
(2006) 09 MAD CK 0136
In the Madras High Court
Case No : Writ Petition No. 13819 of 2006

S.V. Mahalingam	Vs	APPELLANT
The Collector, Pasumpon Muthuramalinga Thevar		RESPONDENT

Date of Decision : 25-09-2006

Acts Referred:

Citation : (2006) 4 MLJ 1335

Hon'ble Judges : K. Suguna, J

Bench : Single Bench

Advocate : R. Muthukannu, for the Appellant; Geetha Thamilselvan, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

K. Suguna, J.—Initially the petitioner has filed O.A. No. 2277 of 1993 on the file of the Tamil Nadu Administrative Tribunal with a prayer

to set aside the order in Na.Ka. No. A1/85257/91 dated 15.4.93, passed by the Collector, Pasumpon Muthuramalinga Thevar District at

Sivagangai and to give all attendant benefits and the same has been transferred to this Court and renumbered as W.P. No. 13819 of 2006.

2. According to the learned Counsel for the petitioner, by charge memo dated 02.04.92 certain allegations were levelled against the petitioner. For

the said allegation, an enquiry was conducted and by an order dated 15.04.93 punishment order of reduction to lower post permanently was

imposed. Challenging the same, the above writ petition/original application has been filed.

3. According to the learned Counsel for the petitioner by the impugned order the punishment imposed is reduction to lower post permanently. As

per Ruling (2) of Fundamental Rule 29 such punishment cannot be imposed. Ruling (2) of Fundamental Rule 29 reads as follows;

29(2) Every order passed by a competent authority imposing on a Government Servant the penalty of reduction to a lower service, grade or post

or to a lower stage in his time-scale should indicate;

(i) The date from which it will take effect and the period (in terms of years and months) for which the penalty shall be operative. It should be noted

that a reduction to a lower service, grade or post or to a lower stage in his time-scale is also not permissible under the rules either for an

unspecified period or as a permanent measure. It should only be for a specified period.

4. Apart from this, according to the learned Counsel for the petitioner, the petitioner has also taken a specific ground in the original application that

punishment of reduction to a lower Post permanently is contrary to the order issued in G.O. Ms. No. 603 P & AR Department, dated 19.5.79,

which was issued following the decision of this Court in W.P. No. 4389/78. As such, the impugned order is prima facie illegal and the same has to

be set aside.

5. On the other hand the learned Government Advocate appearing for the respondent department has contented for the allegation levelled against

the petitioner, the punishment imposed is only a minor punishment. As such, the impugned order has to be confirmed and the writ petition has to be

dismissed.

6. I have considered the above submissions of the learned Counsel for the petitioner as well as learned Government Advocate. As rightly

contended by the learned Counsel for the petitioner, as per Ruling 2(1) of Fundamental Rules 29, the punishment of reduction to lower post

permanently cannot be imposed. As such, the impugned order is contrary to Ruling 2 of Fundamental Rule 29. Apart from this the impugned order

is also contrary to the principle laid down in the order passed in W.P. No. 4389/78. That apart according to the learned Counsel for the petitioner,

in view of the interim order granted by the Tamil Nadu Administrative Tribunal the petitioner was allowed to continue in the original post. On the

date of filing of the writ petition, the petitioner is 54 years old and he had retired from service with effect from 31.5.97.

7. For the reasons stated above, the impugned order is prima facie illegal and also taking into account the date of retirement of the applicant, the impugned order is set aside and the writ petition is allowed. No costs.