

(2012) 11 MAD CK 0074
In the Madras High Court
Case No : W.A. No. 719 of 2011

V. Ramamurthy

APPELLANT

Vs

Director of School Education and Others

RESPONDENT

Date of Decision : 20-11-2012

Acts Referred:

Citation : (2012) 8 MLJ 808

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

Bench : Division Bench

Advocate : G. Devi, for the Appellant; K.V. Dhanapalan, Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J.—Challenge in this intra-Court appeal is the order dated 24.3.2010 made in W.P. No. 16827 of 2006 setting aside the order of dismissal (dated 5.10.1995) passed against the appellant retrospectively w.e.f. 3.8.1988 and remitting the matter back to the 3rd

respondent-District Educational Officer, Nagapattinam to consider as per G.O.Ms. No. 153, Personnel and Administrative Reforms (F.R. III)

Department, dated 8.8.2000. The matter had a chequered history of two decades. The appellant was appointed as a Library Record Clerk and

working as Library Record Clerk in Government Higher Secondary School, Thiruthuraipoondi. On 7.11.1983, he found that some books in the

library were scattered here and there and he intimated the Headmaster about the facts that out of 26,000 books, 1739 books were missing. On

1.6.1985, the Chief Educational Officer, Thanjavur has issued a show cause notice to the appellant to explain as to why a sum of Rs. 4,161.56

equivalent to the value of the missing books should not be recovered from him. The appellant has submitted his explanation to the show cause

notice on 4.7.1985. On 22.12.1987, the Chief Educational Officer, Thanjavur, passed an order for recovery of sum of Rs. 4,161-56, in twenty

one instalments from the appellant's salary. Aggrieved by the same, the appellant has preferred an appeal before the Director of School Education,

College Road, Madras. Thereafter, against the order of recovery, the appellant preferred an application in O.A. No. 1044 of 1989 before the

Tamil Nadu Administrative Tribunal, Chennai. In the meantime, the first respondent namely the Director of School Education, Chennai confirmed

the order of the second respondent and therefore, another application in O.A. No. 1124 of 1990 was also filed.

2. The Tribunal has allowed the above said application on 26.2.1993. On 1.8.1988, the appellant was transferred from Thiruthuraipoondi to

Government High School, Ayyanur. Case of appellant is that the Headmaster has not issued relieving order. But according to respondents, the

Headmaster served the transfer order; but the appellant left school without receiving the relieving order. The relieving order was sent by registered

post, but it was not received by the appellant and sent back to the Head Master. The appellant applied for medical leave from 3.8.1988 to

3.10.1988. On the expiry of the medical leave, when the appellant approached the Head Master, Government Higher Secondary School,

Thiruthuraipoondi, to issue the relieving order so as to enable him to join at Ayyanur, the 4th respondent insisted the petitioner to accept the liability

for missing of books and to pay a sum of Rs. 4,161-56, failing which the appellant would not be relieved from Thiruthuraipoondi. It is the case of

the appellant that since he refused to admit the responsibility for missing of the Library Books and did not pay the said amount, he was not relieved

from the school at Thiruthuraipoondi and in such circumstances, he could not join duty either at Thiruthuraipoondi or at Ayyanur.

3. On 31.1.1990, the District Educational Officer, Nagapattinam - the third respondent issued a show cause notice for termination of service of the

appellant on the ground that he was absent for two years. The appellant has submitted his reply on 16.4.1990 to the said show cause notice and

further submitted his willingness to work anywhere and requested the authority for posting orders. The appellant has further submitted that by an

order dated 17.5.1990, the third respondent directed him to pay a sum of Rs. 4,161-56 and informed him that only after the said payment, posting orders would be issued.

4. O.A. No. 2232 of 1994 was filed by the appellant for directing the respondents to give posting. Date of retirement of appellant is 31.5.1995. In

Na.Ka. No. 64 A1/1995, dated 5.10.1995, the appellant was terminated with retrospective effect from 3.8.1988. Challenging the said

proceedings dated 5.10.1995, the appellant filed W.P. No. 16827 of 2006 and also to direct the respondents to pay salary for the period from

4.10.1988 to 31.5.1995 treating the period as compulsory wait and settle all the retirement benefits. Government resisted the writ petition

contending that the appellant was responsible for loss of books and in O.A. No. 1124 of 1990 Tribunal passed orders regarding recovery of

money only. Services of appellant were terminated in G.O. Ms. No. 1046 P&AR (FR. III) Department, dated 13.11.1987. The appellant applied

for unearned leave on medical certificate for 20 days from 3.8.1988 and then he extended the leave for 10 days and thereafter no information was

received from the appellant. Under those circumstances, the appellant was terminated from service on the ground that he was absent for two years.

As per T.N.P.R 21, dismissal or removal of Government servant from a service or post results in forfeiture of his past services and therefore the

appellant was not eligible for pension and encashment of earned leave benefits.

5. Upon consideration of rival contentions, the learned single judge held that before terminating the services of appellant, no enquiry at all was

conducted and summarily the impugned order dated 5.10.1995 was passed by the 3rd respondent terminating the appellant from service and

remitted the matter back to the 3rd respondent to pass orders afresh in accordance with G.O. Ms. No. 153 dated 8.8.2000 after giving sufficient

opportunity to the appellant. Challenging the said order, the appellant has preferred the appeal.

6. Learned counsel for appellant contended that Writ Court ought to have seen that appellant has been continuously requesting the appellant for

permitting him to join duty and he has also filed O.A. No. 2232 of 1994 (W.P. No. 18948 of 2006) to direct the respondents to post him as a

Library Record Clerk and for payment of salary from 10.8.1988, which was

dismissed on 10.10.2007 on the ground that appellant has also reached the age of superannuation on 31.5.1995. The learned counsel contended that the impugned order of termination was issued on 5.10.1995 with retrospective effect on 3.10.1988 and on the date of impugned order, actually the appellant was deemed to have retired. The learned counsel would further submit that after having held that the appellant was dismissed from service without any enquiry, the learned single judge ought to have considered the age of the appellant that he is aged 73 years and duration of the pendency of the case and that there cannot be a fair departmental enquiry after a long delay of 25 years and could not have remitted the matter to the third respondent.

7. Drawing our attention to typed set of papers, learned Additional Government Pleader submitted that appellant was responsible for loss of books

to the tune of Rs. 4,161.56. The learned Additional Government Pleader further contended that the appellant did not re-join duty after expiry of

leave and no information was received from the appellant and under those circumstances, as per G.O. Ms. No. 1046 dated 13.11.1987, the

appellant was terminated from service on the ground that he was absent for two years. The learned Additional Government Pleader would also

contend that having held that there was no enquiry the learned single judge rightly remitted the matter to the respondent for consideration of the

matter afresh and the order warrants no interference.

8. Insofar as the order of recovery of money towards loss of library books from the appellant was the subject matter of challenge in O.A. No.

1044 of 1989 and 1124 of 1990, by the Order dated 26.2.1993, the Tribunal passed the following order:

... Therefore, in the fitness of things both appellant and the Headmaster are to be made accountable for the loss of books. The amount for the

missing books to the tune of Rs. 4161-50 has to be collected from both the applicant and the Headmaster after the latter has been given adequate

opportunities to put forth his view points. So far in this case the Headmaster has not been impleaded. If action has to be taken on both, in the

absence of any decision on the responsibility of the Headmaster, the applicant cannot be totally held responsible for the loss of books. As such the

impugned order relating to recovery of money from the applicant are set-aside.

9. As per the above order of the Tribunal, apart from the appellant, the Headmaster is also to be made accountable for the loss of books and that

order has become final. No materials were placed before us to show that in pursuance to the order in O.A. No. 1124 of 1990, the Department

initiated any disciplinary proceedings against the appellant and the Headmaster.

10. The reason for terminating the services of the appellant is that the appellant applied for unearned leave on medical certificate from 3.8.1988 for

30 days and that he did not submit any application for further leave and he did not join duty and the appellant did not have any valid reason for his

unauthorised absence and as per G.O.Ms. No. 1046 P&AR dated 13.11.1987, appellant's service was terminated.

11. Case of appellant is that he was on medical leave from 3.8.1988 to 3.10.1988 and after expiry of leave he approached the Headmaster of

Thiruthuraipoondi Higher Secondary School for relieving him so as to enable him to join duty at Ayyanoor; but the Headmaster did not relieve the

appellant on the ground that the appellant was to pay the amount of Rs. 4161.56, which was the subject matter of application pending before the

Tribunal in O.A. Nos. 1044 of 1989 and 1124 of 1990. Consistent stand of appellant is that he has not left the service and that he has been

repeatedly requesting the authorities to issue the posting order, but he was not allowed to join duty.

12. Learned counsel for appellant has drawn our attention to the order dated 17.5.1990, wherein the appellant was directed to pay the amount of

Rs. 4,161.56 sought to be recovered from him and after such payment alone the appellant will be given posting. The said order strengthens the

case of appellant that he approached the authorities for issuance of posting orders. As rightly contended by the learned counsel for appellant, it

was not overstaying of leave nor non-reporting for duty to term it as unauthorised absence for two years.

13. The order of learned single judge refers to batch of original applications - O.A. No. 1120 of 1989 etc., batch, which were filed challenging the

validity of Rule 18(3) of Fundamental Rules insofar as it relates to the orders of removal from service by following the provisions contained in F.R.

18(2) and 18(3) without any information after expiry of the leave period. By common order dated 21.10.1999, those original applications were

allowed setting aside the punishment and orders and remanded the matters back to the concerned authorities for fresh action. In the light of the

observations, the learned single judge has referred to the said order in extenso. Paragraph No. 28 of the said order of the Tribunal reads as under:

28. I make it clear that depending upon the nature, circumstances, duration of the pendency of the cases before this Tribunal, the age of the

applicants and other relevant circumstances, it is open to the concerned authorities to decide whether further proceedings against any, some or all

of the applicants are necessary at all. As a result, the applications are allowed and the punishment orders are set aside. However, the matters are

remitted back to the concerned authorities for fresh action, if necessary, without reference to the orders already passed and the provisions

contained in F.R. 18(3).

14. Government did not prefer any appeal against the order dated 21.10.1999. On the other hand, Government implemented the order of the

Tribunal by issuing G.O. Ms. No. 153, Personnel and Administrative Reforms (F.R. III) Department, dated 8.8.2000 and paragraph No. (iii) of

the above said G.O. reads as under:

(iii) In future, disciplinary cases against the Government Servants for their unauthorised absence beyond the maximum permissible limit stipulated in

Fundamental Rule 18(1) and 18(2) shall be initiated by the disciplinary authority under Rule 17 of the Tamil Nadu Civil Service (Discipline and

Appeal) Rules and the disciplinary authority considers that good and sufficient reasons exist for imposing penalties under Rule 8 of the Tamil Nadu

Civil Service (Discipline and Appeal) Rules, final orders may be passed under Rule 8 of the Tamil Nadu Civil Service (Discipline and Appeal)

Rules.

15. The above Government Order thus refers only to disciplinary cases in future. In the present case, the termination order is dated 5.10.1995 and

the said G.O. is not applicable. Therefore, the present case is to be examined in the light of the observations of the Administrative Tribunal in

paragraph No. 28 i.e., for unauthorised absence/failure to resume duty after expiry of leave the matter has to be considered depending upon the

nature, circumstances, duration of the pendency of the case before the Tribunal.

16. Considering the present case in the light of the observations of the Tribunal,

which the Government thought fit to implement in G.O. Ms. No.

153 dated 8.8.2000, the case of appellant is not overstayed. As pointed out earlier, the appellant has been requesting the authorities for posting.

The Order dated 17.5.1990 and the appellant's repeated representations to the authorities and filing of O.A. No. 2232 of 1994 indicate that the

appellant was requesting the authorities for issuing the posting orders. Considering the facts and circumstances, we are of the view that no grave

indiscipline could be attributed to the appellant. The impugned order dated 5.10.1995 terminating the appellant with retrospective effect from

3.8.1988 is liable to be set aside. While setting aside the order, the learned single Judge has remitted the matter to the authorities for consideration

of the matter afresh in the light of G.O. Ms. No. 153 dated 8.8.2000.

17. The appellant is stated to be aged 73 years and he has already attained superannuation. The date of retirement was on 31.5.1995. Having

regard to the passage of time and also the age of the appellant, we are of the view that the appellant need not be subjected to ordeal of another

round of litigation by remitting the matter back to the respondents.

The appellant was issued with a show cause notice for dismissal on 31.1.1990. On 17.5.1990, the appellant was asked to pay the amount of Rs.

4161.56, being the amount of recovery and on such payment, the posting order will be issued. The appellant could have very well paid that amount

without prejudice to his contention in the disciplinary proceedings for recovery of the amount towards loss of books and obtained posting order.

But the appellant has not chosen to do so nor he has challenged that order dated 17.5.1990 nor the show cause notice dated 31.1.1990. Of

course, the appellant filed O.A. No. 2232 of 1994, but the said application was filed nearly four years after the issuance of show cause notice on

31.1.1990. Under such circumstances, considering the fact that he has not approached the Court at the earlier point of time and that he has not

worked from 3.8.1988 to 31.5.1995, he shall not be entitled to salary and other monetary benefits from 3.8.1988 to 31.5.1995.

In the result, the writ appeal is allowed and the order of the learned single Judge dated 24.3.2010 made in W.P. No. 16827 of 2006 is set aside.

It is held that the appellant is deemed to have retired on 31.5.1995. From 3.8.1988 to 31.5.1995, the appellant is not entitled for pay and

allowances and other monetary benefits and the said period shall be taken into account only for the purpose of continuity of service and pensionary

benefits. The respondents are directed to settle the retirement benefits of the appellant within a period of four months from the date of receipt of a

copy of this judgment and process the pension papers within a period of six 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.