
(1993) 08 MAD CK 0016

In the Madras High Court

Case No : Writ Petition No. 1640 of 1992

S. Packiam

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 05-08-1993

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1993) 2 MLJ 608

Hon'ble Judges : S. Janarthanam, J

Bench : Single Bench

Judgement

Janarthanam, J.—One Dr. S. Packiam, petitioner herein, having been employed in academic field, it is said, came to be appointed as the

Principal of V. O. C. Teachers College, Tuticorin. He is stated to be a post-graduate in Arts, Post Graduate in Science, Post Graduate in

Education and also a Doctorate degree holder.

2. The Manonmanium Sundaranar University, Tirunelveli, came to be constituted under the Manonmanium Sundaranar University Act, 1990, for

short "the Act" which came into force on 12.6.1990 and the second respondent is the present Registrar. Sec. 55 of the Act provides that the first

Registrar of the said University shall be appointed by the Government on a salary to be fixed by them for a period not exceeding three years and

on such other conditions as they may think fit. For subsequent appointment of Registrar, enough statutory protection had been made in the shape

of Sec. 13 empowering the syndicate of the University to make such appointment.

3. In terms of Sec. 55 of the Act, the first respondent, State of Tamil Nadu, passed an order in G. O. Ms. No. 1255, Education Department,

dated 5.9.1990, appointing the petitioner as the first Registrar of the said University. A notification was appended to the above said order, which was published in the Tamil Nadu Government Gazette dated 5.9.1990. As per the notification, the petitioner was appointed as the first Registrar of the said University for a period of three years with effect from the date of his taking charge. He assumed charge on 10.9.1990. Further G. O. Ms. No. 14 Education Department, dated 7.1.1991 came to be passed by the first respondent specifying the terms and conditions of his appointment, and it also reiterated the fact that the petitioner had been appointed as Registrar for a period of three years and that he should not resign or voluntarily retire while in foreign service.

4. The petitioner came to Madras for a meeting to be held on 20.1.1992. He was called upon to meet the Secretary to Government, Education Department, and the Chairman of the Convenors Committee at 4 p.m. on 20.1.1992. To his check and surprise he was stated to have been served an order in G. O. 2D, Ms. No. 27 Education (H2) Department, dated 20.1.1992 reverting him from the post of Registrar to his previous post viz., the Principal, V. O. C. Teachers College, with effect from the date of relief. The secretary to Government, Education Department, it is said, also required him to sign a letter dated 20.1.1992 to the effect that he has handed over charge to one Singaravadivelu, principal, Arignar Anna Arts College, Musiri, who was reported to have been appointed as the new Registrar on the same date. The said letter further stated that the petitioner would hand over the record to him on 23.1.1992. The said letter was stated to have been obtained from him without giving any room for him to refuse the same. The aggrieved petitioner resorted to the present action, praying for the issue of a writ of certiorarified mandamus, calling for the records of the first respondent made in G. O. 2D, No. 27, Education (H2) Department, dated 20.1.1992, and quash the same and consequently direct the respondents to restore and continue the petitioner as the first Registrar of the said University for the full period of three years as per the order in G. O. Ms. No. 1255, Education Department, dated 5.9.1990.

5. This Court notice of motion on 17.2.1992 and the matter has come up for final disposal.

6. Mr. V. Ayyathurai, learned counsel for petitioner would press into service the following points for consideration.

(i) The reversion of the petitioner, a tenure office holder, all of a sudden and for no reason whatsoever which is nothing short of termination of his

service as Registrar of the University, without giving him any opportunity, is ex facie illegal and offends the principles of natural justice.

(ii) Though the order of reversion does not contain anything either expressly or by way of implication, casting a stigma on the petitioner, yet, it is a

camouflage for an order of reversion for misconduct and this aspect of the matter gets revealed by the specific averments resorted to have been

taken in that regard in the counter-affidavit filed by the first respondent and, therefore, the impugned order is nothing but a punishment for

misconduct without any enquiry.

7. Ms. V. J. Latha, learned counsel for first respondent and Mr. N. R. Chandran, learned Senior Counsel for second respondent, would repeal

such submission. Mr. N. R. Chandran learned Senior Counsel for second respondent would further submit that in case this Court comes to the

conclusion that the reversion is not sustainable in law, it is but proper for this Court to take into account the subsequent events that had happened,

in the sense of appointment of a subsequent Registrar on the reversion of the petitioner whose tenure was to end on 9.9.1993 and instead of

making an order for reinstatement to order for payment of adequate compensation to the petitioner which would meet the ends of justice.

8. There is no pale of controversy that the petitioner prior to his appointment as Registrar, was functioning as Principal of the V. O. C. Teachers

College, Tuticorin. Yet another undisputed fact is that he had been appointed as the first Registrar of the Manonmaniam Sundaranar University,

Tirunelveli, for a period of three years under the sanguine and salutary provisions adumbrated under Sec. 55 of the Act by the issuance of a

Government Order by the first respondent. Admittedly, a notification also had been appended to the order appointing him as Registrar for a fixed

period, whereby his service conditions had been mentioned. One of such terms and conditions was that he should not resign or retire voluntarily

while in such foreign service. There was also no option given to the appointing authority, first respondent to voluntarily terminate the services of the

petitioner at any time during the tenure period of appointment for any reason whatever. Such being the terms and conditions of service, the

petitioner assumed charge as Registrar of the University on 10.9.1990 and in the normal run of things, he ought to have continued so till 9.9.1993.

However, he had been reverted by the first respondent on 20.1.1992 all of a sudden and without any notice or reason whatever and he was stated

to have handed over charge to his successor by name one Singaravadivelu, the then Principal, Arignar Anna Arts College, Musiri, on the very

same day. For the back-drop of facts and circumstances leading to his appointment, it is rather very clear that he is an appointee for a fixed period

of three years. In the absence of any specific term or condition for the termination of the petitioner's service inhering in favour of the first

respondent/Government for any reason whatever, it cannot be stated that his services can be terminated without assigning any reason whatever and

if at all, he can be terminated for any misconduct on his part and that too after holding an enquiry into such misconduct, giving him due and

adequate opportunity to meet the accusation of misconduct alleged. The impugned order, of course, use the term "reversion". The meaning of a

word cannot be stated to be fixed or static and it assumes different shades of meaning, depending upon the context in which it is used. The meaning

attached to the term ""reversion"" in the context in which it is used cannot be anything other than termination of service of the tenure holder of office

in that post viz., the petitioner. No doubt, the impugned order does not say anything either explicitly or by way of implication that the petitioner had

been terminated for any specific reason. But nonetheless a cursory perusal of the counter, if made, will unmistakably reveal that the order of

termination was prompted on account of certain misconducts on the part of the petitioner, besides deriving solidified support from the records

produced for perusal of the Court. For the so-called alleged misconducts, no explanation appears to have been called for from the petitioner, nor

was there any enquiry for the same, leave alone giving him any sort of an opportunity to meet the accusations in this regard. Thus, it is rather clear

that the impugned order of termination is a camouflage for the termination of the services of the petitioner in that post for certain alleged

misconducts, which cannot be anything other than by way of punishment. This sort of termination of service demonstrates in no uncertain terms the

exercise of arbitrary power in so naked a fashion, violating all sorts of principles of natural justice, equity, fair play and good conscience.

9. Worthy it is at this juncture to pen down the weighty observations of the Supreme Court as respects arbitrary exercise of power, as found in

paragraph 223 of the decision in *Delhi Transport Corporation v. D. T. C. Mazdoor Congress*, 1991 I CLR 152.

There is need to minimise the scope of the arbitrary use of power in all walks of life. It is inadvisable to depend on the good sense of the

individuals, however high placed they may be. It is all the more improper and undesirable to expose the precious rights like the rights of life, liberty

and property to the vagaries of the individuals whims and fancies. It is trite to say that individuals are not and do not become wise because they

occupy high seats of power, and good sense, circumspection and fairness does not go with the posts, however high they may be. There is only a

complacent presumption that those who occupy high posts have a high sense of responsibility. The presumption is neither legal nor rational. History

does not support it and reality does not warrant it. In particular, in a society pledged to uphold the rule of law, it would be both unwise and

impolitic to leave any aspect of its life to be governed by discretion when it can conveniently and easily be covered by the rule of law.

The right to life includes right to livelihood. The right to livelihood therefore cannot hang on to the fancies of individuals in authority. The

employment is not a bounty from them nor can its survival be at their mercy. Income is the foundation of many fundamental rights and when work is

the sole source of income, the right to work becomes as much fundamental. Fundamental rights can ill-afford to be consigned to the limbo of

undefined permits and uncertain applications. That will be a mockery of them".

10. In *Parshotam Lal Dhingra Vs. Union of India (UOI)*, , the Supreme Court had the occasion to consider as to when the termination of service

or reduction in rank amounts to punishment, and the following observations are found in paragraph 26 of the judgment.

Shortly put, the principle is that when a servant has right to a post or to a rank either under the terms of the contract of employment, unexpressed or

implied, or under the rules governing the conditions of his service, the termination of the service of such a servant or his reduction to a lower post is

by itself and prima facie, a punishment, for it operates as a forfeiture of his right to hold that post or that rank and to get the emoluments and other

benefits attached thereto. But if the servant has no right to the post, as where he is appointed to a post, permanent or temporary either on

probation or on an officiating basis and whose temporary service has not ripened into a quasi-permanent service as defined in the Temporary

Service Rules, the termination of his employment does not deprive him of any right and cannot, therefore, by itself be a punishment.

One test for determining whether the termination of the service of a Government Servant is by way of punishment is to ascertain whether the

servant, but for such termination, had the right to hold the post. If he had a right to the post, the termination of his service will by itself be a

punishment and he will be entitled to the protection of Art. 311.

In other words and broadly speaking Art. 311(2) will apply to those cases where the Government Servant, had he been employed by a private

employer, will be entitled to maintain an action for wrongful dismissal, removal or reduction in rank. To put it in another way, if the Government

has, by contract, express or implied, or, under the rules, the right to terminate the employment at any time then such termination in the manner

provided by the contract or the rules is, prima facie, and per se not a punishment and does not attract the provisions of Art. 311.

11. Applying the aforesaid proposition of law as laid down by the Apex Court of this country and giving legal fitment to the fact and circumstances

of the instant case, it goes without saying that the termination of the services of the petitioner in the post in question is traceable to the oblique

exercise of arbitrary power, throwing to winds the principles of natural justice, fair play and good conscience, amounting to punishment without any

enquiry thereon and such being the case, the impugned order, cannot at all be sustained in law and the same deserves to be set aside.

12. The concomitant consequences flowing from setting aside of the impugned order must have to ordinarily result in the reinstatement of the

petitioner to the post which he was previously holding. But such a rule cannot be expected to be followed in the instant case. There are certain

circumstances in the shape of subsequent events and incidents and they have to be necessarily taken into account in moulding the relief in the best

of fashion possible without in the least causing either any sort of injustice or loss to the parties concerned. As stated earlier, the tenure appointment

of the petitioner comes to an end by 9.9.1993. Further, subsequent to the termination of the service of the petitioner, one Singaravelu, Principal,

Arignar Anna Arts College, Musiri had been appointed as Registrar and he is stated to be continuing in office. If the petitioner in such situation is

ordered to be reinstated, the present incumbent in office must have to quit and the petitioner has to be accommodated and even after such

accommodation, he can after all be in service for a period of 30 or 35 days in the sense of his tenure appointment coming to an end on 9.9.1993.

Such a venture would undoubtedly lead to disastrous consequences in the administrative spheres of the said University. The possibility of the

administrative set up of the said University being given a rude shake in case of reinstatement of the petitioner, cannot be ruled out of consideration.

The best course in such circumstance would be that instead of reinstating the petitioner in service for an ephemeral period of 30 or 35 days, he

may be adequately compensated for the loss of service ever since the date of his termination which event happened on 20-1-1992 upto 9.9.1993,

the date on which his tenure of service would come to an end, had he been holding the post without termination according to his order of

appointment. For no fault of his the petitioner had been terminated from service. Such being the case, though he was out of office, he ought to have

been considered as having been in office and in that view of the matter, he had to be adequately compensated for loss of service. The adequate

compensation may consist of the emoluments and all other attendant benefits he could have had, had he been in service. As such, the compensation

for loss of service for the period between 20.1.1992 and 9.9.1993 has to be calculated on the emoluments and other attendant benefits he could

have had, had he been in service. The compensation amount so calculated is directed to be paid by the respondents on or before 9.9.1993 the day

on which his tenure appointment would have ceased.

13. With direction as above, writ petition is disposed of, but however, there will be no order as to costs.

14. Petition ordered.