
(2002) 03 MAD CK 0217

In the Madras High Court

Case No : Writ Petition No. 1879 of 2002, W.P.M.P. No. 2600 of 2002 and
W.V.M.P. No. 106 of 2002

U. Gunasekaran

APPELLANT

Vs

The Executive Director, Tamil Nadu Science and Technology
Centre, Guindy, Chennai

RESPONDENT

Date of Decision : 08-03-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Civil Services (Classification, Control and Appeal) Rules, 1953 — Rule 17

Citation : (2002) 03 MAD CK 0217

Hon'ble Judges : K. Sampath, J

Bench : Single Bench

Advocate : M.K. Hidayathullah and Vijaynarayan, for the Appellant;

Final Decision : Dismissed

Judgement

K. Sampath, J.—By consent the main writ petition itself was taken up and arguments heard.

2. The case of the petitioner is as follows:

He joined the office of the respondent on 9.11.1990 on a temporary basis and his services were regularised with effect from 2-7-1994. He has been designated as Scientific Assistant. He has been very sincere and dutiful in discharging his job. There was no allegation of any insubordination or misconduct against him. In 1998 some disciplinary proceedings were initiated against one Rajaboopathy. The petitioner was called upon to give statement in the enquiry proceedings. He gave his statement, which was true. However, since he did not comply with the extraneous order of the respondent, the latter developed animosity with him and he was found fault with whatever act he was doing. He was abused and scolded in a most derogatory and filthy language. The petitioner's wife fell sick and was operated for hernia. He has two sons and a daughter. The petitioner was put to great hardship because of the ill-health of his wife and he had to do all the

routine work both in taking care of his children and his ailing wife. On 3-1-2002 the petitioner gave a letter to the respondent seeking permission to have his lunch outside in a hotel. He sought for lunch break of 30 minutes. The respondent refused permission. He also directed the petitioner to go to Villupuram on 4-1-2002 to conduct the mobile exhibition for three days. The petitioner expressed his inability to go to Villupuram since his wife was bed-ridden. The respondent took serious note of this and immediately on 4-1-2002 he passed orders of suspension and it was approved under sub rule (e) of Rule 17 of the Tamil Nadu Civil Service (Classification, Control and Appeals) Rules, vide Memo No.36/E1/2002. Challenging this, the present writ petition has been filed.

3. The order impugned states that the petitioner is suspended with effect from 4-1-2002 afternoon, pending enquiry on his misbehaviour in the Chamber of the Executive Director and disobedience as per sub rule (e) of Rule 17 of the Tamil Nadu Civil Service (Classification, Control and appeals) Rules until further orders. The writ petition was admitted and interim stay for a period of four weeks was granted on 30-1-2002.

4. A counter has been filed by the first respondent denying the various allegations and further stating that the power has been exercised with bona fide intention as per the Rules and the writ petition is not maintainable. On merits the counter states as follows:

There is a Museo Bus with 24 built-in exhibits with Portable Planetarium which is travelling all parts of Tamil Nadu, particularly schools and colleges in the rural places for popularising science and technology concepts among the general public, particularly students. On rotation basis, the scientific and technical staff working in the Centre are posted to look after the duty. Accordingly, one Manoharan was posted in the Museo Bus for discharging duties at Elumalai Polytechnic from 4-1-2002 to 6-1-2002 and from 7-1-2002 to 9-1-2002. Stating that his mother-in-law was seriously ill he requested the Executive Director to relieve him by posting a substitute in his place. The petitioner was posted to look after the duties of Elumalai Polytechnic, Villupuram, in the Executive Director's Memo No.457/P1/2001, dated 4-1-2002. Instead of attending to the duty, the petitioner rushed into the Executive Director's Chamber at 5.20 p.m., when officers were discussing about the financial and other policy matters. The Superintendent of Accounts Section was also waiting to get the signature of the Executive Director in the bills and cheques to be disbursed immediately. Without getting the permission of the Executive Director, he pulled the chair and sat on it and shouted at the Executive Director that he would not attend his duty. He further told the Executive Director that his wife was ill and he could not go to Villupuram. He disturbed the work in the Executive Director's Chambers for sometime. He behaved in a more indisciplined manner unbecoming of a responsible staff member. At the time of his misbehaviour, four staff members were also present and they had also given complaints against him. Due to his

misbehaviour the petitioner was suspended from duty and the order was sent to him by registered post. On 6-1-2002 the suspension order was also handed over to the petitioner in person. It was not true to say that the respondent developed animosity with the petitioner or that he was harassed and put to great hardship. It was equally false to say that the respondent abused powers and scolded the petitioner in derogatory or filthy language. The permission to have lunch outside was rejected because the respondent being a public oriented enterprise, there were equipment worth about Rs.30 lakhs in the custody of the petitioner and if he left the premises, there was a possibility that the equipment might be stolen or damaged. In fact, on one past occasion when the petitioner left the premises, a transistor worth approximately Rs.700/- was stolen. The petitioner had committed grave misconducts and the charges are likely to be framed shortly. A domestic enquiry is also likely to be conducted. The suspension order had been passed properly and no exception can be taken to this.

5. A reply has been filed setting out the events that had happened subsequent to the petitioner obtaining the interim order, besides denying the case set out in the counter and reiterating the contentions in the main writ petition. It is further stated in the reply that he obtained the copy of the order from this Court on 4.2.2002 and furnished a copy of the same to the respondent. Immediately on receipt of the order from this Court, the respondent called the petitioner and informed him that he would revoke the order of suspension provided the petitioner withdrew the writ petition. On 6-2-2002 the petitioner sent a letter to the Counsel for the respondent through his Counsel narrating the above facts and sought for amicable settlement in the matter. In fact, on 6-2-2002 he met the respondent accompanied by his uncle Mr. Rangaraj. On that day the respondent started abusing the petitioner. These facts have been suppressed in the counter. The incumbent Officer is bent on removing the petitioner from service on some pretext or the other.

6. This is a case of suspension pending departmental enquiry. From the narration, I do not find any mala fides in the order of suspension passed by the respondent. I had occasion to consider the question regarding stay of suspension in W.P.No.4724/98 and W.M.P.Nos.7312 and 7313 of 1998 and held that there was no scope for interference by this Court under Article 226 of the Constitution when serious allegations of misconduct are made against the aggrieved party.

7. In State of Orissa Vs. Bimal Kumar Mohanty, : the Supreme Court referred to a number of earlier decisions and ultimately held as follows:

"It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind

by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or enquiry, etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in a service pending enquiry or contemplated enquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or enquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental enquiry or trial of a criminal charge."

To the same effect is the decision of the Supreme Court in Secretary to Government, Prohibition and Excise Department Vs. L. Srinivasan, .

8. In the latest decision of the Supreme Court NEWINDIA ASSURANCE CO. LTD. VS. S.M.I. KAZIM AND OTHERS 2001 1 LLJ 1700 it has been held that,

"an order of suspension during the pendency of a departmental inquiry is ordinarily not interfered with by the High Court in exercise of its jurisdiction under Article 226 of the Constitution until and unless the Court comes to a conclusion that the order has been mala fide passed; or that the appropriate authority has not passed the order of suspension."

9. In as much as no mala fides have been shown in this matter, it is not possible to invoke Article 226 of the Constitution. The writ petition fails and the same is dismissed. The connected miscellaneous petitions are also dismissed. There will be no order as to costs. However, there will be a direction to the respondent to complete the enquiry within a period of three months from the date of receipt or production of a copy of the order in the writ petition.