

(2013) 11 MAD CK 0077
In the Madras High Court
Case No : W.A. No. 541 of 2012

The Managing Director and Chennai Metropolitan Water	APPELLANT
Vs	
K.P. Sugumar	RESPONDENT

Date of Decision : 12-11-2013

Acts Referred:

Citation : (2013) 8 MLJ 641

Hon'ble Judges : R. Banumathi, J;K. Kalyanasundaram, J

Bench : Division Bench

Advocate : T. Gowthaman, for the Appellant; T.C. Ram Mohan for Mr. B. Sivakumar, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J.—Challenge in this appeal is the Order dated 14.3.2011 made in W.P. No. 26384 of 2008 quashing the proceedings in

CMWSSSB/P&A/VC(A)/17981/2008 dated 22.9.2008 passed by the 2nd appellate Board and directing the appellants to reinstate the

respondent with continuity of service, but without back wages. The respondent joined the services of Chennai Metropolitan Water Supply and

Sewerage Board (in short, "CMWSSB") as Surveyor-cum-Draftsman in the year 1983 and thereafter promoted as Junior Engineer. While serving

as Junior Engineer, the respondent was issued with a charge memo dated 13.7.2006 alleging breach of integrity and devotion to duty stating that

that the respondent while working as Junior Engineer in the Area Office VII, though he was not a competent Pay Drawing Officer, he has given

undertaking as Pay Drawing Officer to the Union Bank of India, Vadapalani Branch, Chennai - 26 in respect of 20 employees of CMWSSB for

getting personal loans from the said Bank and upon his undertaking, the Union Bank of India, Vadapalani Branch has also granted personal loans

to those employees during June 2002 and later those employees had defaulted in repaying the loan instalments. The respondent, though

acknowledged the charge memo on 9.8.2006, has not submitted his explanation. The Enquiry Officer was appointed. The respondent appeared

before the Enquiry Officer on 18.5.2007 and he is alleged to have accepted the allegations made. The Enquiry Officer concluded that the charges

framed against the respondent are proved since the respondent himself has accepted the charges framed against him.

2. The Employment Committee is the competent disciplinary authority to pass final orders in the cadre of Junior Engineer. The Employment

Committee took note of the findings of the Enquiry Officer that the delinquent/respondent himself has admitted the charges framed against him.

The Committee also took note of the fact that the respondent had also committed similar kind of offence in getting personal loan from TNSC Bank

Limited, Periamet Branch, Chennai - 7 for 15 numbers of employees/workers and in proceedings No. CMWSSB/P&A/VC2 20845/2006, dated

8.2.2005, the respondent was awarded punishment of stoppage of increment for three years without cumulative effect and even thereafter the

respondent has not corrected himself but has repeated the same offence and he has brought disrepute to the Board by his Act. Finding that the

proved charges are serious in nature, which warrants severe punishment, the Employment Committee imposed punishment of ""removal from

service"" for the proved charges against the respondent.

3. As against the order of dismissal from service passed by the Disciplinary Authority, the respondent preferred the appeal on 30.4.2008 before

the Board of Directors, CMWSSB. After considering the matter, the appellate authority Board modified the punishment of ""removal from service

as ""compulsory retirement"". Challenging the proceedings of the Board modifying the punishment as ""compulsory retirement"" and alleging bias and

violation of principles of natural justice, the respondent filed the Writ Petition No. 26384 of 2008 praying to quash the impugned proceedings

dated 22.9.2008 and to direct the appellants to reinstate the respondent.

4. The Appellant Board filed counter alleging that the fact of modification of

punishment of "removal from service" to that of "compulsory

retirement" itself is a sufficient ground to show that by taking into consideration the years of service and his family circumstances, decided

sympathetically in favour of the respondent. Having committed serious misconduct, the respondent has no legally enforceable right to invoke the

extraordinary jurisdictional power of judicial review under Article 226 of the Constitution of India.

5. Upon consideration of the rival contentions, the learned single Judge held that SAO/VC participated in the proceedings of the Enquiry

Committee and the very same authority took part in the appeal proceedings by sitting in appeal along with Secretary-cum-G.M., and that the

element of bias cannot be ruled out. The learned single Judge relied upon a decision of the Supreme Court in Cantonment Executive Officer and

Another Vs. Vijay D. Wani and Others, . The Writ Court pointed out that the issuance of Pay Certificates in respect of TNSC Bank and Union

Bank of India was within short intervals and prior to the issuance of the Circular dated 7.1.2003 and while so the disciplinary authority as well as

the appellate authority erroneously proceeded as though the respondent repeated the misconduct once again after the punishment of stoppage of

increment for three years was imposed on the respondent to the undertaking given by the respondent in respect of loans advanced by TNSC

Bank. The learned single Judge further held that in the facts and circumstances of the case, non-furnishing of report of the Enquiry Officer to the

delinquent would be violative of principles of natural justice. On those findings, the learned single Judge quashed the Order of the Board modifying

the punishment of "removal from service" as "compulsory retirement". Pointing out that the matter is pending in the Court for about 2 = years and

that the respondent has got five more years of service, the learned single Judge took the view that it is not desirable to remit the case back for

consideration of authorities and directed the appellants to reinstate the respondent forthwith with continuity of service but without back wages

based on the rule of "no work-no pay".

6. The learned counsel for appellants Mr. Gowthaman has submitted that when the respondent himself admitted his misconduct and the Board has

modified the punishment of "removal from service" as "compulsory

retirement", the learned single Judge erred in perceiving bias. The learned counsel further submitted that as per the decision of the Honourable Supreme Court, non-furnishing of enquiry Officer's report per se will not vitiate the proceedings and the prejudice caused to the respondent ought to be palpable and while so the learned single Judge erred in finding that non-furnishing of enquiry report would vitiate the disciplinary proceedings and the punishment imposed. It was further submitted that without consideration of the facts and circumstances of the case, the Writ Court erred in saying that there was no proper analysis of the matter by the original authority before imposing the major penalty of "removal from service".

7. Taking us through the charges framed against the respondent and also the order of the Disciplinary authority as well as the Board, the learned

Senior Counsel for the respondent submitted that both the disciplinary authority as well as the appellate authority erroneously proceeded as though

the respondent has repeated misconduct once again after suffering the punishment/increment cut. The learned Senior Counsel submitted that as

pointed out by the Writ Court, the undertaking given in respect of TNSC Bank and Union Bank of India was within short intervals and prior to the

issuance of the Circular dated 7.1.2003 and while so without proper examination and analysis of the facts and materials on record, the original

authority imposed extreme punishment of removal from service and the appellate authority did not properly appreciate the findings of the

disciplinary authority.

8. While working as Junior Engineer in the Area Office VII, in June, 2002, the respondent is alleged to have given undertaking as Pay Drawing

Officer to the Union Bank of India, Vadapalani Branch, Chennai - 26 in respect of 20 employees for getting personal loan from the Bank and upon

his undertaking, Union Bank of India also sanctioned the loan on 11.9.2002. The respondent is also said to have given similar undertaking as Pay

Drawing Officer in respect of 15 employees of the Board for getting personal loan from Tamil Nadu State Cooperative Bank, Periamet Branch,

Chennai - 7 (in short, "TNSC Bank) and TNSC Bank sanctioned the loan on 31.10.2002. In respect of the Undertaking given by the respondent

to TNSC Bank in respect of 15 employees, a charge was framed against the respondent for breaching the integrity and devotion to duty. By the

proceedings of the Board in No. CMWSSB/P&A/VC 2/20845/2003 dated 8.2.2005, the respondent was awarded punishment of stoppage of increment for three years without cumulative effect.

9. For the undertaking given by the respondent to the Union Bank of India, Vadapalani Branch in respect of 20 employees of the Board for availing personal loan from the said Bank, another charge was framed against the respondent and by the proceedings of Disciplinary Authority No.

CMWSSB/P&A/VC2/25258/2006 dated 28.3.2008, the respondent was imposed the punishment of "removal from service". In the said

proceedings, the disciplinary authority observed that even after imposing punishment of "stoppage of increment for three years", in respect of

undertaking given to TNSC Bank, respondent has not corrected himself, who has repeated the same offence within a short time. The observation

of findings of disciplinary authority reads as under:

10..... The Employment Committee in its meeting held on 7.2.2008 has took note of the details of charges framed against Thiru. K.P. Sugumar,

J.E., and Enquiry Officers report put forth in the Agenda notes. The Committee took note of the findings of the Enquiry Officer that the charged

official has himself admitted the charges framed against him. The Committee also took note of the fact that the above official has already committed

similar kind of offence in getting personal loan from TNSC Bank Ltd., Periamet Branch, Chennai-7 for 15 Nos. of Employees/Workers by issuing

false pay certificate for which he was awarded a punishment of stoppage of increment for three years without cumulative effect vide Proc. No.

CMWSSB/P&A/VC2 20845/2006, dt. 8.2.2005. Even after this, he has not corrected himself but had repeated the same offence within a short

time, which is serious in nature and warrants severe punishment. He has brought disrepute to the Board by his act. Therefore the Employment

Committee felt that there is no justification to continue him in service due to his dishonesty and therefore decided to remove him from the services

of the Board for the proven charges against him.

10. As pointed out earlier, the punishment of stoppage of increment for three years in respect of undertaking given to TNSC Bank was imposed

by the proceedings No. CMWSSB/P&A/VC 2/20845/2003 dated 8.2.2005, whereas undertaking to Union Bank of India was given in respect

of 20 employees for availing personal loan from the said Bank and the loan was sanctioned on 11.9.2002. Based on the undertaking given by the respondent, loan was sanctioned by TNSC Bank on 31.10.2002. Thus, the undertaking to TNSC Bank as well as to Union Bank of India in the year 2002 are within the short interval of the same year 2002. Such undertaking given by the respondent to TNSC Bank as well as Union Bank of India was prior to the issuance of the Circular dated 7.1.2003, which prohibits the Pay Drawing Officers from issuance of Pay Certificates and giving undertaking to the employees for availing personal loans.

11. As pointed out earlier, in respect of the undertaking given to TNSC Bank, the punishment was imposed on 8.2.2005. But without examining the facts and the materials on record, the disciplinary authority erroneously proceeded as if the undertaking was given by the respondent to Union Bank of India after the respondent was awarded punishment of stoppage of increment for three years without cumulative effect by proceedings dated 8.2.2005 and even thereafter the respondent has not corrected himself but has repeated the same offence within a short time.

12. In the appeal preferred by the respondent, the appellate authority also did not examine the facts and materials on record. When the appeal has been preferred, the appellate authority has to consider whether the findings of the disciplinary authority are borne out by the evidence on record and whether the punishment imposed is correct. As noticed, while considering the appeal, the appellate authority has to re-appreciate the evidence and come to its own conclusion on facts. But the appellate authority has simply proceeded to confirm the findings of the disciplinary authority and modified the punishment as ""compulsory retirement"" on humanitarian grounds. The Appellate authority also did not keep in view that the undertaking given by the respondent in respect of TNSC Bank and Union Bank of India are within short interval in the year 2002 much prior to the issuance of Circular dated 7.1.2003.

13. In the counter affidavit filed in the Writ Petition, though the Office Order (P&A)/STF/R&A3/50/2000 dated 23.9.2000 has been referred, as per which the Controlling Officer is the Accounts Officer as mentioned in Item 3(8) of the said Circular and that the Enquiry Officer (Finance and Accounts) is the Pay Drawing Officer of the Unit concerned (Area concerned) of

the Metropolitan Water Board in Chennai Corporation limits.

According to the appellants, despite the said Circular, respondent had deliberately given the undertaking by assuming that he is the Pay Drawing

Officer of the Unit concerned. The said Circular has not been referred either in the charge memo or placed the Circular as a material in the

disciplinary proceedings. While so, it is not open to the Board to refer those proceedings in the Writ Court. The learned single Judge rightly held

that there was no proper examination and analysis of the matter by the original authority before imposing the major penalty of ""removal from

service"".

14. On behalf of the respondent, it was then contended that there is also violation of principles of natural justice as no opportunity was afforded to

the respondent to submit his reply and that the copy of the Enquiry Officer's report was not furnished to him. In the report of the Enquiry Officer, it

is stated that though the respondent has acknowledged the charge memo on 9.8.2006, he has not submitted his explanation. The Enquiry Officer

had also stated that the respondent himself had accepted the allegations levelled against him and informed that four persons have cleared the loan

amount and the balance employees will settle their account within six months. The Enquiry Officer observed that the delinquent has not produced

any proof from the Bank Manager, Union Bank of India. Before the Enquiry Officer, the respondent had taken time to submit his explanation for

the charges proved against him within two days. Pointing out that the delinquent/respondent has not submitted his written statement, the Enquiry

Officer concluded that the charges framed against the delinquent/respondent are proved since he himself has accepted the charges framed against

him. By reading of the Enquiry Officer's report (as extracted in the proceedings of the Disciplinary Authority dated 28.3.2008), we are of the view

that no sufficient opportunity was afforded to the respondent.

15. Likewise, before imposing punishment of ""dismissal from service"", a second show cause notice was not issued to the respondent calling upon

him as to why the major punishment of ""removal from service"" is not to be imposed on him. When the respondent has not appeared before the

Enquiry Officer, the disciplinary authority ought to have afforded a reasonable opportunity to the respondent by issuing second show cause notice

as to why the punishment of "dismissal from service" is not to be imposed on him and therefore the order of disciplinary authority is vitiated on

account of violation of principles of natural justice.

16. The learned single Judge has held that the proceedings is vitiated due to violation of principles of natural justice in view of the non-furnishing of

Enquiry Officer's report to the delinquent officer. In the proceedings of the Disciplinary authority dated 28.3.2008, it is clearly stated that the

Enquiry Officer's report was sent to the delinquent on 5.9.2007 and the same was received by the respondent on 14.9.2007. We are of the view

that Writ Court was not right in saying that the Enquiry Officer's report was not furnished to the respondent.

17. The learned single Judge held that the proceedings of the appellate authority is rendered invalid since one of the members forming part of the

Employment Committee was also a member in the appeal proceedings as the member of the Board. Employment Committee is the competent

disciplinary authority to pass final orders in the category of Junior Engineer. Section 17(1)(d) of the Chennai Metropolitan Water Supply and

Sewerage Act, 2008, which deals with the "Committees" reads as under

17. (1) There shall be established the following Committees namely:-

...

(d) an "Employment Committee" consisting of the Managing Director, the Finance Director, the Engineering Director and the heads of planning, personnel and material branches of the Board.

Section 4(1)(dd) of the Act deals with "Board", which reads as under:

The Board shall consist of the following directors, namely.

.....

(d) the Managing Director, Tamil Nadu Water Supply and Drainage Board.

18. The respondent raised the plea that one of the members of the Employment Committee also was a member of the Appellate Board and

therefore the order of the Appellate authority is vitiated by bias. Having regard to the submissions of the respondent, the Writ Court directed the

Appellate Board to submit the relevant files and perused the files. On perusal of the files, the learned single Judge observed that SAO/VC who

was a member of the Employment Committee was also the member of the

Board, the learned single Judge observed as under:

5. the Employment Committee, which passed the order of removal, was consisting of four officials viz., SAO/VC, V.O./G.M., EXE. DIR. and

M.D. While so, two members are shown to have signed the Appellate Order and they are SAO/VC and Secretary-cum-G.M. Respectively. A

further verification would also reveal that SAO/VC who participated in the proceedings of the Employment Committee is the very same authority,

who took part in the Appeal Proceedings as well, by sitting in appeal along with Secretary-cum-GM. Further, the signature of the said official-

SAO/VC in both the proceedings being one and the same, the version of the learned Senior Counsel for the petitioner regarding bias is well

substantiated....

19. For observing that the proceedings of the Board is vitiated on account of bias, the learned single Judge referred to the decision of the Supreme

Court in Cantonment Executive Officer and Another Vs. Vijay D. Wani and Others, . In the said decision, three persons, who conducted the

enquiry, were also the members of the Board and that the Board was to take a decision in that matter as to whether the report submitted by the

Enquiry Committee should be accepted or not. In those circumstances, the Hon"ble Supreme Court held that the participation of these six

members in the Committee would give a real apprehension in the mind of the respondent that he will not get fair justice in the matter because of the

three members who submitted the report would be interested to see that the report should be accepted and the bias apprehended cannot be said

to be unreal. But in this case, as SAO/VC alone was a member in the appeal proceedings sitting along with Secretary cum G.M., it cannot be said

that the decision of SAO/VC would have influenced the decision of the Board. The Employment Committee and the Board were constituted

according with the provisions of the Act and the rules. In such circumstances, we are unable to endorse the finding of the learned single Judge that

the participation of SAO/VC in the proceedings vitiates the order of the appellate authority.

20. However, since we have held that there was non-application of mind to the facts and materials on record and that there was violation of

principles of natural justice, the impugned proceedings of the appellate authority

- 2nd respondent - No. CMWSSB/P&A/VC(A)/17981/2008

dated 22.9.2008 as well as the original authority - No. CMWSSB/P&A/VC2/25258/2006 dated 28.3.2008 cannot be sustained and are liable to

be quashed. As rightly pointed out by the learned single Judge, since the matter is pending for nearly five years, and that the appellant has got only

few more years of service, and to meet the ends of justice, the learned single Judge rightly directed the appellant Board to reinstate the respondent

with continuity of service but without any back wages.

21. It was stated that in respect of other delinquents viz., M. Diraviam and D. Prabakaran, against whom charges were framed in respect of

undertaking given to TNSC Bank, only minor punishment of stoppage of increment for three years without cumulative effect was imposed and they

continued in the services of CMWSSB and have now retired on attaining the age of superannuation. While similarly placed persons were imposed

minor punishment, the appellant cannot be imposed major punishment of "removal from service". In the facts and circumstances of the case, we are

of the view that such direction issued by the Writ Court cannot be interfered with. In view of the foregoing discussion, the writ appeal is liable to be

dismissed and accordingly the same is dismissed. The appellants are directed to reinstate the respondent forthwith without any back wages till the

date respondent joining the service. The period from 22.9.2008 till the date of respondent's joining the service shall be taken into account for

continuity of service and for calculating the pensionary benefits and other attendant benefits. The appellants are directed to reinstate the respondent

within three months from the date of receipt of copy of this judgment. However, there is no order as to costs. Consequently, the connected

miscellaneous petition is closed.