
(2014) 08 MAD CK 0263

In the Madras High Court

Case No : W.P.(MD) No. 10821 of 2012, W.P.(MD) Nos. 10822 to 10827 of 2012
and M.P. Nos., 1,1,1,1,1,1 and 1 of 2012

P. Shaheen

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 01-08-2014

Acts Referred:

Post-Graduate Institute of Medical Education and Research, Chandigarh Act, 1966 —
Section 4

Citation : (2014) 5 CTC 444 : (2014) WritLR 936

Hon'ble Judges : R. Mahadevan, J

Bench : Single Bench

Judgement

R. Mahadevan, J.—These writ petitions are filed challenging the charge memo issued to the petitioners. The petitioners are teachers in the polytechnic college functioning under the Institute of Road Transport, a registered society created for the purpose of educating the children of the staffs of the State Transport Corporation.

2. The Charges under Rule 17 (a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and Rules 20(1), 20(2)(1) and 20(3) of the Tamil Nadu Fundamental Rules, framed against the writ petitioners, are as follows:

"(i)..... failed to maintain absolute integrity and devotion to duty and has done everything which is/are unbecoming members of the service.

(ii)..... has/have failed to ensure duty integrity and devotion to duty among students.

(iii)..... failed to perform the task assigned to him/her/them."

3. The case of the petitioners is that as the pass percentage of the Institute had gone down, fixing the liability on the petitioners, a charge memo was issued to the petitioners. The petitioners in reply had submitted that the syllabus was very tough, that the students who failed in the examinations did not attend the special

classes regularly and that the key answers to the same questions were different in different Institutes. However, without considering the exact reply, the 4th respondent has on his own imagined and quoted a reply which was not furnished by the petitioners and has framed these baseless and vague charges. Aggrieved over the same, these writ petitions have been filed.

4. The Counsel for the petitioners submitted that the teachers cannot be found fault for the poor result in the board examinations. The Counsel further contended that the petitioners had also conducted special classes and counselling. The Counsel further contended that the reply given by the petitioners to the show cause notices have been completely ignored before issuing the impugned charge memo and the 4th respondent had with malafide intentions quoted something else as if it was the reply of the petitioners admitting the allegations. The Counsel further reiterated that the syllabus was tough and the Management should not have permitted the students who failed in the model examinations to undertake the board examination. The Counsel further contended that the allegations in the charge memo are vague and baseless. The Counsel relying upon the judgments in (i) Union of India (UOI) and Others Vs. J. Ahmed, ; (ii) State of Uttar Pradesh and Others Vs. Ramesh Chandra Mangalik, ; and (iii) Dr. (Mrs.) Gurjeewan Garewal Vs. Dr. (Mrs.) Sumitra Dash and Others, , contended that the 4th respondent has no authority to initiate the departmental proceedings as the Fundamental Rules are not applicable to the petitioners and the alleged acts would not constitute an act of ? misconduct? and hence sought the quashing of the charge memo in all the writ petitions.

5. The Counsel for 4th respondent asserting the contentions in the counter contended that it is only because of the negligence, the pass percentage of the students has tremendously gone down. As responsible teachers, the petitioners have failed to ensure that all the students who attended the Board Examinations passed out and also failed to provide any remedial measures for future improvement and thereby committed a ?misconduct?. The cost of running the Institute is derived from the income yielded by the State Transport Corporation and the students are all children of the employees of the Transport department. The Counsel also contended that as an employer, the 4th respondent is entitled to take appropriate action against the petitioners. It is further contended that the instead of submitting the explanation, the petitioners have rushed to this Court.

6. Heard both sides and perused the materials available on record.

7. A perusal of the charge memo clearly illustrates that the basis for framing the charges is the pass percentage. The question is whether the petitioners who were the lecturers in different subjects could be solely responsible for the poor pass percentage?. This Court is of the firm view that the petitioners alone cannot be solely responsible for the poor pass percentage as at the end of the day, it is only the students who write the examinations. Therefore, the basis of the charges are misdirected and infact the charges are very vague. Further, as rightly

contended by the Counsel for the petitioners, the objections furnished by the petitioners have been ignored and a new explanation has been quoted in the charge memo as if the same was given by the petitioners to the 6th respondent. There is nothing on record to show that such statements were made by the petitioners. Therefore, this Court is also of the view that the charges have been framed in haste and without application of mind.

8. The next point for consideration is, whether the acts of the petitioners would constitute ?misconduct?.

9. In the judgment in Union of India (UOI) and Others Vs. J. Ahmed, , the Honourable Apex Court while dealing with ?misconduct? and ?devotion to duty?, has held as follows:

"9. The five charges listed above at a glance would convey the impression that the respondent was not a very efficient officer. Some negligence is being attributed to him and some lack of qualities expected of an officer of the rank of Deputy Commissioner are listed as charges. to wit, charge No. 2 refers to the quality of lack of leadership and charge No. 5 enumerates ineptitude, lack of foresight, lack of firmness and indecisiveness. These are qualities undoubtedly expected of a superior officer and they may be very relevant while considering whether a person should be promoted to the higher post or not or having been promoted, whether he should be retained in the higher post or not or they may be relevant for deciding the competence of the person to hold the post, but they cannot be elevated to the level of acts of omission or commission as contemplated by Rule 4 of the Discipline and Appeal Rules so as to incur penalty under rule 3. Competence for the post, capability to hold the same, efficiency requisite for a post, ability to discharge function attached to the post, are things different from some act or omission of the holder of the post which may be styled as misconduct so as to incur the penalty under the rules. The words "acts and omission" contemplated by rule 4 of the Discipline and Appeal Rules have to be understood in the context of the All India Services (Conduct) Rules, 1954 ("Conduct Rules" for short). The Government has prescribed by Conduct Rules a code of conduct for the members of All India Services. Rule 3 is of a general nature which provides that every member of the service shall at all times maintain absolute integrity and devotion to duty. Lack of integrity, if proved, would undoubtedly entail penalty. Failure to come up to the highest expectations of an officer holding a responsible post or lack of aptitude or qualities of leadership would not constitute failure to maintain devotion to duty. The expression "devotion to duty" appears to have been used as something opposed to indifference to duty or easy-going or light-hearted approach to duty. If rule 3 were the only rule in the Conduct Rules it would have been rather difficult to ascertain what constitutes misconduct in a given situation. But rules 4 to 18 of the Conduct Rules prescribe code of conduct for members of service and it can safely stated that an act or omission contrary to or in breach of prescribed rules of conduct would constitute misconduct for disciplinary proceedings. This code of

conduct being not exhaustive it would not be prudent to say that only that act or omission would constitute misconduct for the purpose of Discipline and Appeal Rules which is contrary to the various provisions in the Conduct Rules. The inhibitions in the Conduct Rules clearly provide that an act or omission contrary thereto as to run counter to the expected code of conduct would certainly constitute misconduct. Some other act or omission may as well constitute misconduct. Allegations in the various charges do not specify any act or omission in derogation of or contrary to Conduct Rules save the general rule 3 prescribing devotion to duty. It is, however, difficult to believe that lack of efficiency, failure to attain the highest standard of administrative ability while holding a high post would themselves constitute misconduct. If it is so, every officer rated average would be guilty of misconduct. Charges in this case as stated earlier clearly indicate lack of efficiency, lack of foresight and indecisiveness as serious lapses on the part of the respondent. These deficiencies in personal character of personal ability would not constitute misconduct for the purpose of disciplinary proceedings.

11..... It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high..... But in any case, failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty."

10. In the judgment in State of U.P. and others v. Ramesh Chandra Mangalik reported in (2002) 3 Supreme Court Cases 443, it is held as follows:

"13..... In that connection while considering the question as to what amounts to misconduct it was observed that an act or omission or lack of efficiency or failure to attain highest standard of administrative ability may not by itself amount to or constitute misconduct. Error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct. There was an outbreak of disturbances in the District of Nowgong, Assam where the officer was holding the post of Deputy Commissioner. The charge in that case seemed to have been that the officer showed complete lack of leadership while disturbances broke out and disclosed complete inaptitude or lack of foresight and lack of firmness to take quick and firm decision....."

11. The above judgments are squarely applicable to the present facts of the

case. Even if an employee is found wanting in ability or negligent, the same would not amount to ?misconduct?.

12. This Court is of the view that even negligence cannot be attributed towards the petitioners in the instant case. The petitioners have clearly stated in their reply that the students who failed in the model examinations were irregular in attending special classes despite counselling. This shows that the petitioners had also spoken to the concerned students.

13. In all these cases, by attending the classes of the petitioners, not less than 60% of the students have passed out successfully. Even if the students attend the classes regularly, what that matters is what they write in their answer sheet. The petitioners have also raised the issue of tough syllabus and different key answers. It is not the case of the respondents that the petitioners abstained from conducting classes or were irregular in conducting classes.

14. Similarly, a person academically sound may not have administrative capacities. It is for the Management to come out with remedial measures after discussions with the teachers, parents and the students. There is no discussion in the charge memo as to why the explanation submitted by the petitioner should not be accepted. Therefore this Court is of the view that the petitioners have done no wrong making them unbecoming members of the service and failure in devotion to duty. Similarly, failure in task assigned by itself would not constitute a misconduct. Only if the failure is due to ill motive, it would constitute a misconduct. No such allegations are made against the petitioners. The reasons for such failure as evident are the non-cooperation from the students. As this Court has already held that the petitioners cannot be blamed for poor pass percentage, the third charge is vague and baseless.

15. The next point is, whether the provisions of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and the Tamil Nadu Fundamental Rules can be invoked against the petitioners.

16. In *State of Assam and Others Vs. Shri Kanak Chandra Dutta*, , the Honourable Apex Court, has held as follows:

"There is no formal definition of "post" and "civil post". The sense in which they are used in the Services Chapter of Part XIV of the Constitution is indicated by their context and setting... a civil post means a post not connected with defence outside the regular services. A post is a service or employment. A person holding a post under a State is a person serving or employed under the State.... There is a relationship of master and servant between the State and a person holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is a

relation between the State and the alleged holder of the post." (AIR p. 886, para 9)

(emphasis supplied.)"

17. Following the above judgment, the Honourable Apex Court in the judgment in Dr. (Mrs.) Gurjeewan Garewal Vs. Dr. (Mrs.) Sumitra Dash and Others, , has held as follows:

"14. Reverting back to the case in hand, Section 4 of The Post Graduate Institute of Medical Education & Research, Chandigarh Act, 1966 [PGIMER Act] says that PGIMER is a "body corporate which is having a perpetual succession and a common seal with power." This clearly provides that PGIMER is a separate entity in itself. Admittedly the employees of any authority which is a legal entity separate from the State, cannot claim to be holders of civil posts under the State in order to attract the protection of Article 311. There is also no master and servant relationship between the State and an employee of PGIMER, which is a separate legal entity in itself. It is a settled position that a person cannot be said to have a status of holding a "civil post" under State merely because his salary is paid from the State fund or that the State exercises a certain amount of control over the post. The PGIMER Act might have provided for some control over the institution but this doesn't mean that the same is a State for the purpose of Article 311. Therefore the employees of PGIMER cannot avail the protection of Article 311 since the same can be claimed only by the members of a civil service of the Union or of All India Service or of a civil service of a State or by persons who hold a civil post under the Union or a State. PGIMER cannot be treated as a "State" for the purpose of Article 311 and the employees therein are not holding any "civil post". In result, the 1st Respondent is not holding a "civil post" and she cannot claim the guard of Article 311."

18. From the above judgment, it is clear that when an authority is a separate legal entity from the state, the employees of such authorities cannot be termed to hold ?Civil Posts?. In the present case, the 4th respondent Institute is a registered society. It is a separate legal entity. The state has no control over the employees of the society. There is no relationship of master and servant. Just because it is contended that the contributions for the Institute emanate from the state transport department, the 4th respondent Institute would not become an organisation of the state. Therefore, the Discipline and Appeal Rules and Fundamental Rules cannot be invoked against the petitioners.

19. The job of a teacher is not mean. He not only contributes academically, but on the whole to the society and the country by producing high quality students. But all this is possible, only if the student is interested and willing to co-operate. If unnecessarily, the teachers are harassed by instituting charges against them, as in this case, the same would cause remorse and discourage not only the petitioners but also others from taking up the job.

20. Therefore, for the reasons stated above, this Court is of the view that the

charges against the petitioners are baseless and vague and therefore unsustainable. The charges against all the petitioners are quashed. However, considering the future of the students, the 6th respondent is directed to convene a joint meeting comprising of the students, parents and the teachers as and when necessary to ensure that the fruits of hard work of the petitioners are savoured.

21. In the result, all the writ petitions are allowed. Consequently, the connected miscellaneous petitions are closed. No costs.