

(1997) 04 MAD CK 0028
In the Madras High Court
Case No : W.A. No. 1167 of 1992

Syed Khader Mohiuddin

APPELLANT

Vs

The Chairman, Tamil Nadu Public Service Commission and
Another

RESPONDENT

Date of Decision : 16-04-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11

Citation : (1997) 2 LLJ 111 : (1997) 2 LW 932 : (1997) 2 MLJ 272

Hon'ble Judges : D.J. Jagannadha Raju, J; A.R. Lakshmanan, J

Bench : Division Bench

Advocate : Jayesh Dolia, for the Appellant; R. Subramanian, for the Respondent

Judgement

1. This Writ Appeal is directed by the unsuccessful petitioner against the order of a learned single Judge of this Court in W.P. No. 9968 of 1983

dated August 21, 1992 dismissing the writ petition filed by the appellant.

2. The petitioner joined the services of the 1st respondent Tamil Nadu Public Service Commission (hereinafter referred to as "the Commission") as

Junior Assistant on November 1, 1973. According to the appellant, some of the officials of the Commission were personally prejudiced against

him and have been foisting false allegations of misconduct against him and inflicted penalties like warning, censure, cut in increments and the like.

On November 12, 1979, the Joint Secretary of the Commission issued a charge sheet asking the appellant to show cause as to why disciplinary

action should not be taken against him for using intemperate language while submitting explanations to the charges framed against him. The charge

sheet alleged that the appellant had used intemperate language against his

superiors like Mr. T. P. Sreedhara Menon, Under Secretary and Mr. R.

Raghavan, Joint Secretary of the Commission. However, the said charge sheet was issued by the said R. Raghavan, Joint Secretary, who is the

aggrieved party and against whom the appellant has been alleged to have used intemperate languages. Such an action on the part of the Joint

Secretary of the Commission, according to the appellant, is violative of the cardinal principle of natural justice, i.e., no one should be judge of his

own cause inasmuch as the person who is interested in the disciplinary proceedings cannot be a prosecutor himself.

3. According to the appellant, he submitted his explanation to the said charge sheet denying the charges levelled against him. He submitted his

explanation on November 30, 1979. A domestic enquiry was held to go into the charges levelled against him. However, the appellant was not

given sufficient opportunity to put forward his case, in that, he was not allowed to state his case fully and only a part of his deposition was

recorded. The domestic enquiry was conducted not by an independent officer, but by the Deputy Secretary of the Commission who showed

official bias in not recording the appellant's statement in full. The domestic enquiry was turned out to be an empty formality and ultimately, the

Enquiry Officer found the appellant guilty of the charges levelled against him. On April 11, 1980, the appellant was directed to file his written

statement which he filed on May 9, 1980 and after which nothing was heard from the respondents for more than two and a half years. But,

suddenly on January 7, 1983, the 2nd respondent directed the appellant to show cause against the proposed penalty of dismissal from service.

Then, the 2nd respondent passed the order of dismissal from service on March 5, 1983.

4. The appellant contends that the delay of two years and eight months after the submission of the second statement by the appellant itself vitiates

the order of dismissal since there is no justification for the respondents to delay the passing of the ultimate order of dismissal by 32 months. The

appellant's appeal to the 1st respondent reiterating his innocence and asking to reconsider the order of the 2nd respondent was dismissed by the

1st respondent after modifying the order of dismissal from service into one of removal from service. It is this order of the 1st respondent in so far

as he has not set aside the order of removal and reinstated the appellant in service with full backwages and continuity to service which is challenged

in the writ petition. The prayer in the writ petition is as follow :

To call for the records of the 2nd respondent pertaining to his order bearing Proceedings No. 1677-C1/77 dated March 5, 1983, as affirmed by

the 1st respondent by his order bearing Proceedings No. 3583-C1/1983 dated July 1, 1983 and quash the same.

5. The writ petition was resisted by the respondents. The 2nd respondent filed a counter affidavit on behalf of both the respondents. It is

contended therein that the charge sheet was issued against the appellant on specific instances and that there is no violation of the cardinal principles

of natural justice on this score. It is submitted that the language used by the appellant even in his written statement of defence to the charge sheet

would prove his indifferent attitude and insolent behaviour of the appellant towards his superiors. It is denied in the counter affidavit that the

disciplinary enquiry was not conducted properly. As per the rules, the Enquiry Officer was appointed within the frame work of the statutory rules.

Even though as per rules, the Disciplinary Authority himself is competent to conduct an enquiry, the Deputy Secretary of the Commission who had

not initiated against the appellant on any occasion was directed to conduct the enquiry and the appellant was informed accordingly appellant did

not raise any objection by adducing any specific reason against the appointment of the Deputy Secretary of the Commission as the Enquiry Officer.

When the appellant was asked to appear before the Enquiry Officer for an oral enquiry, he did not do so. The respondents have also denied the

other allegations raised in the affidavit of the petitioner/appellant. According to them, full opportunity was given to the appellant to explain his stand

in respect of the three items and the final orders passed thereon. Therefore, it is submitted that the allegations made by the appellant are baseless

and devoid of merits. The respondents have also stated that the delay in the passing of the final order is only attributable to the appellant and that

the main reason for the delay was due to the fact that the appellant was absenting himself from duty frequently and that, of the delay of 2 1/2 years

pointed out by the appellant, he was on leave on one pretext or other for 376 days on broken spells.

6. The appellant filed a reply affidavit denying the allegations contained in the counter affidavit.

7. Before the learned single Judge, the learned counsel for the appellant in support of his contention relied on the judgments reported in v.

Somasundaram v. The Madras Cricket Club 1974 T.N.L.J. 1 and R. V. Dhanapalan v. State of Tamil Nadu (Order in W.P. No. 5902 of 1982

dated July 19, 1984). The learned counsel for the appellant contended before the learned single Judge that the language used by the appellant in

the explanations dated May 18, 1979, February 18, 1979, June 18, 1979, September 24, 1979 and October 8, 1979, referred to in the charge

memo, would not constitute intemperate language amounting to misconduct so as to warrant disciplinary action against the appellant. It was further

contended that the appellant genuinely felt that he has been harassed by his superiors and therefore he stated so in his reply to the various charge

memos and that even assuming that the appellant should not use such language in his reply to the charge memos, the use of such language in the

explanations submitted by the appellant would not amount to misconduct. The learned single Judge, however, distinguished the judgments cited by

the learned counsel for the appellant on facts and held that the principles laid down therein have no application to the facts of the present case. The

learned single Judge has also held that the requirements of Rules 17(1)(b) and 23(1)(a) & (b) are satisfied by the respondents while passing the

order challenged in the writ petition. On the question of laches, the learned single Judge held that the delay is attributable only to the appellant since

he was on leave on one pretext or the other on frequent spells and therefore, he alone was responsible for the delay in passing final order. To the

contention of the learned counsel for the appellant that the punishment of removal from service imposed on the appellant by the Commission is

disproportionate to the charges levelled against the appellant, the learned single Judge held that the Appellate Authority/1st respondent taking into

consideration of all the facts and circumstances of the case came to the conclusion that the gravity of the charges does not warrant the extreme

penalty of dismissal from service and modified the same into one of removal from service. In these circumstances, it cannot be said that the penalty

imposed is disproportionate to the gravity of the misconduct proved against the appellant.

8. Before us, Mr. Jayesh Dolia, learned counsel for the appellant, reiterated the contentions raised before the learned single Judge. In the

concluding part of his argument, the learned counsel for the appellant fervently appealed that the punishment of dismissal from service imposed by

the 1st respondent is grossly disproportionate to the alleged charges and that the punishment should be proportionate with the offence alleged to

have been committed by the appellant.

9. We have gone through the entire records including the records pertaining to the domestic enquiry. We have also gone through the replies

submitted by the appellant to the charge memos.

10. Before proceeding to deal with the contentions of the learned counsel on either side it may be useful to extract the explanations submitted by

the appellant on various dates to the charge memos. They read thus :

In the explanation dated May 18, 1979 submitted by the appellant in reply to the charge framed against him in Memo No. 377-C1/79 dated

February 15, 1979, he has stated as follows :-

I am quite justified in saying that the Under Secretary concerned had actually never missed a chance to tease or to pass unbecoming and painful

remarks against me whenever I had submitted papers to him for orders. He had framed irrelevant and unnecessary charges against me.

The kind Joint Secretary took a pucca and perfect unilateral decision against me that I would have destroyed the above said paper. Assuming that

he called me lazy and without sense in the burning fire of prejudice and personal bias and asked me to transfer the above said tapal with those

remarks to KW Section ...

Again, in his explanation dated February 18, 1979 and in further written statement dated June 18, 1979 in reply to the charges framed against the

appellant in Memo No. 6854/C1/78 dated December 30, 1978, he has stated as follows :

It is not known why I am so much harassed by my higher authorities for no reason at all. I would like to take this opportunity to bring to the notice

of my superiors that I am being framed in for various imaginary and trumped up charges from time to time clearly showing a definite purpose of

harassment during the past few months To substantiate this state of affairs, I would like to quote our Joint Secretary Thiru R. Raghavan who

had already made up his mind for charge sheeting me on the above issue by threatening as follows after calling me in his office "you should not blame office later for anything". I am prepared to face another impartial enquiry on any other charges framed in the above manner in the past and I would at the same time request that necessary action may also please be initiated against such persons responsible and instrumental in harassing me in such a manner.

Further, in his explanation dated September 24, 1979 in reply to the memorandum calling for explanation in Memorandum No. 1677/C1/177

dated April 26, 1979, the appellant has stated as follows :

It is common knowledge and with my limited experience as an Assistant I take it that it is incumbent on the concerned officers to have gone

through the case fully which have all the essential information for him to issue orders rather than accuse his subordinate at a very belated stage and

level an unfair charge to cover up his own shortcoming of the cursory study of the case. I am sure, any logically thinking person would agree that a

funny Junior Assistant, who merely connected up the case at its very inception (complete in all respects) cannot be held responsible for all the

carelessness, callousness, misdeeds and incompetence of all the persons concerned who were instrumental in subsequent detailed proceeding of

the case.

11. Though it is alleged that the appellant has been using intemperate language, we are wholly unable to subscribe to the submission made by the

learned Special Govt. Pleader. In our opinion, the appellant appears to be always bullying the officers by casting aspersions on them. It appears to

us that it has become a regular habit on the part of the appellant to allege something or the other against his superior officers. The appellant always

appears to be in a fighting tendency against his superiors who have initiated actions against him, which may perhaps be because of the long drawn

battle waged by the respondents against the appellant and the retaliatory attitude on the part of the appellant against the officers of the Commission.

The respondents having imposed the punishments of warnings, censure, cut in increments, etc., would have gracefully closed the chapter, but,

however, they initiated action against the appellant by issuing a charge sheet asking him to show cause as to why disciplinary action should not be

taken against the appellant for using intemperate language while submitting his explanations to the charges framed against him.

12. Mr. Jayesh Dolia submitted that the impugned order is bad in law since the appellant did not use any intemperate language against the officers

of the Commission and in any event, the punishment of removal from service is grossly disproportionate to the misconduct alleged to have been

proved against the appellant. It is also a matter of record that the appellant was originally asked to show cause for the charge of certain

interpolations. He submitted his explanation for the same and an enquiry was held and he was found not guilty. However, the respondents, with an

ulterior motive and with a view to punish him for some charge or the other, issued another charge sheet stating that the appellant has used

intemperate language in his explanations to the charge memos. It is submitted that the explanations to a charge sheet cannot form the subject matter

of another charge sheet. Otherwise, no employee will be able to submit his explanation freely without fear of such explanation forming the basis for

another chargesheet.

13. Mr. R. Subramanian, learned Special Govt. Pleader appearing on behalf of the Commission, while reiterating the stand taken by the

Commission in their counter affidavit, would submit that the Commission has followed the procedure prescribed for initiating disciplinary action

against the appellant for the intemperate language used by him while submitting his explanations. He would further submit that the action was

initiated against the appellant not with an ulterior motive as alleged by the appellant but with a view to maintain discipline in the office. He would

also submit that during the tenure of his service in the Commission's office, the appellant has to be pulled up on many occasions for corrective

action as he was not discharging his duties as expected of him and the efforts taken by the administration to allow him to turn a new leaf by

administering warning or some minor punishments such as censure, withholding of increments, etc., were proved to be in vain. Instead of taking

efforts to discharge his duties sincerely and honestly, the appellant began to nurse grudges against the officers of the Commission and has chosen to

go on rambling and accusing the officers and casting highhanded remarks in the explanations to the charges on those who took action against him

earlier for the lapses committed by him. The learned Special Govt. Pleader while justifying the punishment imposed on the appellant would contend

that the appellant is one among 400 permanent employees in the Commission's office and the officers of higher echelons need not form any

prejudiced opinion against a particular individual holding the post at a lower rung viz., Junior Assistant. The appellant has also not explained what

exactly the prejudice and personal bias that motivated the Joint Secretary and Under Secretary of the Commission to frame charges against him.

When the unsatisfactory work and conduct of an individual is brought to the notice of the higher officials quoting specific instances thereof, the

officer concerned has to initiate disciplinary action against the erring individual in order to maintain discipline. Therefore, disciplinary proceedings

were initiated against the appellant on specific instances and punishment imposed for the proved charges. The learned Special Govt. Pleader,

therefore, contends that there is no violation of the cardinal principle of natural justice. The appellant was given sufficient time to rebut the charges

by giving proper explanation and letting in evidence. Instead of giving explanation to the charges, the appellant has chosen to attribute motive and

prejudice against the officers. Since the tone and tenor of the language used by the appellant in his explanation proved to be unbecoming of a

Government servant, specific charges were framed against him under Rule 17(n) of the Tamil Nadu Civil Services (Classification, Control and

Appeal) Rules for having used intemperate language. Our attention was also drawn to a few instances which were extracted in the counter affidavit

filed by the respondents. We have gone through the same.

14. Though the language used by the appellant cannot be strictly characterised as an intemperate language, in our opinion, the method of employing

certain harsh words while submitting his explanations to the charge sheets would have been avoided by the appellant since using such language is

not in good taste. We cannot also blame the officers for initiating action against the appellant for using the language, which, according to them, is

intemperate. When we visualise the situation we would have also initiated the same action against the appellant had we been in their place. In short,

we can say, both parties were on war path and more on prestige. We cannot, at the same time, tolerate any public servant employing any

intemperate language while submitting the explanation to the charge memo. It is always open to the person, who is charged with certain allegations, to submit his explanation by adopting a simple, understandable and unambiguous language. On any account, adopting agitational attitude against the superiors and employing unparliamentary words and intemperate language cannot at all be tolerated. If the Courts are to intervene in such disciplinary proceedings, the Court would in a way encourage such Government officials indulging in such actions.

15. We cannot also blame the Government servant concerned, who, while submitting his explanation employs intemperate language which may be due to various reasons. The Government servants, in order to send the reply correctly may, sometimes, approach others to help them in preparing the explanation and may adopt the same language employed by them for preparing the explanation and forward the same as their reply to the charge memo. Lack of working knowledge in English can also be construed as another reason for employing intemperate language, which may not be appropriate in the facts and circumstances of a particular case. We are of the view, that the appellant was always in the habit of bullying the officers by casting aspersions on them, which he is not entitled to do. We, therefore, feel, that the appellant should hereafter avoid using such expression and must maintain decency, decorum and discipline and should not give room for any such complaint in future.

16. As already noticed, the learned single Judge, on a careful consideration of the entire materials placed before him and of the arguments advanced by the counsel appearing on either side, came to the conclusion that the charge framed against the appellant has been proved, that sufficient opportunity was given to the appellant by the officials of the Commission to put forth his defence, that the delay in passing the final order is only attributable to the appellant as he was frequently on leave for a period of 376 days on broken spells and that the impugned order cannot be set aside on the ground of Teaches. As regards the prayer for reducing the punishment, the learned single Judge was of the view that the punishment imposed by the Appellate Authority/1st respondent was after taking into consideration the facts and circumstances of the case and also the gravity of the charges and therefore, the punishment of removal from service was the appropriate punishment which could be imposed on the

appellant. In this view of the matter, the learned single Judge declined to interfere with the punishment as well.

17. In our opinion, the punishment imposed on the appellant for using intemperate language or disrespectful language is too severe in the facts and

circumstances of the case. It is true that the appellant has employed, knowingly or unknowingly, some sort of intemperate language, which,

according to the respondents, is improper and disrespectful. We may also keep in mind that the appellant was charge sheeted for one misconduct

and found guilty for yet another misconduct, which is not the subject matter of the disciplinary proceedings. In our opinion, justice, equity and fair

play demand that the punishment must always be commensurate with the gravity of the offence charged. This Court in exercising the power under

Article 226 of the Constitution of India, therefore, can examine whether the respondents while imposing the punishment of removal from service

have properly approached the matter by exercising or refusing to exercise their power. Before this Court can exercise the discretion, this Court has

to be satisfied that the order of removal from service was not justified on the facts and circumstances of the case. As pointed out by the Supreme

Court in the decision reported in *Rama Kant Misra v. The State of U. P.* (1982 II LU 472), the use of indiscreet, improper and abusive language

may show lack of culture, but merely the use of such language on one occasion unconnected with any subsequent positive action and not preceded

by any blame worthy conduct, cannot permit an extreme penalty of removal from service.

18. In the decision reported in *Ram Kishan Vs. Union of India and others*, the Supreme Court has held as follows at p. 985 :

When abusive language is used by anybody against a superior it must be understood in the environment in which the person is situated and the

circumstances surrounding the event that led to the use of the abusive language. No straight jacket formula could be evolved in adjudging whether

the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts. What

was the nature of the abusive language used by the appellant was not stated.

19. The decision reported in *The Chairman, Railway Board, New Delhi v. D. Sainson* 1996 (1) S.L.R. 440 is also a case of removal from service.

The petitioner therein was removed from service for unauthorised absence of 45 days. A learned single Judge found that the punishment is

disproportionate to the misconduct and quashed the order of removal from service and directed the disciplinary authority to impose the penalty of

censure. On appeal, a Division Bench of this Court consisting of K. A. Swami, CJ. and T. Somasundaram, J., held that though even after finding

that the disciplinary proceedings conducted by the disciplinary authority is fair and proper and that the finding recorded on the charge of

misconduct is proved and does not suffer from any lack of fair and proper opportunity to the delinquent, it is still open to the High Court in exercise

of its jurisdiction under Article 226 of the Constitution of India to interfere with the order of punishment if it comes to the conclusion that the

penalty imposed is harsh and disproportionate to the proved misconduct. In that case, the Division Bench, has however remitted the case to the

disciplinary authority to consider the question of imposition of penalty afresh. We are of the view that the remittal is not warranted in the instant

case in view of the decision of the Supreme Court reported in Rama Kant Misra Vs. The State of Uttar Pradesh and Others, .

20. In the decision reported in Rama Kant Misra Vs. The State of Uttar Pradesh and Others, , the Supreme Court has held that the Supreme

Court while exercising jurisdiction under Article 136 of the Constitution of India over the decision of the Labour Court, can examine whether the

Labour Court has properly approached the matter for exercising or refusing to exercise its power u/s 11A of the Industrial Disputes Act, and

before the Court can exercise the discretion conferred by Section 11A of the Industrial Disputes Act, the Court has to be satisfied that the order of

discharge or dismissal was not justified in the facts and circumstances of the case.

In the case before the Supreme Court, the Supreme Court while converting the punishment of dismissal into one of withholding of two increments

with future effect held that the management has not shown that there was any blameworthy conduct of the appellant during the period of 14 years

service he rendered prior to the date of misconduct and the misconduct consists of language indiscreet, improper and disclosing a threatening

posture. The Supreme Court has observed as follows at p 476 :

When it is said that the language discloses a threatening posture, it is the subjective conclusion of the person who hears the language because voice modulation of each person in the society differs and indiscreet, improper and abusive language may show lack of culture but merely the use of such language on an occasion unconnected with subsequent positive action and not preceded by blame worthy conduct cannot permit an extreme penalty of dismissal from service"".

21. One of us (D. Raju, J.) sitting single, in *Virudhachalam Co-op. Urban Bank Ltd. v. The Presiding Officer* 1994 WLR 627, while considering the prayer to quash the order of the Labour Court, held that the High Court will not sit on appeal over the conclusion of the Labour Court setting aside the punishment of dismissal. The learned Judge, however, held that mere use of abusive or indecorous language by a worker cannot be the basis of an order of dismissal. In that case, the management filed the writ petition to quash the order in I.D. No. 87 of 1992. The 2nd respondent therein made certain remarks accusing the Secretary of the petitioner/bank of several irregularities, as a consequence of which the charge memo in question was said to have been issued. The worker denied the charge. On the basis of the findings of the Domestic Enquiry Officer, the worker was dismissed from service with effect from September 20, 1986.

Thereupon, he raised an industrial dispute and the same has been referred for adjudication to the Labour Court, which, after consideration of the evidence recorded by the domestic Enquiry Officer, came to the conclusion that the finding of the Domestic Enquiry Officer that the charges levelled against the worker have been proved do not call for interference and the finding of the Domestic Enquiry Officer was well justified. After recording such a finding, the Labour Court has chosen to consider the matter in exercise of its power u/s 11A of the Industrial Disputes Act, the quantum of punishment with reference to the nature and gravity of the charges levelled and held proved against the worker. The Labour Court thought fit to reduce the punishment to one of withholding of three increments and denial of backwages in the place of dismissal of the worker. The Labour Court directed the worker to be re-employed only with continuity of service, without backwages and further denying three increments.

22. Before the learned Judge, the award of the Labour Court was challenged

contending that the Labour Court having held that the charges were properly proved, ought not to have interfered with the quantum of punishment and in doing so, the Labour Court has committed a grave error of law. Certain decisions were also cited before the learned single Judge. The learned Judge was of the view that no exception could be taken to the award of the Labour Court in interfering with the quantum of punishment and that the gravity of the charge of using indecorous language is to be viewed in the light of the surrounding circumstances and keeping in view also the action of the management, which has driven the worker to resort to such method. In the concluding portion of the judgment, the learned Judge has observed as follows :

I am of the view that the Labour Court was right in coming to the conclusion that the punishment of dismissal was grave and disproportionate to the seriousness of the charges, held proved. In my view, the modified punishment imposed by the Labour Court itself is sufficiently harsh and more than sufficient for the gravity of the charges levelled against the 2nd respondent herein. It is by now well settled that this Court, exercising jurisdiction under Article 226 of the Constitution of India, does not exercise appellate jurisdiction and on the other hand only exercises supervisory control over the functioning of the Labour Court, and the exercise of powers by the forums constituted under the Act. Viewed in such context, I am of the view that the award of the Labour Court does not suffer from any patent error of law or perversity of approach, warranting the interference of this Court under Article 226 of the Constitution of India. The Writ Petition, therefore, fails and shall stand dismissed.

23. As pointed out by the learned single Judge in the above judgment, mere use of abusive or indecorous language by a worker per se cannot be the basis of an order of removal. The punishment imposed should always depend upon the gravity of the charges levelled against the worker and also in the light of the surrounding circumstances. In the instant case, the facts and the surrounding circumstances of the case should be kept in mind while imposing the punishment. Imposing the punishment of removal from service for using intemperate and disrespectful language is too severe in the facts and circumstances of the case on hand, and it is disproportionate to the seriousness of the charges held proved against the appellant.

Therefore, in our opinion, the order of removal from service is liable to be set aside and instead, the appellant shall be entitled to 50 % of the

backwages only for the period in question and he has to forego the remaining 50 % of the backwages, however, with continuity of service. This

punishment, in our opinion, is imposed in order to discourage the use of indecorous, indifferent, disrespectful and intemperate language and thereby ensure the prevention of indiscipline among the workers.

24. For the foregoing reasons, the order of the 1st respondent/Appellate Authority removing the appellant from service is set aside and the

appellant will be restored to service with continuity of service. However, the appellant is entitled to only 50% of the backwages from the date of

removal from service till he is reinstated and he has to forego the other 50% of the backwages. The Writ Appeal is allowed to the extent indicated

above. However, there will be no order as to costs.