

In the High Court of Judicature at Madras

Reserved on : 04.03.2015
Delivered on : 15.06.2015

Coram

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice P.R.SHIVAKUMAR

Writ Petition No.16099 of 2014

K.Govindarajulu

...Petitioner

Vs

1.State of Tamilnadu, rep. by Chief
Secretary to Government,
Public (Special-A) Department,
Secretariat, Chennai - 600 009.

2.The Registrar General,
High Court, Chennai.

...Respondents

PETITION under Article 226 of Constitution of India seeking the issue of a Writ of Certiorarified Mandamus to call for the records from the first respondent dated 29.05.2014 in G.O.Ms.No.403, quash the same and consequently direct the respondents to pay salary and all terminal benefits due to the petitioner, which he would have been entitled to, had he retired from service on 31.05.2014 in the normal course together with 12% interest per annum.

For Petitioner : Mr.N.G.R.Prasad for
M/s. Row & Reddy

For Respondent-1 : Mrs.A.Srijeyanthi, Spl.G.P.

For Respondent-2 : Mr.Haja Mohideen Gisthi, SCGSC

ORDER

V.Ramasubramanian,J

The petitioner has come up with the above writ petition, challenging a penalty of dismissal from service.

2. We have heard Mr.N.G.R.Prasad, learned counsel for the petitioner, Mrs.A.Srijeyanthi, learned Special Government Pleader, appearing for the first respondent and Mr.Haja Mohideen Gisthi, learned Senior Central Government Standing Counsel appearing for the High Court.

3. When the petitioner was functioning as the Principal District Judge, Ramanathapuram, he was placed under suspension on 4.10.2012 in contemplation of an enquiry into grave charges. A charge memo dated 30.7.2013 was issued. The sum and substance of the charges, in brief, are as follows:-

(i) that the petitioner used to attend the court only after 12.00 Noon and he used to sleep in the open court during court hours; and

(ii) that on 1.10.2012, when he was expected to join duty after the expiry of unearned leave on medical certificate, he did not join duty in the forenoon resulting in the Additional District Judge, Ramanathapuram adjourning all the cases and that the petitioner reported for duty in the afternoon, received written arguments from the defendants 6 and 7 in a case, which had been adjourned by the Additional District Judge to 10.10.2012 and posted the case for judgment on 3.10.2012, without hearing the arguments of the other parties, leading to allegations of favouritism, misuse of power etc. The petitioner denied the charges.

4. Thereafter, an enquiry followed. In the enquiry, the first charge was held not proved, but the second charge was held proved. After furnishing a copy of the enquiry report and giving him an opportunity of giving a representation against the findings of the Enquiry Officer, the Full Court decided to accept the report and imposed the penalty of dismissal from service. Accordingly, the Government issued G.O.Ms.No.403 Public Department dated 29.5.2014, imposing upon the petitioner, the penalty of dismissal from service. It is against the said order that the petitioner has come up with the above writ petition.

5. It is seen from the enquiry report that the Secretary of the Bar Association, Ramanathapuram was examined as P.W.1 and the resolution passed by the Bar Association was marked as Ex.P.1. But, P.W.1 did not corroborate the allegations contained in Ex.P.1. Therefore, the Enquiry Officer held the first charge not proved. We are not, therefore, getting into factual details regarding the first charge.

6. The second charge is grave in nature and it reads as follows:-

"Charge No.2 :

That you, Thiru K.Govindarajulu, District Judge under suspension, while functioning as Principal District Judge, Ramanathapuram, did not join duty on 01.10.2012 F.N., on expiry of unearned leave on medical certificate applied by you, from 01.09.2012 to 30.09.2012. The Additional District Judge, Ramanathapuram, who was holding full Additional Charge of the post of Principal District Judge, Ramanathapuram, conducted the Court of Principal

District Judge, Ramanathapuram, in the forenoon session, on 01.10.2012 and attended the calling work. On calling O.S.No.48 of 2012 on the file of Principal District Judge, Ramanathapuram, he had passed over the matter, on the request of the counsel for D6 and D7 for filing written argument and when the case was taken up at 1.00 p.m., the counsel for D6 and D7 was not present. D6 and D7 were also called absent and hence, the case was adjourned to 10.10.2012, for the arguments of D6 and D7; that you joined duty in the afternoon of 01.10.2012 and at 3.00 p.m., took O.S.No.48 of 2012, on your own, without informing the counsel for the plaintiff and the plaintiff and had accepted the written argument, along with the memo filed by the counsel for D6, on behalf of D6 and D7 and had reserved the judgment in the said case, on 03.10.2012, without hearing the arguments of the defendants or giving opportunity to the plaintiff to submit the reply arguments, if any, and that, apart from O.S.No.48 of 2012, you did not take up a single case on that day, which showed your personal interest in O.S.No.48 of 2012, on the file of Principal District Judge, Ramanathapuram, and thus you have committed acts of serious misconduct, favouritism, misuse of power and conducting improper court proceedings and had conducted yourself in a manner unbecoming of a Judicial Officer and thus, you have rendered yourself liable for departmental action, under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules."

7. A careful look at the second charge would show that it comprises of three components or events namely:

(a) that the delinquent officer did not join duty in the forenoon of 1.10.2012 and hence, the cases were taken up by the Additional District Judge holding Full Additional Charge;

(b) that the Additional District Judge passed over the case in O.S.No. 48 of 2012 at the request of the learned counsel for defendants 6 and 7, but later adjourned the case to 10.10.2012 after finding that the counsel for the defendants 6 and 7 did not turn up by 1.00 p.m.; and

(c) that the petitioner joined the duty in the afternoon, took up the case O.S.No.48 of 2012 at 3.00 p.m. at the request of the learned counsel for the defendants 6 and 7, without informing the counsel for the plaintiff and received the written arguments of the defendants 6 and 7 and reserved judgment in the case.

8. None of the above components of charge No.2 is denied by the petitioner. In his explanation dated 13.8.2013 to the charge memo, he stated that on 1.10.2012, he reached the court by about 12.00 'O' Clock and that thereafter the learned counsel for the defendants 6

and 7 appeared before him and complained about the long adjournment given by the First Additional District Judge. The petitioner claimed in his reply that he was satisfied with the submission made by the learned counsel for the defendants 6 and 7 and hence, he received the written arguments and posted the case for judgment.

9. In the reply dated 13.8.2013, the petitioner did not deny the fact: (i) that he took up O.S.No.48 of 2012, at the request of the counsel for defendants 6 and 7, in the absence of and without the knowledge of the counsel appearing for the other parties; and

(ii) that this was done by him despite the fact that the case had already been adjourned by the Additional District Judge to 10.10.2012, and he also received the written arguments of the defendants 6 and 7 and reserved the case for judgment.

Therefore, it is clear that the petitioner did not exhibit a conduct that was expected of the Judicial Officer. A case, which was taken up in the forenoon of 1.10.2012 and adjourned to 10.10.2012 by the officer holding Full Additional Charge, should not have been taken up in the afternoon even without any application for advancing the hearing and even without any of the parties other than the defendants 6 and 7 knowing about it. Even if he had received the written arguments in the afternoon of 1.10.2012, he could not have reserved judgment without hearing other parties.

10. The 'A' Diary extract filed as Ex.P.5 would show that the petitioner reserved judgment without even fixing a date. Such a conduct was also contrary to the provisions of Order XX Rule 1(i), which mandates the court to fix a date for the pronouncement of the judgment and that too, after due notice to the parties. The next blunder committed by the petitioner, which gave rise to a lot of suspicion, was that the counsel for the defendants 6 and 7 did not make a mention in the open court. They seem to have made a mention in the residence of the petitioner. The Hon'ble Judge, who acted as the Enquiry Officer in this case, has pointed out in para 22 of the enquiry report that the petitioner received the written arguments at his official quarters and reserved judgment. Paragraph 22 of the enquiry report reads as follows:-

"As discussed supra, the evidence of P.W.2 to P.W.4 along with Exs.P3, P5 and P6, has clearly proved that after the case was adjourned by the Additional District Judge, Ramanathapuram, who holds Additional Charge, the delinquent officer suo motu took up the matter at 3.00 p.m. and without giving notice to the other side, received the written arguments of D6 and D7 only at his official quarters and reserved for judgment on 01.10.2012. It shows that the delinquent officer did not attend the court on that day and he was only at his official bungalow. Thus, from all the above aspects, I am of the considered opinion, Charge No.2 is proved."

11. The above action of the petitioner cannot at all be condoned. As a matter of fact the very explanation given by the petitioner on 13.8.2013 to the charge memo raises more questions than they seek to answer. In paragraph 13 of his explanation to the charge memo, the petitioner has stated as follows:-

"13. I further respectfully submit that due to paucity of time on the said date, I couldn't take other cases for consideration. Moreover, in the morning session, during the "Calling Work", the learned I Additional District Judge, who was holding full Additional Charge, had adjourned all the remaining cases other than the cases he took up for the hearing on the said date. In view of the above, I couldn't take other cases on that day. I have no interest whatsoever in O.S.No.48 of 2012. In fact I was pressurized/cajoled to pass favourable orders to one of the parties, by the persons. Those People had instigated to send the allegations since I had declined to pass orders to their favour."

12. Again in para 9 of his explanation dated 13.8.2013, the petitioner had virtually pleaded something that was within the knowledge of defendants 6 and 7 in the case. Para 9 of the explanation of the petitioner to the charge memo reads as follows:-

"I further respectfully submit that for the reason(s) best known to him, the learned I Additional District Judge adjourned certain cases including the alleged O.S.No.48 of 2012 erroneously in the guise of absence of D6 and D7, who were present on that day and solicited "Pass over" for filing written argument. In fact it was posted to 10.10.2012 purposefully, since it has been ordered by the Hon'ble High Court to dispose it before 31.10.2012."

13. It is quite perplexing that the petitioner pleaded knowledge about the presence of defendants 6 and 7 in the Fore Noon before the I Additional District Judge and their request for pass over for filing written arguments. The petitioner admittedly joined duty in the After Noon (at the most by 12 Noon) and the defendants 6 and 7 had met him at his residence. Therefore, the petitioner could not have had any knowledge about what transpired in the Fore Noon before the I Additional District Judge.

14. In any case, his statement in paragraph 13 of the explanation to the charge memo that he was pressurized/cajoled to pass favourable orders to one of the parties, goes to show that all was not well. Therefore, the finding of the enquiry officer on charge No.2 cannot be said to be perverse. Once the finding is seen to be not vitiated by perversity, there is very little that a court exercising jurisdiction under Article 226 of the Constitution can do. There are also no allegations of violation of the principles of natural justice or the Rules of procedure prescribed by the statutory Rules. Therefore, the findings of the enquiry officer cannot be interfered with and the enquiry has been held in a fair and proper manner.

15. Mr.N.G.R.Prasad, learned counsel for the petitioner next highlighted the issue of proportionality. The learned counsel submitted that the punishment of dismissal was highly disproportionate to the charge held proved against the petitioner.

16. But we are unable to agree. We are dealing with the case of a District Judge. The kind of conduct expected of a person holding office as a District Judge, is of an high order.

17. In High Court of Judicature at Bombay v. Shirishkumar Rangrao Patil [(1997) 6 SCC 339], the Supreme Court held that the conduct of every judicial officer should be above reproach. The Court further held that the judiciary can never regain its lost respect and esteem if faith in judiciary is forfeited.

18. In Rajesh Kohli v. High Court of J & K [(2010) 12 SCC 783], the Supreme Court held that the District Judiciary is the bedrock of our judicial system and positioned at the primary level of entry to the doors of justice. In providing opportunity of access to justice to the people of the country, the judicial officers who are entrusted with the task of adjudication must officiate in a manner that is becoming of their position and responsibility towards the society. The Court further pointed out that the public perception of the judiciary matters just as much as its role in dispute resolution. The credibility of the entire judiciary is often undermined by isolated acts of transgression by a few members of the Bench and therefore, it is imperative to maintain honesty, accountability and good conduct.

19. In Rajendra Singh Verma v. Lt.Governor (NCT of Delhi) [(2011) 10 SCC 1, the Supreme Court pointed out that judicial service is not a service in the sense of an employment as it 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.

20. Therefore, in the facts and circumstances of the case, the punishment imposed upon the petitioner cannot be held to be disproportionate. Hence, all the contentions of the petitioner are liable to be rejected and the writ petition is liable to be dismissed. Accordingly, it is dismissed. There will be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gr.

To

1.The Chief Secretary to Government of Tamil Nadu,
Public (Special-A)
Department, Secretariat, Chennai - 600 009.

2.The Registrar General, High Court, Chennai.

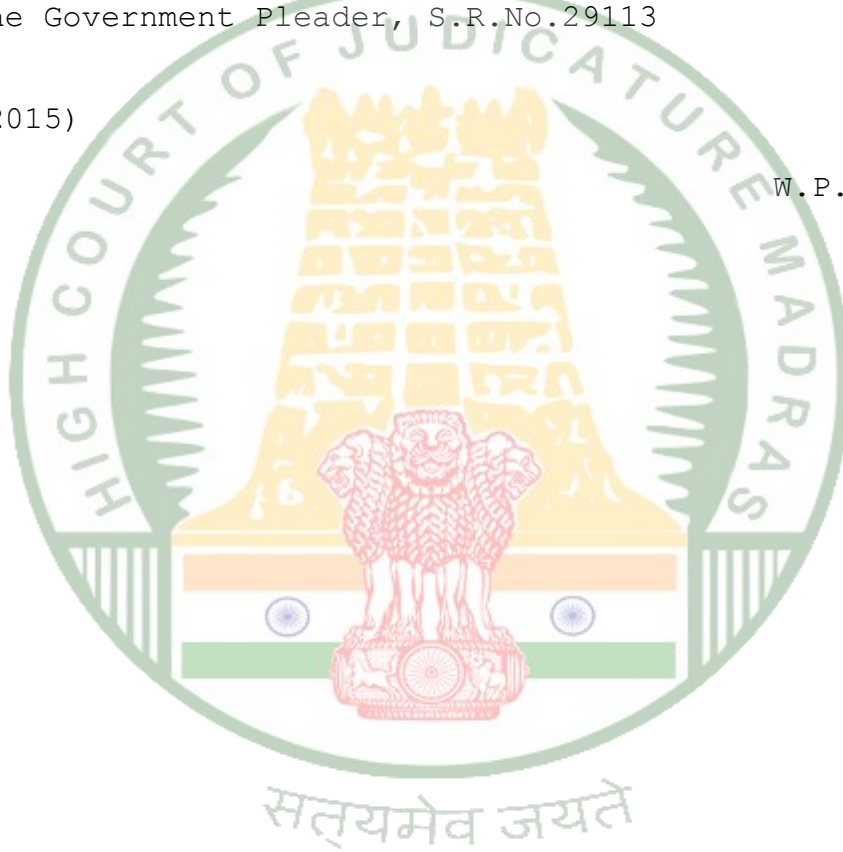
+lcc to Mr.S. Haja Mohideen Kisthi, Advocate, S.R.No.29045

+lcc to Mr.Row & Reddy, Advocate, S.R.No.29173

+lcc to the Government Pleader, S.R.No.29113

LRS (CO)
EU(30/06/2015)

W.P.No.16099 OF 2014



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