
(1998) 06 MAD CK 0113
In the Madras High Court

P.S. Pamani

APPELLANT

Vs

Government of Tamil Nadu and Others

RESPONDENT

Date of Decision : 11-06-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 2 MLJ 771

Hon'ble Judges : P. Sathasivam, J

Bench : Division Bench

Judgement

P. Sathasivam, J.—Aggrieved against the order of dismissal dismissing the petitioner from fourth respondent college, he has filed the above writ petition for quashing the same and also for direction directing the fourth respondent to reinstate him retrospectively and pay the salary and other attendant benefits.

2. According to the petitioner, he was appointed as Assistant Professor of Tamil by the fourth respondent college on 1.7.1970. He was promoted as the Professor and Head of the Department of Tamil in 4th respondent's college on 1.11.1981. He had put in 14 years of continuous service. It is stated that he had been taking an active part in Madurai Kamarajar University Teachers' Association. The Secretary of the 4th respondent College took up an inimical attitude towards the Association and was particularly severe towards the active members of the said Association, for which he was harassing the members of the Association and putting them to various untold hardships. The fourth respondent has never been a minority institution. It is further stated that the fourth respondent by its proceedings dated 1.4.1984 terminated his services with effect from 3.4.1984. The said termination has been done in contravention of the various provisions of the Private Colleges Regulations Act, 1976. The fourth respondent has not followed the provisions of the Act before resorting to such termination. Aggrieved by the order of the termination, he made several representations to the other respondents, but all proved futile. The appeal preferred to the first respondent was also rejected stating that the appeal cannot be entertained as per the Act. In

such circumstance, he has approached this Court by way of the present writ petition.

3. The fourth respondent filed a counter affidavit wherein it is stated that the petitioner was appointed on 1.7.1970 as Assistant Professor in Tamil in the fourth respondent college and that he was promoted as Professor and Head of the Department of Tamil. At the time of appointment, the petitioner signed an Agreement with the Management. In spite of the said agreement, which prohibits the petitioner to carry on directly or indirectly any trade, business or canvassing work, private tuition or the like, of a remunerative kind, a complaint has been received by the Manager of the College against the petitioner stating that the petitioner was employed as an L.I.C. Agent/Field Officer while working as Professor of their college and he was forcing the students to get policy. It is also stated that another complaint was received from one Syed Mohammed and Abdul Razack that the petitioner had gone abroad during 10.12.1982 to 23.12.1982 without obtaining permission from the Management. The Management called for an explanation from the petitioner dated 15.9.1983. The petitioner submitted a reply dated 14.10.1983. As his reply was not satisfactory, the Management decided to conduct an enquiry and appointed one S. Srinivasagam, Advocate of Madurai to conduct an enquiry regarding the charges mentioned in the notice dated 15.9.1983. On the enquiry date before the Enquiry Officer, the petitioner requested to treat his letter dated 14.10.1983 sent to the Management as his explanation to the charges before the Enquiry Officer and left abruptly from the place of hearing. The Enquiry Officer found that two out of 3 charges were proved. The Enquiry Officer forwarded his findings to the Management. The Management placed the findings before the Managing Committee, which in turn recommended for dismissal of the petitioner. Thereupon, the Secretary of the 4th respondent college issued an order dated 1.4.1984 dismissing the petitioner from 3.4.1984. They also denied the other averments as factually incorrect. It is stated that the charges against the petitioner are not frivolous and motivated. The charge relating to going abroad without prior intimation was found to be proved by the Enquiry Officer. The petitioner did not substantiate his case that the charges framed was baseless. It is also stated that the petitioner is now employed in Tharmayadenap, Pakkayhara College, Myladuthurai. With these averments, they prayed for dismissal of the writ petition.

4. In the light of the above pleadings, I have heard Mr. R. Subramanian learned Counsel for the petitioner, learned Government Advocate for respondent Nos. 1 to 3 and Mr. Ilias AH for fourth respondent.

5. Even though the learned Counsel for the petitioner raised several contentions including matters relating to minority status of the college and appointment of Advocate as Enquiry Officer, he has fairly submitted that he is not pressing those points. The only point pressed into service by the learned Counsel for the petitioner is that the punishment, namely, dismissal from service taking note of the proved charges, is disproportionate and, according to him, the same is liable

to be quashed. On the other hand, the learned Counsel for the contesting fourth respondent submitted that inasmuch enquiry was conducted after affording adequate opportunities to the petitioner and two charges which are serious in nature having been proved, the order of dismissal is perfectly in order and it requires no interference by this Court in the quantum of punishment.

6. I have carefully considered the rival submissions.

7. In view of limited submission, namely, with regard to punishment imposed on the petitioner it is unnecessary for me to refer all other factual aspects. The following two charges have been framed against the petitioner:

It is not disputed that the petitioner was not given an opportunity to put-forth his defence either prior to the commencement of the enquiry proceedings or before the Enquiry Officer. As a matter of fact, at the time of enquiry, he requested the Enquiry Officer to treat his letter dated 14.10.1983 sent to the Management as his explanation to the charges and left abruptly from the place of hearing. Therefore, the Enquiry Officer on the basis of the evidence adduced on the side of the fourth respondent-Management, found that both the charges have been proved. The Enquiry Officer forwarded his findings to the Management. Thereafter the Management placed the findings before the Managing Committee which in turn recommended for the dismissal of the petitioner taking note of the gravity of the charges. I have already extracted both the charges levelled against the petitioner. It is not open to the petitioner to act as an Agent of Life Insurance Corporation/Field Officer while he was working as Professor of the College. As a matter of fact, the said charge has been proved before the Enquiry Officer on the basis of the complaint received from the students and Parents of fourth respondent college. With regard to second charge, it is seen that the petitioner had gone abroad during the period from 10.12.1982 to 23.12.1982 without obtaining permission of the Management. No doubt, the petitioner has stated that he had obtained permission from the Principal and Secretary of the 4th respondent College, the said statement has been stoutly denied by them. Pursuant to the action of the Management with regard to his foreign trip, he sent a reply in which he has mentioned the reason for his foreign trip as treatment. Even though it is stated that he has obtained medical leave for treatment, admittedly he did not obtain specific permission from the fourth respondent-Management for his trip to abroad. The fourth respondent institution is a minority institution; hence the provisions of the said Act i.e., Tamil Nadu Private Colleges Act are not applicable. The petitioner, who was a Professor at the relevant point of time has to follow and adhere some established procedures. It is not the case of the petitioner that he was not given sufficient opportunity before the Enquiry Officer. A perusal of the finding of the Enquiry Officer shows that the fourth respondent Management has established both the charges by placing acceptable evidence. Once it is concluded that the enquiry was properly conducted after affording proper opportunity to the petitioner, it is out of question for this Court to interfere with the quantum of punishment without any

concrete evidence. Admittedly the petitioner had already retired from service and according to the 4th respondent, the petitioner had already received back all his documents, certificates and he is employed in Tharmayadenap, Pakkayhara College, Myladuthurai. No doubt, by relying on the Division Bench decision of this Court consisting of D. Raju and AR. Lakshmanan, JJ., in *Syed Khader Mohinuddin v. The Chairman, Tamil Nadu Public Service Commission* 1997 Writ L.R. 527, learned Counsel for the petitioner submitted that even while exercising jurisdiction under Article 226 of the Constitution of India, it is open to this Court to interfere with the quantum of punishment and if it is disproportionate to the proved charges, the same is liable to be modified. As requested, I have carefully gone through the factual position in that case. In the said decision, for mere use of abusive or indecorous language by a worker, the Management removed him from service. Taking note of the above aspect, the learned single Judge of this Court came to the conclusion that mere use of abusive or indecorous language by a worker cannot be the basis for his removal. The said conclusion has been confirmed by the Division Bench in the above said decision. There is no dispute that the punishment imposed should be proportionate to the charges proved against the worker/delinquent officer and also in the light of the surrounding circumstances. In our case, I have already concluded that the petitioner was given adequate opportunity before conducting enquiry and during enquiry. The Enquiry Officer ultimately submitted a finding holding that both charges are proved. In the Division Bench decision, the petitioner therein was a worker. Here, in our case, the petitioner was a Professor of a college. Taking note of the proved charges, punishment of dismissal imposed on the petitioner cannot be said to be disproportionate as contended by the learned Counsel for the petitioner. As a matter of fact, in similar circumstances, another Division Bench of this Court consisting of Their Lordship Dr. A.S. Anand, Hon'ble Chief Justice (as His Lordship then was) and Raju, J., in *(The Secretary to Government, Transport Department, Madras v. Marimuthu)* W.A. No. 1331 of 1988 dated 5.2.1991, have observed as follows:-

...The judgment of the learned single Judge in W.P. No. 6593 of 1983, following which the learned single Judge interfered with the order of punishment came up for consideration in W.A. No. 56 of 1986 by a Division Bench of this Court.

Ramalingam, J., speaking for the Bench, after a reference to a number of authorities held that it is not open to the court, in exercise of the powers under Article 226 of the Constitution of India, after accepting the findings of the domestic enquiry regarding the established misconduct, to interfere with the quantum of punishment. The judgment of the learned single Judge which had been relied upon by him to interfere with the quantum of punishment was set aside by the Division Bench on the 11th July, 1989.

In view of the law laid down above and in *Union of India (UOI) Vs. Parma Nanda*, . We hold that in exercise of the powers under Article 226 of the Constitution of India, the court cannot interfere with the quantum of punishment,

after finding the domestic enquiry to have been properly conducted and upholding the findings recorded during the domestic enquiry. Once there has been an enquiry consistent with the service rules and in accordance with the principles of natural justice, and the findings recorded at that enquiry are not frowned upon, the court would not interfere with the quantum of punishment unless the adequacy of the penalty is shown to be vitiated by mala fides, which certainly is not the position in the instant case. Thus, for what we have said above, we find the judgment of the learned single Judge cannot be sustained and we accordingly set aside the same. There shall be no order as to costs.

8. The above observation is directly applicable to the facts of our case and by applying the same, I am not in a position to accept the contention of the learned Counsel for the petitioner for interference in the punishment imposed on the petitioner. It is not open to this Court in exercise of powers under Article 226 of the Constitution after accepting the finding of the Enquiry Officer regarding charges to interfere, with the quantum of punishment. Further there is no material to show that the adequacy of the penalty is vitiated by mala fides. Accordingly, the writ petition fails and the same is dismissed. No costs.