

(2012) 06 MAD CK 0009

In the Madras High Court

Case No : W.P.No.28462 of 2007 and M.P.No.1 of 2007

V.Yoharaja

APPELLANT

Vs

The Special Commissioner/Director and Additional Director,
Land Survey and Land Tax Scheme, Chennai-600005, The
Deputy Director, Land Survey and Land Tax Scheme, Madurai
Division, Madurai-625020 and Assistant Director, Land
Survey and Land Tax Scheme, Tuticorin District, Tuticorin

RESPONDENT

Date of Decision : 05-06-2012

Acts Referred:

Army Rules, 1954 — Rule 14

Central Civil Services (Conduct) Rules, 1964 — Rule 3

Tamil Nadu Civil Services Rules — Rule 17, 36(1)

Tamil Nadu Government Servants Conduct Rules, 1973 — Rule 7(3)

Citation : (2012) 06 MAD CK 0009

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S.Subbiah, for the Appellant; M. Dig Vijaya Pandian, AGP, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr.Justice K. Chandru

1. This writ petition is filed by the petitioner seeking to challenge an order of the first respondent dated 25.5.2007. By the impugned order, the

order passed by the second respondent Deputy Director was set aside and he was directed to give appropriate punishment in terms of the

misconduct committed by the petitioner after going into records. The writ petition was admitted on 29.8.2007. Pending the writ petition, an interim

stay was granted. On notice from this court, the respondents have filed a counter affidavit, dated 15.11.2007. The petitioner also filed an additional

typed set containing several documents including the enquiry report.

2. It is seen from the records that the petitioner was employed as a Surveyor / Draftsman on 01.12.1982. Subsequently, he was appointed as a

Field Surveyor on time scale of pay on 29.5.1984 which was also regularized from that date. He had completed his probation on 16.6.1986 and

was promoted as a Firka Surveyor with effect from 1.6.1987. At the time of penalty, he was working as a Sub Inspector of Survey and Land

Records in the District Survey Unit, Thoothukudi. The petitioner ought to have submitted his returns for assets and liabilities on or before

28.8.1984 on completion of three months from the date of the appointment. But, he had not done so. He had submitted the returns in the

prescribed form along with the application for permission to acquire an house site having an area of 0.04.5 acres at Meelavittam village,

Thoothukudi from one Sarojini Samuel, who was not a reputed dealer as envisaged under the conduct rules. For this transaction, he had submitted

a copy of the agreement from the vendor, dated 21.8.1992. On examining the agreement deed from the vendor, it was found that the petitioner

had paid Rs. 16810/- as an advance and for the whole transaction, he had paid Rs. 96,810/-. It was also stated that he had furnished a receipt

obtained from one V.S.Alagirisamy Chettiar and Sons Jewellers, Thoothukudi for the sale of 189 grams of gold. He had submitted a photo copy

of bank accounts from the Central Bank of India, Thoothukudi Branch maintained from 24.6.1983 to 2.9.1989. On examining the bank accounts,

it was found that the petitioner had made transactions to the tune of Rs. 85,315.25. These facts were concealed by the petitioner to the competent

authority, i.e., the third respondent.

3.The third respondent by an order dated 26.2.1993 found that the bank accounts was not bona fide and was dubious in nature. On examining his

previous services, it was found that his character was a blemished one. He was transferred from Thoothukudi District to Virudhynagar District on

certain allegations of corruption. The petitioner moved the tribunal with O.A.No.269/1990 and pursuant to the order of the tribunal dated

6.2.1990, he was posted to the same district. He had also relinquished promotion as the Sub Inspector of Survey and Land Records from

31.08.1989 to 30.8.1992 so as to continue as Firka Surveyor with ulterior

motive. He had amassed disproportionate wealth and submitted suspicious and dubious records, thereby violated Rule 7(3)(d) of the Tami Nadu Government Servants Conduct Rules. This requires a serious disciplinary action in terms of the conduct rules.

4. Initially, the third respondent sent a letter suggesting his case should be referred to the Vigilance and Anti corruption Department for further investigation. The issue was examined by the Special Commissioner, who in turn sent a report to the Director of Vigilance and Anti Corruption on

13.5.1993. The Director of Vigilance and Anti corruption on receipt of the same, had conducted a detailed enquiry by taking the block period

from 1.6.1991 to 31.12.1997. It was found that the petitioner had amassed disproportionate wealth of Rs. 3,76,992/- which included movable

and immovable properties. A regular criminal case was also directed to be registered under the provisions of Prevention of Corruption Act. The

Directorate of Vigilance and Anti Corruption had also recommended suitable disciplinary action against the petitioner for violation of Government

Servants Conduct Rules. Accordingly, the State Government had instructed the third respondent to take a disciplinary action. Based on the

direction, a charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules was framed against the petitioner with

the following charges :

(a) Purchased a house site in Survey No. 825/24 in Meelavittan Village of Tuticorin District measuring 10.5 cents with a built-up area (house) of

485 Sq.ft., on the said land from Tmt.Sarojini, without obtaining prior permission of the concerned authority.

(b) Without seeking prior permission of the concerned authority he extended his house located in Tuticorin, in the year 1997.

(c) Borrowed a sum of Rs. 84,000/- in 1997, as loan from the L.I.C. Housing Finance Corporation Ltd., for extension of his house, without

intimating the concerned authority.

(d) Engaged himself in textile business, from 1983 through his wife Tmt.Vanaja without obtaining prior permission.

(e) Purchased a land ad-measuring an extent of 0.22.5 acres in Survey No. 280/6 in Puthur Pandiyapuram Village of Tuticorin District without

obtaining prior permission of the concerned authority.

(f) During 1996 to 1999 purchased movable properties viz., Refrigerator for Rs. 8000/-, Washing Machine for Rs. 5000/-, Sofa Set for Rs.

6000/- and Colour Television for Rs. 11,000 without intimating the officials concerned._

5. The petitioner gave his explanation. A detailed enquiry was conducted by the enquiry officer who had confirmed that all charges were proved.

The third respondent however had imposed a penalty of reduction in rank by 10 steps in the tentative seniority list of Sub Inspector of Survey by

placing the petitioner in Serial No. 61(a) between one C.Kandappan and S.Pitchaikani. However, the first respondent on coming to know the

same, had directed the second respondent to cancel the minimum punishment granted and to award an appropriate punishment depending upon the

gravity of charges. In the meanwhile, the second respondent on receipt of the appeal from the petitioner dated 22.6.2005 and on examining the

same, gave an opportunity to the petitioner to show cause as to why his pay in the category of Sub Inspector of Survey, i.e., Rs. 5000-150-8000

should not be reduced from Rs. 6800/- to Rs. 6500/- for a period of one year. After receiving the petitioner's objection, the second respondent

had passed the final order imposing the penalty by modifying the earlier order of penalty. However, the first respondent on examining this order

found that the punishment given was the lesser one and it is not proportionate to the gravity of offence. Hence by his proceedings dated 25.5.2007

had instructed the second respondent to re-examine the whole issue with all relevant documents.

6. Because of the order of interim stay, the further proceedings could not be initiated. It was also stated that powers are available under Rule 36(1)

of the Tamil Nadu Civil Services (Discipline and Appeal) Rules for re-examining the penalty. However, the learned counsel for the petitioner made

an elaborate submission regarding the illegality of the order to re-examine the penalty. This court do not find any case is made out to interfere with

the order of remand made by the first respondent to the second respondent. Certainly for the proved misconduct, it cannot be said that the penalty

imposed by respondents 2 and 3 are commensurate with the gravity of charges.

7. The Supreme Court vide its judgment in Praveen Bhatia Vs. Union of India (UOI) and Others, held that even the delay in submitting the property

returns itself is a serious misconduct. In this regard, it is relevant to extract the following passage found in paragraphs 12, 13 and 14 of the judgment.

12.....

17.The range of activities which may amount to acts which are inconsistent with the interest of public service and not befitting the status, position

and dignity of a public servant are so varied that it would be impossible for the employer to exhaustively enumerate such acts and treat the

categories of misconduct as closed. It has, therefore, to be noted that the word _misconduct_ is not capable of precise definition. But at the same

time though incapable of precise definition, the word _misconduct_ on reflection receives its connotation from the context, the delinquency in

performance and its effect on the discipline and the nature of the duty. The act complained of must bear a forbidden quality or character and its

ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the statute

and the public purpose it seeks to serve.

18.In *Union of India v. Harjeet Singh Sandhu* in the background of Rule 14 of the Army Rules, it was held that any wrongful act or any act of

delinquency which may or may not involve moral turpitude would be _misconduct_ under Rule 14.

19.In *Baldev Singh Gandhi v. State of Punjab* it was held that the expression _misconduct_ means unlawful behaviour, misfeasance, wrong

conduct, misdemeanour, etc.

20.Similarly, in *State of Punjab v. Ram Singh* it was held that the term _misconduct_ may involve moral turpitude. It must be improper or wrong

behaviour, unlawful behaviour, wilful in character, forbidden act, a transgression of established and definite rule of action or code of conduct but

not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character.

21._Misconduct_ as stated in *Batt's Law of Master and Servant* (4th Edn. at p.63) is _comprised positive acts and not mere neglects or failures_.

The definition of the word as given in *Ballentine's Law Dictionary* (148th Edn.) is _A transgression of some established and definite rule of action,

where no discretion is left except what necessity may demand, it is a violation of

definite law, a forbidden act. It differs from carelessness._

22.It may be generally stated that the conduct rules of the Government and public sector corporations constitute a code of permissible acts and behaviour of their servants.

23.The scheme of the Conduct Rules, almost invariably, is to first of all enunciate a general rule of conduct and behaviour followed by specific

prohibitions and restrictions. For example, Rule 3 of the Central Civil Services (Conduct) Rules, 1964 which occurs under the heading _General_

provides that every Government servant shall at all times:

(i) maintain absolute integrity;

(ii) maintain devotion to duty; and

(iii) do nothing which is unbecoming of a government servant.

The aforesaid aspects were highlighted in M.M. Malhotra v. Union of India⁴, SCC at pp.362-63, paras 16-23.

13.The power of the court to interfere with the quantum of punishment is extremely restricted and only when the relevant factors have not been

considered the court can direct reconsideration or in an appropriate case to certain litigation, indicate the punishment to be awarded; and that can

only be in very rare cases.

14.It is evident from the record that the prescribed period for filing property return is six months and though the appellant was aware of the

requirement he did not choose to file any return; even during the course of enquiry no return was filed and ultimately after show-cause notice was

issued it was filed. That being so there is no merit in this appeal which is accordingly dismissed.

In the light of the above, there is no case made out by the petitioner. Hence the writ petition will stand dismissed. No costs. Consequently

connected miscellaneous petition stands closed.