
(2010) 03 MAD CK 0147
In the Madras High Court
Case No : Writ Petition No. 27773 of 2007

R. Duraisamy

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision : 26-03-2010

Acts Referred:

Constitution of India, 1950 — Article 235, 311(2)

Citation : (2010) 03 MAD CK 0147

Hon'ble Judges : M. Sathyanarayanan, J;D. Murugesan, J

Bench : Division Bench

Advocate : K. Doraisamy for V.M.R. Rajentren, for the Appellant; Geetha Thamaraiselvan, Government Advocate for R-1 and Jenasenan, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

D. Murugesan, J.—Keeping in mind the huge pendency of cases at the level of District Judges as well as recognising the speedy trial as a fundamental right, the concept of appointing Fast Track Courts of Session was evolved and the Government in G.O.Ms. No. 1251, Home (Courts 1A) Department, dated 18.12.2001, issued orders for constitution of 19 Fast Track Courts and accordingly, sanction was also given. Based on the said Government order, the Registrar-General, on the basis of the resolution of the High Court, earmarked 15 posts of Additional District Judges to be filled up by way of direct recruitment from the Bar on ad-hoc basis and the remaining 4 posts of Additional District Judges to be filled up by way of promotion from among the eligible Civil Judges Senior Division again on ad-hoc basis. Pursuant to the above, applications were called for from the eligible advocates and selection process was undertaken. Out of 15 candidates selected for the said post from the Bar, the petitioner by name R.Duraisamy was one among them. Pursuant to the selection, the Government issued G.O.Ms. No. 158, Public (Special A) Department, dated 14.02.2002, appointing all the 15 selected candidates including the petitioner to the post of

Additional District Judge (Fast Track Court) on ad-hoc basis subject to terms and conditions fixed by the High Court.

2. The petitioner, while he was serving as Additional District Judge, Fast Track Court No. IV, Chennai, was placed under suspension by the order of the Registrar-General dated 26.03.2005 on the ground that certain allegations of serious misconduct and corruption were noticed and a disciplinary enquiry was contemplated. The petitioner also submitted his explanation and charges were also issued, nevertheless no enquiry was conducted. By G.O.Ms. No. 83, Public (Special. A) Department, dated 12.1.2007, the service of the petitioner was terminated with immediate effect due to his unsatisfactory performance. That order was also passed in respect of other six Additional District Judges, who were selected and appointed along with the petitioner, on the same grounds. The petitioner questions the said order in this writ petition.

3. Mr. K. Doraisamy, learned senior counsel appearing for the petitioner, would contend that inasmuch as the petitioner was placed under suspension on the ground that certain allegations of serious misconduct and corruption were noticed and disciplinary enquiry was contemplated, without there being any enquiry, the service of the petitioner ought not to have been terminated. Further, even when an explanation was offered to the allegation of serious misconduct and corruption mentioned in the order of suspension, the termination of service would amount to a stigma on the petitioner. The learned senior counsel would also submit that even before the service of an ad-hoc appointee is to be terminated on allegation of charges, such termination could be only on the basis of proved charges and not a summary termination.

4. On the other hand, Mr. Jenasenan, learned Counsel appearing for the second respondent, would submit that it is true that the petitioner was placed under suspension initially on the basis of certain allegations of serious misconduct and corruption, but the order of termination was not on the basis of those allegations. He would submit that the periodical review of the performance of Fast Track Court Judges was undertaken by the High Court and it was found that, among six other Fast Track Court Judges, the petitioner's performance was also found not satisfactory. Only on the basis of such recommendation of the Review Committee, the impugned order was passed and the said order does not cast any stigma as alleged by the petitioner. He would also submit that the other Fast Track Court Judges, numbering 6, had also questioned the order of termination in W.P. Nos. 8677 of 2007, etc. (batch) and their challenge was negated by a Division Bench of this Court, vide order dated 18.9.2009 and in view of the findings of the Division Bench in the said order, the present writ petition is also liable to be rejected. However, the learned Counsel, would fairly submit that there is a slight difference in the facts put forth by those judicial officers and the present petitioner. Though all of them were issued with an order of termination, which is simpliciter, in respect of the other judicial officers, they were not placed under suspension and no allegations of misconduct or corruption were put forth

and in the case of the petitioner, he was placed under suspension on the ground of certain allegations of serious misconduct and corruption and an explanation was also received. Though certain charges were framed, no further enquiry was conducted on those charges and the petitioner was also treated alike the other judicial officers and the services were terminated without reference to any of the allegations of misconduct or corruption, but only with reference to the recommendation of the Review Committee.

5. We have considered the respective submissions. As far as the right of the petitioner to question the order, it should be considered keeping in mind the nature of his appointment. The Fast Track Courts were created for being filled up by ad-hoc appointees without any further rights for the said post and a period of five years was also fixed. As far as the termination of such Fast Track Court Judges on the ground that their performance were not satisfactory, without there being any enquiry conducted is concerned, we may usefully refer to the Division Bench order made in W.P. No. 8677 of 2007 dated 18.9.2009, referred to above, wherein the challenge was to the very same impugned order of termination which was passed in respect of seven judicial officers including the petitioner. The Division Bench has said that ad-hoc appointees have no right and the order of termination did not cast any stigma.

6. It is the contention of Mr. K. Doraisamy, learned Senior Counsel for the petitioner, that on the facts of this case, the said judgment cannot be pressed into service and in fact, when this writ petition was also tagged along with the batch, it was separated for the reason that factually the petitioner's case cannot be equated to the case of other judicial officers. It is true that the petitioner was placed under suspension and in the order of suspension, it is mentioned that certain allegations of serious misconduct and corruption were noticed. It is equally true that an explanation was also given by the petitioner and not satisfied with the said explanation, a charge memo was also issued. Thereafter, admittedly, no enquiry was conducted. In the circumstances, the question would be whether the impugned order could be considered to be one as casting stigma on the petitioner or not.

7. It is the specific case of the respondent in the counter affidavit that the impugned order was passed on the basis of the recommendation of the Review Committee of the High Court. The Apex Court in the judgment in Brij Mohan Lal Vs. Union of India (UOI) and Others, , has directed a periodical review of the judicial officers as to their performance. In pursuance to the said direction, the performance of Fast Track Court Judges appointed on ad-hoc basis were also considered by a Review Committee. The files relating to the Review Committee is also placed before us. The Review Committee has specifically recommended for termination of the service of seven judicial officers including the petitioner on the ground that their performance were not satisfactory. In fact, in the impugned order dated 12.1.2007, it has been referred that the Registrar-General had further stated that on such review, the High Court decided to terminate the

services of the seven Additional District Judges, Fast Track Courts. Except a reference to the periodical review of Judges, viz., the Fast Track Court Judges, the impugned order does not indicate of any reference to serious misconduct or corruption and it is an order simpliciter. Hence, we do not find any difference in the reasons adduced in the impugned order for terminating the service of the petitioner along with other six officers.

8. In this context, it would be useful to refer the judgment of the Apex Court in *State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla*, wherein the Apex Court, while considering the termination simpliciter of an ad-hoc employee or temporary government servant in terms of contract of service and rules, held that such termination was valid and it was not punitive so as to attract Article 311(2) of the Constitution of India. In the judgment, the Apex Court held thus:

A temporary government servant has no right to hold the post. Whenever, the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his services in accordance with the terms and conditions of the service or the relevant rules or it may decide to take punitive action against the temporary government servant. If the services of a temporary government servant is terminated in accordance with the terms and conditions of service, it will not visit him with any evil consequences. If on the perusal of the character roll entries or on the basis of preliminary inquiry on the allegations made against an employee, the competent authority is satisfied that the employee is not suitable for the service whereupon the services of the temporary employee are terminated, no exception can be taken to such an order of termination.

The Apex Court, in *Commissioner, Food and Civil Supplies, Lucknow, U.P. and Another Vs. Prakash Chandra Saxena and Another*, wherein even the departmental enquiry was subsequently dropped, while considering the question of termination simpliciter of a government employee appointed under the contract of employment, held that such termination would not offend Article 311(2) of the Constitution of India. Further, in *Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. Vs. Devendra Kumar Jain and Others*, the Apex Court held that in cases where appointments were made on temporary basis, services being terminable without notice or assigning reason, such employees are not entitled even for hearing before termination of their services.

9. As far as the challenge to the order as punitive and casting stigma on the petitioner, again we may refer to the Division Bench judgment of this Court, rendered in the case of six other judicial officers, referred to above, wherein the Division Bench has referred to various judgments of the Supreme Court holding that in orders like this, it cannot be said that any stigma is cast on the officer. The Division Bench has also referred to the three tests, which has been pointed out by the Apex Court in paragraph 21 of the judgment in *Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr*, which reads as

follows:

21. One of the judicially evolved tests to determine whether in substance, an order of termination is punitive is to see whether prior to the termination there was (a) a full-scale formal enquiry (b) into allegations involving moral turpitude or misconduct which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing the termination has been upheld.

10. In an effective functioning of independent judiciary, the role of Judges assumes importance. In the words of Socrates, the simplest definition of justice would be "Justice is to give to each person what is due to him". Justice, in other words, involves consideration of complex issues and it requires a Judge to bestow a lot of attention, devotion, dedication and hard work, apart from rendering a timely justice. For such performance of solemn duty, a Judge must be competent in his performance and when such competency is lacking, it would result in denial of rendering real justice. A competent Judge, who is the foremost requirement in the discharge of judicial administration, is a person, who is well-positioned to judge the value of different sorts of community. Justice is the first virtue of social institution. Being first virtue of human activities, qualitative justice cannot be compromised. Dispensation of good justice depends upon the Judges having not only an effective desire to act justly but also must be competent. It will not be a further elaboration when we say that the importance of judiciary in a democratic country is rather profound than prominent and in the words of George Washington, "Justice is the firmest pillar of a Government".

11. Keeping the above in mind, the framers of constitution, under Article 235 of the Constitution of India, has entrusted the control of the subordinate judiciary including the matters touching the career of incumbents and their service conditions on the High Court. Periodical review of Judges appointed on ad-hoc basis is absolutely necessary, keeping in mind the importance of judiciary and the administrative functions entrusted to those Judges. One of the assessment by the Review Committee is the competency of the Judges as well. In the event, the Review Committee, which reviewed the performance of a Judge, is of the opinion that such performance is unsatisfactory, an order of termination could be passed and such an order of termination made keeping in mind the interest of the institution can only be called as order of termination simpliciter and it would not amount to casting any stigma on such officer.

12. In view of the above, we do not find any reason to differ from the view taken by the other Division Bench in a challenge to the very same order of termination at the instance of other six Fast Track Court Judges. Accordingly, the writ petition fails and the same is dismissed. No costs.