application No.

147 of 1989 is pending before the Industrial Tribunal and as such the petitioner had been dismissed in accordance with the Model Standing

Orders. It is also claimed in the counter affidavit that it is a clear case of moral turpitude, that the petitioner has been found guilty by the competent

Court for which he has been convicted and that the management has got the right to terminate the services of the petitioner in accordance with the

Standing Orders. It is submitted that the petitioner's allegation that the management has not properly understood the purpose of criminal case was

absolutely devoid of merit and was untenable. It is also stated that the petitioner's prayer for reinstatement pending the criminal case is not justified

and the same cannot be sustained in law.

5. Mr. S. Vijayarangam, the learned counsel appearing for the petitioner contends that the reasoning given in the impugned order, that since the

petitioner has not obtained any stay of the order of the learned District Judge he has been dismissed from service, is not justifiable. The learned

counsel also argues that the respondent Corporation has not understood the criminal law or the effect of the criminal appeal and the orders passed

by this Court. The learned counsel further states that no interim order of stay of criminal judgment could be obtained and that the impugned order

was passed without understanding the fundamentals of the criminal law. The learned counsel further states that the impugned order is bad on the

ground that the respondent Corporation cannot dispute the fact that the criminal appeal in C.A. No. 713 of 1985 is pending before this Court

against the conviction passed by the learned Sessions Judge.

6. Per contra, Mr. S. Jayaraman, the learned counsel for the respondent Corporation contends that the Corporation has got the power to pass the

impugned order under the Standing Orders, that though the reasoning given in

the impugned order may be wrong, this Court should not interfere with it, when the judgment of the learned Sessions Judge and conviction are existing as on date. The learned counsel further contends that the pendency of the criminal appeal in C.A. 713 of 1985 before this Court cannot entitle the petitioner to get reinstatement of the service and that the order of dismissal passed by the respondent Corporation is perfectly right under the Standing Orders of the Corporation. The learned counsel brings to my attention the decision in Subbaraman v. The State 1969 L.W. (Crl.) 270, for this proposition. After considering the arguments of Mr. S. Vijayarangam, the learned counsel appearing for the petitioner, Mr. P. Arivudainambi, the learned Government Advocate appearing for the State, and of Mr. S. Jayaraman, the learned counsel appearing for the respondent Corporation. I am of the view that the writ petition is wholly misconceived. The facts are not in dispute. The petitioner has been convicted for murder. The appeal C.A. 713 of 1985 is pending before this Court and the petitioner has been let on bail with conditions. In my view, though the impugned order has not been happily worded. I think law is well settled. In the decision cited by the learned counsel for the respondent Corporation, in Subbaraman v. The State 1969 L.W. (Crl.) 270, it has been held that conviction begins to operate as soon as it is recorded and that it subsists till it is set aside by an appellate court or a court of revision. The point raised in this case is whether the dismissal of the petitioner by the respondent Corporation on a conviction recorded by the learned Sessions Judge, Dindigul, while the criminal appeal C.A. 713 of 1985 is pending before this Court, is valid under law. In the above mentioned case, the learned Judge has held that even when an appeal or a revision is pending, the conviction is alive and it does not cease to exist. Applying this principle to the facts of this case. I am of the view that the order of dismissal by the respondent Corporation is perfectly right. As I have already stated, though the impugned order is not happily worded, yet the sum and substance is that the said criminal appeal No. C.A. 713 of 1985 is pending before this Court and it has been taken note of by the respondent Corporation before the impugned order was passed. The fact that the petitioner has been reinstated in the year 1988 cannot be taken as an estoppel. When the law is very clear and as such even from the fact that the

petitioner was reinstated in the year 1988 in my view wrongly. As such, it cannot be said that the action of the authorities by retracing from the original stand and dismissing the petitioner from the services of the respondent Corporation is not valid in law. In my view, the impugned order is valid in law. I do not think this Court should exercise the discretion under Art. 226 of the Constitution, when the impugned order is valid in law, in favour of the petitioner especially in a case where the petitioner has been convicted on a charge of murder and that it is subsisting. It can be seen the view of the learned Judge in the above mentioned case is based upon the decision in U.P. State v. Mohamed Nooth AIR 1958 S.C. 86. I see no reason to interfere with the order of the second respondent Corporation. There are no merits in the writ petition. The writ petition will stand dismissed. However, there will be no order as to costs.