

(1999) 12 MAD CK 0066

In the Madras High Court

Case No : Writ Petition No. 4609 of 1997 and W.M.P. No. 7666 of 1997

S. Loganathan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 06-12-1999

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14
Constitution of India, 1950 — Article 235, 236, 239
Government of Union Territories Act, 1963 — Section 44, 44(1)

Citation : (1999) 12 MAD CK 0066

Hon'ble Judges : R. Jayasimha Babu, J;P. Sathasivam, J

Bench : Division Bench

Advocate : Mohan, for Sudha Ramalingam, for the Appellant; R. Natarajan, Additional Government Pleader (Pondy), for the Respondent

Final Decision : Dismissed

Judgement

R. Jayasimha Babu, J.—. Petitioner, who is a Junior Clerk in the Court of the principal District Munsif at Pondicherry, and who is governed by the Pondicherry Judicial Subordinate Service Rules, 1979 was charged with having violated the Conduct Rules applicable to the Petitioner by having canvassed for votes in the general elections held in the year 1996 for the Congress party candidate, one Ananda Baskaran at Mangalam Village in Villianur Assembly and Parliamentary Constituency. The memorandum of charges was issued to me Petitioner on 26.9.1996. The First Additional District Munsif, Pondicherry was appointed as Enquiry Officer to enquire into those charges.

2. The Petitioner challenged the appointment of that Enquiry Officer unsuccessfully before the Principal District Munsif, who is the disciplinary authority, and later before the Chief Judge, Pondicherry, who is the appellate authority contending that judicial officers cannot function as Enquiry Officers in respect of charges against the ministerial staff of the Courts in the Union Territory of Pondicherry, as the Government of Pondicherry had on 7.12.1981

while setting out the duties and responsibilities of the Enquiry Officer appointed by the Chief Vigilance officer entrusted that officer with all departmental enquiries against Government Servants (Group "A" to Group "D") to be initiated and conducted under Rule 14 of the CCS (CCA) Rules 1965. One of the Paragraph in that Order required disciplinary authorities contemplating enquiry against Governments Servants under Rule 14 of the CCS (CCA) Rules, 1965 for cases of the nature indicated in the Government Order on 7.12.1981 to issue separate orders appointing one Mr. C.V.S. Rama Rao as Inquiring Authority under the said Rules for each case.

3. A reading of that order clearly discloses that it is for the disciplinary authority to appoint the Inquiring Authority. The disciplinary authority has not been deprived of that power by that order. It is undisputed in this case that the disciplinary authority had appointed the First Additional District Munsif as the Enquiry Officer. The order so made is perfectly in accordance with the Rules.

4. It was, however, contended that the Government Order of 7.12.1981 should be construed as a binding mandate to all disciplinary authorities including those concerned with the employees governed by the Pondicherry Judicial Subordinate Service Rules, 1979 to entrust the enquiries only to the Enquiry Officer named in the Government Order of 7.12.1981. It was submitted that this order has the status of a Rule and should be either read as supplemental to the Central Civil Services CCA Rules or to the Pondicherry Judicial Subordinate Service Rules, or as an amendment to those Rules, as the Government Order had been issued by the Lieutenant Governor, who under Article 239 of the Constitution is the administrator of the Union Territory, and who u/s 44 of the Government of Union Territories Act, 1993 is vested with the power to decide for himself or herself as to whether any matter is or is not a matter in respect of which the administrator is by or under that Act required to act in his/her discretion. It was also submitted that even u/s 44(1) of that Act, the act of the Lieutenant Governor when done in accordance with the advice of the Council of Ministers would bind all the persons in respect of whom such act was performed, if such persons are under the control of the Government of Pondicherry or are the Servants of the Government of Pondicherry.

5. We do not find it possible to accept the submissions so made for the Petitioner.

6. Unlike the other Government servants in the Union Territory of Pondicherry, employees working in the Courts, who are governed by the Pondicherry Judicial Subordinate Service Rules are under the control of the High Court by virtue of Article 235 of the Constitution. That position does not admit of any doubt, and has rightly not been disputed by the Learned Counsel for the Petitioner. That the High Court has such control has been declared by the Apex Court in more decisions than one. In the case of R.M. Gurjar and another Vs. High Court of Gujarat and others, , the Apex Court affirmed the decision of the Full Bench of the High Court of Gujarat, which had held that the control vested in the High Court under Article 235 of the Constitution is exercisable by the High Court not

only over the members of the judicial service of the state as defined in Article 236(b), but also over the ministerial officers and servants on the establishment of the subordinate Courts.

7. The control over the ministerial servants employed in the Courts subject to the Pondicherry Judicial Subordinate Service Rules, therefore, vests in the High Court. The disciplinary authority, as also the appellate authority under the Rules are officers belonging to the judicial service who are also subject to the control of the High Court. The enquiry into the misconduct committed by the clerical staff is to be suitably penalised by the disciplinary authority whose decision is subject to an appeal to the appellate authority, As noticed both these authorities are judicial officers subject to the control of the High Court. The conduct of the enquiry into the allegations of misconduct against the persons governed by the judicial subordinate service is required to be made by or at the instance of the disciplinary authority. It is always open to the disciplinary authority to conduct the enquiry itself. It is also open to that authority to direct another person to conduct the enquiry on its behalf. The choice made here by the disciplinary authority of the enquiry officer, was another judicial officer, whose suitability to conduct the enquiry is beyond question. The fact that the Government, by an executive order had directed the disciplinary authority subject to its control to cause enquiries to be held against Government Servants through the Enquiry Officer named in the circular does not imply either an amendment to the Pondicherry Judicial Subordinate Service Rules or to the CCA (CCS) Rules. The order is what it proclaims to be viz., an executive order. That executive order must in the circumstances only be construed as being applicable to those who are subject to the control of the Government by way of disciplinary and appellate powers. The disciplinary and appellate power in respect of the Petitioner is clearly vested in the judicial officers who are subject to the control of the High Court. The appointments of Enquiry Officers made by such judicial officers in respect of those governed by the Pondicherry Judicial Subordinate Servants Rules, 1979 are, therefore, not subject to the control of the State Government.

8. The order on which the Petitioner places reliance is not an order which either applies to the Government servants, governed by the Pondicherry Judicial Subordinate Service Rules; nor is it an order which binds the High Court or Judicial Officers who are subject to its control and who function as disciplinary authorities or appellate authorities in respect of such persons.

9. We do not find any merit in the petition and the same is dismissed. Consequently, W.M.P. No. 7666 of 1977 is dismissed.