

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 03.09.2015

DELIVERED ON : 18.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P.NO.3352 OF 2010

M. Vijayalakshmi ... Petitioner

vs.

1. The State of Tamil Nadu
rep. by its Secretary to Government
Home (Courts - I) Department
Chennai-9.

2. The Registrar General
High Court
Chennai-600 104.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Certiorari and Mandamus calling for the records connected with G.O.(D) No.629, Home (Courts-I) Department, dated 28 May 2008 and G.O.(D).No.849, Home (Courts-I) Department, dated 28 August 2009 passed by the first respondent and quash the same and direct the respondents to reinstate the petitioner into service with all consequential monetary benefits.

For Petitioner : Mr.Vijay Narayan
Senior Counsel
for Mr. J. Hari Krishna

For Respondents : Mr.P.S. Sivashamnughasundaram
Spl. Govt. Pleader for R.1
Mr. P.K. Rajagopal for R.2

ORDER

K.K.SASIDHARAN, J

The petitioner challenges the order dated 28 May 2008 dismissing her from service and the subsequent order dated 28 August 2009

rejecting the request to review the earlier order.

The facts:

2. The petitioner was initially appointed as Civil Judge (Junior Division/Judicial Magistrate I Class) vide order dated 16 May 1995. The petitioner worked as Judicial Magistrate at Boothapandi in the District of Kanyakumari.

3. The High Court initiated disciplinary proceedings against the petitioner on receipt of complaint from the members of the local Bar. The High Court framed as many as nine charges against the petitioner. Since the explanation submitted by the petitioner to the charge memo was not satisfactory, a decision was taken to initiate enquiry. Thiru R.Mohandoss, Principal District Judge, Chengalpattu was appointed as Enquiry Officer. The enquiry officer examined as many as five witnesses and marked Exs.P.1 to P.38. The petitioner was examined as D.W.1 and Exs.D.1 to D.7 were marked on her side.

4. The enquiry officer in his final report held that charges 1,2,4 and 9 were proved. Thereafter explanation was called for from the petitioner. The High Court, after considering the explanation submitted by the petitioner resolved to dismiss her from service. The first respondent passed an order on 28 May 2008 dismissing the petitioner from service. The petitioner filed a petition to review the order dated 28 May 2008. The review petition was rejected by the Government by order dated 28 August 2009. Feeling aggrieved, the petitioner is before this Court.

Submissions:

5. The learned Senior Counsel for the petitioner contended that the petitioner initiated criminal proceedings against P.Ws.1 to 3 as they barged into the Court on 10 February 2003 and created a scene. Those Advocates naturally would depose against the petitioner with a view to cause her trouble. The learned Senior Counsel contended that on the basis of the defective entries made by the petitioner in Court records, it cannot be inferred that it was made with a corrupt motive. The learned Senior Counsel further contended that P.W.1 appeared for the accused Nagamani Sastha and his brother. The accused Nagamani Sastha is none other than the father of P.W.3, who is a practising lawyer. Those lawyers were having axe to grind against the petitioner and as such they fabricated a case of corruption and falsely implicated the petitioner. The learned Senior Counsel contended that in case the petitioner committed illegality by releasing the accused on probation, the said act would not constitute a misconduct. It is his further contention that neither the owner of the Shop from where the Refrigerator was purchased nor the Driver in whose name the bill was issued were examined to prove charge No.4. In short, it is the contention of the learned Senior Counsel that there were no materials before the enquiry officer to

substantiate the charges framed against the petitioner.

6. The learned Standing Counsel for the second respondent contended that even after concluding the arguments, the petitioner kept the matter pending under the pretext of recording defence evidence. The matter was adjourned time and again without any valid reason. The course of conduct adopted by the petitioner by adjourning the matter even after conclusion of proceedings, if considered in the light of the allegation made by P.Ws.1 to 3 would clearly prove that it was only to take bribe, the said matter was adjourned. The learned counsel further contended that there is no reason to disbelieve the evidence of P.W.1 inasmuch as even before the incident on 10 February 2003, he has made a specific complaint against the petitioner. The learned counsel contended that enquiry report was considered by the administrative committee and thereafter by the Full Court. In fact the Full Court dropped charge No.9 as there were no acceptable materials to sustain the said charge and punished the petitioner only on the basis of charges 1,2 and 4. It was further contended that judicial review in a matter of this nature is very limited.

Analysis:

7. The High Court initially received a telegram alleging corrupt practice on the part of the petitioner. It was followed by a written complaint preferred by Thiru N. Perumal Pillai, Advocate, Nagercoil. Since the complaint contained series of corruption charges, the High Court directed the Vigilance to hold enquiry. The Registrar (Vigilance) conducted discreet enquiry and submitted a report. Explanation was called for from the petitioner and thereafter charges were framed against her. There were nine charges altogether. The enquiry officer conducted a full fledged enquiry. The petitioner participated in the enquiry and submitted her version with respect to each and every charge. The enquiry officer submitted a report holding the charges 1,2,4 and 9 proved. Thereafter, further explanation was called for from the petitioner. The Administrative Committee considered the matter and unanimously resolved to impose the punishment of dismissal on the petitioner. The matter was placed before the Full Court. The Full Court concurred with the findings with respect to charge Nos.1,2 and 4 and dropped charged No.9. The recommendation made by the High Court was acted upon by the Government resulting in passing the impugned order of dismissal. The Review Petition made thereafter was rejected.

8. Now let us consider the three charges (charges 1,2 and 4) on the basis of which the petitioner was dismissed from service.

Charge Nos.1 and 2

9-A(i). The first and second charges are interconnected. It reads thus:

Charge No.1:- That you, Selvi. M. Vijayalakshmi, while functioning as Judicial Magistrate, Boothapandi, has demanded Rs.10,000/- as bribe from one Thiru Perumal Pillai, Advocate who has appeared for the accused in STC Nos.636/99, 1738/99, 1739/99, 330/99 and 331/99 for passing favourable orders. Thus you, have indulged in corrupt practices and conduct unbecoming of a Judicial Officer and thereby rendered yourself liable to be punished under the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

Charge No.2: That you, Selvi M. Vijayalakshmi, while functioning as Judicial Magistrate, Boothapandi, conducted trial in STC Nos.636/99, 1738/99, 1739/99, 330/99 and 331/99 on 29.11.2002 and that Thiru Perumal Pillai, Advocate, who appeared for the accused in the above said cases has advanced his oral arguments and also submitted his written arguments in all the above cases but without pronouncing the judgment you have adjourned all the cases to various dates, but you have made false entries in the judges notes papers as if defence witnesses have to be examined and thus you have committed the act of fabrication of records, misuse of powers and conduct unbecoming of a Judicial Officer and thereby rendered yourself liable to be punished under the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

(ii) The summary trial cases in STC Nos.636/99, 1738/99, 1739/99, 330/99 and 331/99 were conducted by Advocate Perumal Pillai, who was examined before the Enquiry Officer as P.W.1. The witness in his deposition stated that after recording evidence, the matter was posted on 29 November 2002 for arguments. P.Ws.1 and 3 deposed that notes of arguments was submitted on 29 November 2002. It was then adjourned to 2 December 2002 and thereafter on various dates till 31 December 2002. The witnesses have alleged that the petitioner through P.W.2, who is also a practising Advocate demanded a sum of Rs.10,000/- for deciding the cases in favour of the accused. Since amount was not paid, the cases were adjourned periodically. The notes of proceedings recorded by the petitioner herself in Exs.P.13, P.16, P.19, P.22 and P.25 corroborated the version given by P.Ws.1 and 3.

(iii) For instance, the petitioner recorded in Ex.P.22 notes paper pertaining to STC No.330/1999 on 29 November 2002 to the effect that arguments on the side of prosecution heard and adjourned to 4 December 2002 for defence arguments. However, on 9 January 2003 and

20 January 2003, it was recorded that the matter was adjourned for defence witnesses. There was nothing found either in the records or notes paper to the effect that a petition to re-open the matter was filed by the defence. The entry made by the petitioner on the notes paper coupled with the evidence of P.Ws.1 to 3 made the enquiry officer to conclude that it was only on account of non payment of the amount demanded, the case was adjourned under one pretext or the other.

(iv) The petitioner in her further representation submitted that it was only due to mix up of bundles and inadvertence, wrong entries were made. There is absolutely no merit in this defence. The notes papers were maintained separately for all these cases. The petitioner made separate entries relating to each of these cases. We are therefore of the view that there were materials before the enquiry officer to prove the first and second charges. In view of the evidence of witnesses and relevant contradictory entries made by the petitioner herself, we hold that the enquiry officer was correct in arriving at the conclusion with respect to these two charges.

B.(i) Charge No.4:

That you, Selvi M. Vijayalakshmi, while functioning as Judicial Magistrate, Boothapandi, have received a Red Colour Godrej Refrigerator as bribe for passing favourable order in C.C.No.112/2002. Thus, you have indulged in corruption and conduct unbecoming of a Judicial Officer and thereby rendered yourself liable to be punished under the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

(ii) This charge relates to the release of accused in C.C.No.112 of 2002 on probation notwithstanding the statutory bar. The accused in C.C.No.112 of 2002 were charge sheeted for offences punishable under Sections 341, 323 and 506 (ii) I.P.C. According to P.W.2, in order to release the accused under the provisions of Probation of Offenders Act, the petitioner demanded a Refrigerator. The petitioner along with P.W.2 and Driver Muthuraj purchased a Red Colour Refrigerator from Rani Traders, Nagercoil. It was purchased in the name of her Driver Mr.Muthu Raj on 16 December 2002. The cash bill was marked as Ex.P.1. The petitioner released the accused on probation vide judgment dated 17 January 2003 marked as Ex.P.32 notwithstanding the fact that Statute does not permit the release of offenders in case punishment is more than two years.

(iii) The petitioner in her further representation submitted that one of the accused is a student and the other is a Driver, and considering their position in the Society and age, they were released on probation. This explanation is far from satisfactory. The dates and events clearly shows that only after the purchase of Refrigerator, accused were released on probation. It is true that

Driver Muthuraj was not examined as a witness. In case the Refrigerator was purchased by Driver Muthuraj with his money and for his use, the petitioner could have examined him as a defence witness. However no such effort was taken by her.

(iv) We are therefore of the view that the finding recorded by the Enquiry Officer with respect to charge No.4 does not call for interference.

Whether to discard the evidence of Advocates:

10(i) The petitioner has taken up a defence that on 10 February 2003, she preferred a complaint to the police against P.W.1 to 3 on account of their unruly behaviour inside the Court and that was the reason for making a false complaint against her. In case the entire allegations against the petitioner originated after the incident on 10 February 2003, we would have accepted the theory of animosity pleaded by the petitioner. However, the fact remains that as early as on 27 January 2003, P.W.1 through a telegram informed the High Court that the petitioner is demanding money for every thing and all orders are passed on payment. Similarly, he made a written complaint before the incident involving the Advocates.

(ii) It is also a matter of record that P.W.1 preferred a stay petition before the Principal Sessions Court in CMP No.447 of 2003 to transfer S.T.C. No.1197/2002 from the file of the petitioner to any other Court. The learned Sessions Judge granted an order of stay on 14 February 2003. Therefore it is clear that much before the incident on 10 February 2003, P.W.1 moved the High Court and Sessions Court alleging acts of corruption and bias on the part of the petitioner.

(iii) It is true that Trial Courts especially the Courts at the Magisterial Level are working under constant pressure. The lawyers believing in shortcut methods often resort to unethical practices to obtain favourable orders, especially in bail matters. The Court must analyse the evidence of Advocates to arrive at the evidenciary value and to decide whether it was a true account of the incident involving the Judicial Officer.

(iv) In the subject case, there is nothing on record to disbelieve the evidence of P.Ws.1 to 3. P.W.1 took up the issue as early as on 27 January 2003. The petitioner has no case that she was not in good terms with P.W.1 prior to 10 February 2003. Merely because witnesses deposed against the delinquent are all Advocates, it cannot be said as a general Rule that their evidence must be disbelieved. We are therefore of the view that there is no reason to ignore the evidence tendered by P.Ws.1 to 3.

Decisions relied on by the petitioner:

11. The learned Senior Counsel for the petitioner placed reliance on several decisions in support of his contention that on the basis of such weak case, Judicial Officer cannot be punished. We consider it necessary to refer the following decisions relating to Judicial Service alone.

(i) Iswar Chand v. High Court of Punjab and Haryana¹

In this case, judicial Officer was a probationer and the incidents which were the subject matter of enquiry related to the very first year of his service. It was not a charge of corruption. The charge relates to unsatisfactory performance. The Supreme Court observed that if orders are passed without there being any corruption motive, the same should be overlooked. It was held that if after warning and guidance, the officer on probation is not able to improve, his services should be terminated.

(ii) Yoginath D. Bagde v. State of Maharashtra²

In this case, the Supreme Court found that the disciplinary committee had taken its final decision without giving an opportunity to the appellant at the stage at which it proposed to differ with the findings of the enquiry officer. The Supreme Court also found that the complainant's story with regard to the place at which the demand was allegedly made by the appellant was inconsistent. Similarly, statements of defence witnesses were not considered. Because of those vital reasons, the Supreme Court set aside the punishment.

(iii) Nirmala J. Jhala v. State of Gujarat³ :

The Supreme Court, in this case indicated the duty of higher judiciary to protect subordinate judicial officers.

"20. A subordinate judicial officer works mostly in a charged atmosphere. He is under a psychological pressure—contestants and lawyers breathing down his neck. If the fact that he renders a decision which is resented by a litigant or his lawyer were to expose him to such risk, it will sound the death knell of the institution. "Judge bashing" has become a favourite pastime of some people. There is growing tendency of maligning the reputation of judicial officers by disgruntled elements who fail to secure an order which they desire. For functioning of democracy, an independent judiciary, to dispense justice without fear and favour is paramount. Judiciary should not be reduced to the position of flies in the hands of

1 AIR 1988 SC 1395

2 (1999) 7 SCC 739

3 (2013) 4 SCC 301

wanton boys.

Judicial Service - Conceptually different:

12. The principles evolved by the Courts with regard to judicial review of order passed by the Disciplinary Authority against Civil Servants cannot be applied with the same force to the members of judicial service. Judges are exercising a solemn function. They are accountable both inside and outside the Court for their acts and conduct.

Relevant Judgments:

13. The Supreme Court in *Rajendra Singh Verma v. Lt. Governor (NCT of Delhi)*⁴ defined judicial service in the following words:

"81. Judicial service is not a service in the sense of an employment as is commonly understood. Judges are discharging their functions while exercising the sovereign judicial power of the State. Their honesty and integrity is expected to be beyond doubt. It should be reflected in their overall reputation. There is no manner of doubt that the nature of judicial service is such that it cannot afford to suffer continuance in service of persons of doubtful integrity or who have lost their utility."

14. The Supreme Court in *Rajendra Singh Verma* while considering the question regarding review of remarks regarding the integrity of judicial officers which was the basis for compulsory retirement observed that even in such cases there may not always be any tangible material against the concerned officer. The relevant observation reads thus:

"192. Normally, the adverse entry reflecting on the integrity would be based on formulations of impressions which would be the result of multiple factors simultaneously playing in the mind. Though the perceptions may differ, in the very nature of things there is a difficulty nearing an impossibility in subjecting the entries in the confidential rolls to judicial review. Sometimes, if the general reputation of an employee is not good though there may not be any tangible material against him, he may be compulsorily retired in public interest. The duty conferred on the appropriate authority to consider the question of continuance of a judicial officer beyond a particular age is an absolute one. If that authority bona fide forms

4 (2011) 10 SCC 1

an opinion that the integrity of a particular officer is doubtful, the correctness of that opinion cannot be challenged before courts. When such a constitutional function is exercised on the administrative side of the High Court, any judicial review thereon should be made only with great care and circumspection and it must be confined strictly to the parameters set by this Court in several reported decisions. When the appropriate authority forms bona fide opinion that compulsory retirement of a judicial officer is in public interest, the writ court under Article 226 or this Court under Article 32 would not interfere with the order.

195. It is a matter of common knowledge that the complaints which are made against a judicial officer, orally or in writing are dealt with by the Inspecting Judge or the High Court with great caution. Knowing that most of such complaints are frivolous and by disgruntled elements, there is generally a tendency to discard them. However, when the suspicion arises regarding integrity of a judicial officer, whether on the basis of complaints or information received from other sources and a committee is formed to look into the same, as was done in the instant case and the committee undertakes the task by gathering information from various sources as are available to it, on the basis of which a perception about the judicial officer concerned is formed, it would be difficult for the Court either under Article 226 or for this Court under Article 32 to interfere with such an exercise. Such an opinion and impression formed consciously and rationally after the enquiries of the nature mentioned above would definitely constitute material for recording adverse report in respect of an officer. Such an impression is not readily formed but after Court's circumspection, deliberation, etc. and thus it is a case of preponderance of probability for entertaining a doubt about the integrity of an official which is based on substance, matter, information, etc. Therefore, the contention that the adverse entries were recorded in the ACR of the appellants without material or basis cannot be upheld and is hereby rejected."

15. The Supreme Court in T.A.Nazshbandi vs. State of Jammu and Kashmir⁵ indicated the extent of judicial review in cases relating to members of judicial service. The Supreme Court said:

"10. ... Neither the High Court nor this Court, in exercise of its powers of judicial review, could or would at any rate substitute themselves in the place of the Committee/Full Court of the High Court concerned, to make an independent reassessment of the same, as if sitting on an appeal. On a careful consideration of the entire materials brought to our notice by learned counsel on either side, we are satisfied that the evaluation made by the Committee/Full Court forming their unanimous opinion is neither so arbitrary or capricious nor can be said to be so irrational as to shock the conscience of the Court to warrant or justify any interference. In cases of such assessment, evaluation and formulation of opinions, a vast range of multiple factors play a vital and important role and no one factor should be allowed to be overblown out of proportion either to decry or deify an issue to be resolved or claims sought to be considered or asserted. In the very nature of things it would be difficult, nearing almost an impossibility to subject such exercise undertaken by the Full Court, to judicial review except in an extraordinary case when the Court is convinced that some monstrous thing which ought not to have taken place has really happened and not merely because there could be another possible view or someone has some grievance about the exercise undertaken by the Committee/Full Court."

16. In Rajendra Singh Verma the Supreme Court indicated the scope of judicial review in the following words:

"218. ... In cases of such assessment, evaluation and formulation of opinions, a vast range of multiple factors play a vital and important role and no one factor should be allowed to be blown out of proportion either to decry or deify an issue to be resolved or claims sought to be considered or asserted. In the very nature of things, it would be difficult, nearing almost an impossibility to subject such exercise undertaken by the Full Court to judicial review except in an extraordinary case when the Court is convinced

5 (2003) 9 SCC 592

that some real injustice, which ought not to have taken place, has really happened and not merely because there could be another possible view or someone has some grievance about the exercise undertaken by the Committee/Full Court."

17. While considering the question regarding compulsory retirement pursuant to the Full Court Decision, the Supreme Court in High Court of Judicature, Patna vs. Shyam Deo Singh & Ors.⁶ held that in such cases there should be limited judicial review and that too in rare cases, where there is no material. The Supreme Court said:

"8. ... The evaluation of the service record of a judicial officer for the purpose of formation of an opinion as to his/her potential for continued useful service is required to be made by the High Court which obviously means the Full Court on the administrative side. In all High Courts such evaluation, in the first instance, is made by a committee of senior Judges. The decision of the Committee is placed before the Full Court to decide whether the recommendation of the Committee should be accepted or not. The ultimate decision is always preceded by an elaborate consideration of the matter by the Hon'ble Judges of the High Court who are familiar with the qualities and attributes of the judicial officer under consideration. This is also what had happened in the present case. The very process by which the decision is eventually arrived at, in our view, should permit a limited judicial review and it is only in a rare case where the decision taken is unsupported by any material or the same reflects a conclusion which, on the face of it, cannot be sustained that judicial review would be permissible."

18. The findings given by the enquiry officer with respect to charges 1,2 and 4 were on the basis of materials placed by way of oral and documentary evidence. The report submitted by the enquiry officer was placed before the Administrative Committee. Thereafter the decision was placed before the Full Court. The Full Court was of the view that evidence both oral and documentary produced before the enquiry officer were not sufficient to sustain charge No.9. The Full Court therefore accepted only the findings with respect to charge Nos.1,2 and 4. The fact that the Full Court dropped charge No.9 in spite of recording a positive finding by the Enquiry Officer with respect to the said charge, clearly indicates that the matter was subjected to detailed review by the Full Court. Such being the

6 (2014) 4 SCC 773

position, it cannot be said that the order of dismissal was not on the basis of materials and it was a case of concurring with the views of enquiry officer without considering the merits of the matter.

19. For the aforesaid reasons, we do not find any ground to set aside the punishment by exercising the power of judicial review.

20. In the upshot, we dismiss the writ petition. No costs.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

1. The State of Tamil Nadu
rep. by its Secretary to Government
Home (Courts - I) Department
Chennai-9.

2. The Registrar General
High Court
Chennai-600 104.

+lcc to Mr.J.Hari Krishna, Advocate Sr.50970
+lcc to Government Pleader Sr.51556

W.P.No.3352 of 2010

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