

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 06.09.2019

Orders Pronounced on : 18.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

W.P.No.15449 of 2017

S.Sivaji

... Petitioner

Vs.

1. The Registrar General,
High Court, Madras.

2. The Principal District Judge-cum-
Disciplinary Authority,
Vellore District, Vellore.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order dated 03.10.2013 passed by the first respondent in R.O.C.No.196/2011/C1, quash the same and consequently direct the respondents to reinstate the petitioner in service and take steps to release the petitioner's service benefits within a stipulated time frame as may be fixed by this Court.

For petitioner : Mr.D.R.Arun Kumar

For respondents : Mr.C.T.Mohan

ORDER

R.SUBBIAH, J

The present Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order dated 03.10.2013 passed by the first respondent in R.O.C.No.196/2011/C1, quash the same and consequently direct the respondents to reinstate the petitioner in service and take steps to release the petitioner's service benefits within a stipulated time frame as may be fixed by this Court.

2. The petitioner herein joined as Copyist in the Subordinate Judicial Service on 09.12.1996 at Vellore. While he was working as such in the said post from 1996 onwards, an anonymous letter dated Nil, containing obscene language imputing serious allegations against the Principal District Judge, Vellore, one Mr.Ramu, Personal Assistant to Principal District Judge and one Babu, his Assistant, was received by the Honourable Chief Justice of this Court. A copy of the same was also received by the Principal District Judge on 11.07.2006 at 10 a.m, containing allegations of corrupt practice by the District Judge, his PA and his Assistant and also containing the names of 14 members of the staff and various allegations were made in that anonymous letter in derogatory terms. The sender's name was subscribed on the cover in the name of Karunakaran, who was working as Clerk in the Labour Court, Vellore and he was enquired as to whether he had sent that anonymous petition, for which, he replied that he had not sent any such letter and submitted a letter in writing that he never sent such letters to the High Court, Madras. Finally, on enquiry, the petitioner herein had admitted that it is he who had sent the anonymous letter and tendered a letter of apology on 11.07.2006 and he requested the Principal District Judge to pardon him. On the oral directions, dated 12.07.2006, by the then Principal District Judge, Vellore, notices were issued to 14 persons whose names were mentioned in the complaint. As the Principal District Judge, Vellore, namely Mr.A.V.Ravipandian expired on 14.07.2006 while on his camp at Ambur, the office notice was submitted on 17.07.2006 before Mr.G.K.Bharathi, Additional District Judge/Fast Track Court, Ranipet, who was placed in full additional charge of the post of Principal District Judge, Vellore. Further, the in-charge Principal District Judge, Vellore directed the above persons to appear on 22.07.2006 at 10 a.m. for oral enquiry.

3. Thereafter, Mr.C.Chinnappan, assumed charge as the Principal District Judge, Vellore on 31.07.2006 and he perused the office note, complaint and the statements of the persons recorded in the preliminary enquiry. While going through the files, it was observed that in the envelope of the complaint, the name of Mr.Karunakaran, Labour Court, Vellore, was mentioned in "from address". On enquiry, Mr.Karunakaran submitted in writing earlier on 11.07.2006 that he has nothing to do with the said address on the envelope. The P.A. to District Judge and his Assistant were familiar with the handwriting on the envelope and it was informed to the Principal District Judge that the writing of sender's name on the envelope resembles that of the handwriting of one Mr.V.Natarajan (second delinquent). The

Principal District Judge obtained the specimen signature of Mr.V.Natarajan. He scrutinised the specimen signatures with various Court records and came to the conclusion that the second delinquent Mr.V.Natarajan had superscribed the "from address" on the envelope said to have been sent from Karunakaran of Labour Court, Vellore. The said Principal District Judge (PDJ) submitted detailed report on 22.08.2006 to the High Court regarding the role played by Mr.V.Natarajan. The High Court, in Office Memo, dated 15.09.2006, directed the PDJ to issue show cause notice on the allegations, to the petitioner being the first delinquent.

4. Accordingly, show cause notice, dated 25.09.2006 was issued to the petitioner to submit his written submissions by way of representation within 15 days. Similarly, the second delinquent was also proceeded with departmentally. On 15.12.2006, the photocopies of the documents, numbering 19 and the other documents were furnished to the petitioner (first delinquent). On 23.01.2007, the petitioner submitted his explanation. On 07.02.2007, the PDJ issued Memo enclosing the entire records in disciplinary proceedings and sent the same to the Enquiry Officer who is the Principal District Munsif, Vellore, with direction to peruse the entire records and frame charges against the delinquents, if sufficient materials were available for framing charge. Since the explanation of the delinquents were not satisfactory, the following charges were framed against the petitioner/first delinquent:

Charge No.1: Thiru.S.Sivaji, formerly Typist of District Munsif Court, Sholinghur and now working as Typist of Sub-Court, Tirupur, while functioning as Typist of Principal District Court, Vellore, submitted an undated anonymous petition to the Hon'ble Chief Justice of High Court, Madras, a copy of which was received in the Office of the Principal District Judge, Vellore on 11.07.2006, levelling certain allegations of corrupt practice against the former Principal District Judge, P.A. to Principal District Judge and P.A. Assistant and also described them as DOGS knowing fully well that sending such anonymous petition to the Hon'ble High Court was refrained by the instructions already issued by Hon'ble High Court, Madras, this act amounts to irregularity in the discharge of official duty with a dishonest motive.

Charge No.2 : Thiru.S.Sivaji, formerly Typist of District Munsif Court, Sholinghur and now

working as Typist of Subordinate Judge's Court, Tirupur, while functioning as Typist of Principal District Court, Vellore, in the month of April 2006 acted in the abuse of his official position, uttered words to Mrs.S.Poongothai, formerly Reader, Sub Court, Gudiyatham and now working as Junior Assistant, Labour Court, Vellore to affect her decency and to deceive her to share her bed with him under the pretext of securing her transfer to either Ambur or Gudiyatham when she was working at District Munsif-cum-Judicial Magistrate Court, Arcot. This act amounts to misuse of official position for personal gain.

Charge No.3 : Thiru.S.Sivaji, formerly Typist of District Munsif Court, Sholinghur and now working as Typist of Subordinate Judge's Court, Tirupur, while functioning as Typist of Principal District Court, Vellore in 2006 acted in the abuse of his official position to deceive Ms.S.Manjula, formerly Assistant of the District Munsif Court, Arakonam now working as Assistant in the Judicial Magistrate Court, Gudiyatham to secure her promotion/Transfer as Assistant in Gudiyatham or Vellore, when she was working as Typist at Principal District Munsif Court, Ambur. This act amounts to irregularity in the discharge of official duty with dishonest motive.

Charge No.4: Thiru.S.Sivaji, formerly Typist of District Munsif Court, Sholinghur and now working as Typist of Subordinate Judge's Court, Tirupur, while functioning as Typist of Principal District Court, Vellore, in June 2006 directed Thiru.S.Vijayabhaskaramoorthy, formerly Head Clerk of Additional District Munsif-cum-Judicial Magistrate Court, Ambur and now working at Principal District Court, Vellore as Record Keeper to produce the bail orders in an attempt to manipulate the crime number concerning to C.M.P.No.5325 of 2006 on the file of the Principal District Judge, Vellore relating to crime number 276 of 2006 of Ambur Taluk Police Station, from the Court of Additional District Munsif-cum-Judicial Magistrate, Ambur without there being any direction from the Principal District Judge, Vellore. This act amounts to misuse of official position.

Charge No.5: Thiru.S.Sivaji, formerly Typist of District Munsif Court, Sholinghur and now working as Typist of Subordinate Judge's Court, Tirupur, while functioning as Typist of Principal District Court, Vellore in the abuse of his official position misused the office telephone (which telephone installed in computer room) for his personal purpose. This act amounts to misuse of official position.

Charge No.6: Thiru.S.Sivaji, formerly Typist of District Munsif Court, Sholinghur and now working as Typist of Subordinate Judge's Court, Tirupur, while functioning as Typist of Principal District Court, Vellore used to visit the office of Principal District Court, Vellore where he has previously working in a drunken mood. This act amounts to negligence in the discharge of official duty with a dishonest motive.

5. Thereafter, departmental enquiry was being proceeded with. The Principal District Munsif, Vellore was appointed as the Enquiry Officer and the petitioner was afforded with all opportunities during the enquiry. During the enquiry proceedings, 25 witnesses were examined on the side of prosecution and Exs.P-1 to P-27 were marked. No witness was examined on the side of delinquents and Exs.D-1 to D-4 were marked on their side. After careful examination of the oral and documentary evidence, the Enquiry Officer held that Charge Nos.1 to 3 are proved as against the petitioner and the remaining Charge Nos.4 to 6 were held not proved. The principles of natural justice have been followed during the enquiry proceedings and there was no material to hold that the enquiry was conducted in a pre-determined manner. The mere fact that the appellant was exonerated from Charge Nos.4 to 6 by itself, is a sufficient ground to hold that the enquiry was conducted in a free and fair manner.

6. The disciplinary authority accepted the findings of the Enquiry Officer and provided necessary opportunities to the petitioner. On a consideration of the entire materials available on record, by a very detailed and considered order, the disciplinary authority passed an order of dismissal from service against the petitioner. This is challenged in the appeal before the appellate authority, who confirmed the findings of the disciplinary authority and ultimately, the appeal was dismissed by the appellate authority/High Court, by proceedings

dated 03.10.2013, against which, the present Writ Petition is filed by the petitioner for the relief stated supra.

7. The learned counsel for the petitioner submitted that the petitioner was a Copyist in the Principal District Court, Vellore. While so, an anonymous letter was sent to the Honourable Chief Justice of High Court by making defamatory allegations against the PDJ, PA to PDJ and his Assistant and a copy of the same was also received by the PDJ, Vellore. On receipt of the same, the PDJ enquired into the matter and enquired the staff members, who informed that it was the petitioner who had sent the anonymous letter. When the petitioner was enquired, he tried to prove his innocence. But he was compelled to give an apology letter accepting that he had sent the anonymous letter. Finally, the petitioner was left with no other alternative but to give the letter on 11.07.2006. Thereafter, preliminary enquiry was conducted, wherein 17 persons were enquired, but the petitioner was not aware of such preliminary enquiry and after the preliminary enquiry, the petitioner was issued with charge memo after issuance of show cause notice and six charges were framed against the petitioner.

8. In the above context, the learned counsel for the petitioner submitted that the cross-examination of witnesses would clearly indicate that P.Ws.1 and 3 are interested witnesses and P.W.3 is none other than Mr.Babu whose name was referred to in the anonymous letter. He further contended that the said Mr.Karunakaran, whose name was subscribed on the cover of the anonymous letter, was not examined as a witness in the enquiry. In spite of the same, the Enquiry Officer held the petitioner guilty of the charges framed against him, based on which, the disciplinary authority passed the order of dismissal from service. Subsequently, the petitioner filed appeal before the first respondent as against the punishment of dismissal from service imposed by the second respondent on the petitioner. The main grievance of the petitioner is that the second respondent is the one who passed the order of dismissal, was promoted as the Registrar General of the High Court and he confirms his own order, thereby the appeal was rejected by the impugned order, and hence, the impugned order is bad in law on the ground of non-consideration of facts properly. Thus, the impugned order is passed in violation of the principles of natural justice, by merely confirming the order of the disciplinary authority. Hence, the learned counsel for the petitioner prayed for quashing the impugned order and allow the Writ Petition.

9. Countering the above submissions, the learned counsel appearing for the respondents, by filing counter affidavit of the respondents, submitted that the anonymous letter was sent by the petitioner as against the PDJ, PA to PDJ and his Assistant,

mentioning them as "Three Dogs". Pursuant to the same, the PDJ conducted enquiry with the staff members and the petitioner had admitted his guilt. Thereafter, preliminary enquiry was also conducted by the PDJ. Since the postal cover of sender's name was superscribed as Karunakaran, who was working as Clerk in the Vellore Labour Court, he was also examined during the preliminary enquiry, during which he said that he has nothing to do with the postal envelope. Since the writing of the signature of sender's name resembles the handwriting of the said Mr.V.Natarajan, his signature was also obtained and on scrutiny of the specimen signatures in various Court records, the PDJ came to the conclusion that the said Natarajan subscribed the "from address" on the envelope by mentioning the name of the said Karunakaran of Labour Court, Vellore. The said anonymous letter was written by the said Natarajan on the instructions of the petitioner. The departmental enquiry was initiated against the petitioner and also on the said Natarajan.

10. The learned counsel appearing for the respondents further submitted that the enquiry revealed that various witnesses were examined and due opportunities of cross-examination was also afforded to the petitioner and on completion of the enquiry, the Enquiry Officer submitted his report, copy of which has also been served on the petitioner as well as the said Natarajan, calling for explanation from them. Since the explanation was not satisfactory, final order of dismissal from service was passed on the petitioner, after observing the principles of natural justice, by the disciplinary authority. The punishment of stoppage of next increment was ordered in respect of the second delinquent V.Natarajan for a period of three years with cumulative effect. The learned counsel appearing for the respondents submitted that the second delinquent Natarajan had not filed any appeal. The petitioner (first delinquent) preferred appeal to the High Court and the Appellate Authority, consisting of two Honourable Judges of the High Court, found that the petitioner had taken part in the enquiry, and found that the charges levelled against the petitioner are very serious in nature and on consideration of the materials available on record, the Committee consisting of the said Honourable Judges confirmed the order of dismissal of service imposed on the petitioner by the disciplinary authority, by observing the principles of natural justice. Therefore, the learned counsel appearing for the respondents submitted that this Court, at this stage, under Article 226 of the Constitution of India, cannot appreciate the evidence already recorded in the departmental enquiry. The enquiry had been conducted in accordance with law by observing the principles of natural justice. In support of his submissions, the learned counsel appearing for the respondents relied on the following judgments:

- (i) 1999 (8) SCC 90 (R.S.Saini Vs. State of Punjab);
(ii) 2004 AIR SCW 6657 (Union of India VS. P.Gunasekaran)
and
(iii) 1977 (2) SCC 491 (State of Haryana Vs. Rattan Singh).

The relevant portion of the above said judgments of the Apex Court are as follows:

- (i) 1999 (8) SCC 90 :

"16. Before advertng to the first contention of the appellant regarding want of material to establish the charge, and of non-application of mind, we will have to bear in mind the rule that the court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings.

17. A narration of the charges and the reasons of the inquiring authority for accepting the charges, as seen from the records, shows that the inquiring authority has based its conclusions on materials available on record after considering the defence put forth by the appellant and these decisions, in our opinion, have been taken in a reasonable manner and objectively. The conclusion arrived at by the inquiring authority cannot be termed as either being perverse or not based on any material nor is it a case where there has been any non-application of mind on the part of the inquiring authority. Likewise, the High Court has looked into the material based on which the enquiry officer has come to the conclusion, within the limited scope available to it under Article 226 of the Constitution and we do not find any fault with the findings of the High Court in this regard.

18. The other two complaints made before us that there has been flagrant violation of

the principles of natural justice and the impugned order in question was the end product of malice entertained by Respondent 4 against the appellant were also, in our opinion, rightly rejected by the High Court. It is found from the record that the two detailed show-cause notices enumerating the various charges giving necessary particulars were issued to the appellant and the appellant had filed a detailed written reply with reference to each one of the charges. The record also bears out that the appellant has been heard through his counsel and the complaint made that he was not given sufficient adjournments for further hearing, in our opinion, would not constitute a breach of the principles of natural justice. As has been noticed by the High Court, the allegation of mala fides having been answered by Respondent 4 by way of an affidavit denying the same and the High Court having chosen to accept the affidavit of Respondent 4, and rightly so in our opinion, we do not find any material to differ from the said finding.

19. We have noted earlier that the scope of judicial review in matters of this nature being restricted, the High Court had to consider the challenge to the impugned order with a limited degree of scrutiny that was called for. We too have considered the complaint within that limited scope in order to find out the correctness of the allegation that the impugned order of the disciplinary authority suffered from the vice of perversity, non-application of mind and tainted by malice and having come to the conclusion that the report of the inquiring authority cannot be faulted with on any of the grounds stated above, we are unable to agree with the appellant. For the reasons stated above, this appeal fails and is hereby dismissed. No costs."

(ii) 2004 AIR SCW 6657:

"13. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary

authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

a. the enquiry is held by a competent authority;

b. the enquiry is held according to the procedure prescribed in that behalf;

c. there is violation of the principles of natural justice in conducting the proceedings;

d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;

h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

i. the finding of fact is based on no evidence.

Under Article 226/227 of the Constitution of India, the High Court shall not:

(i). re-appreciate the evidence;

(ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii). go into the adequacy of the evidence;

(iv). go into the reliability of the evidence;

(v). interfere, if there be some legal evidence on which findings can be based.

(vi). correct the error of fact however grave it may appear to be;

(vii). go into the proportionality of punishment unless it shocks its conscience."

19. Equally, it was not open to the High Court, in exercise of its jurisdiction under Article 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court. In the instant case, the disciplinary authority has come to the conclusion that the respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity according to Oxford dictionary is "moral 16 Page 17 uprightness; honesty". It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence etc. In short, it depicts sterling character with firm adherence to a code of moral values."

(iii) 1977 (2) SCC 491:

"4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that

passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence – not in the sense of the technical rules governing regular court proceedings but in a fair common sense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the Flying Squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.

5. Reliance was placed, as earlier stated, on the non-compliance with the departmental instruction that statements of passengers should be recorded by inspectors. These are instructions of prudence, not rules that bind or vitiate in the violation. In this case, the Inspector tried to get the statements but the passengers declined, the psychology of the latter in such circumstances being understandable, although may not be approved. We cannot hold that merely because statements of passengers were not recorded the order that followed was invalid. Likewise, the re-evaluation of the evidence on the strength of co-conductor's testimony is a matter not for the court but for the Administrative Tribunal. In conclusion, we do not think the courts below were right in overturning the finding of the domestic tribunal.

6. No actual punishment in the sense of dismissal or removal was inflicted and counsel for the State read out the order finally passed. The order merely states that the services were terminated and the State's counsel agrees that there was no dismissal or removal or punitive punishment as seen from the order. All that we

guess is, taking the words used in the order, the authorities probably had regard to the overall circumstances including the long years of service (10 years) and the comparatively young age of the delinquent at the time of termination of service (26) and relented in the matter of final termination by simply telling him off from service without inflicting any of the punishments. This lies within the power of the employer and it is not for us to say that the State should have punished him in a particular manner. Therefore, while confirming the order passed by the State and setting aside the decree of the courts below we hold that the consequences of a simple termination must follow. We, therefore, direct, while allowing the appeal, that the State shall pay the respondent all that is due to him under the industrial law as an employee when his services are terminated without penal consequences – apart from the salary for the period he has worked after the recent reinstatement. Counsel for the appellants has agreed that this direction will be carried out as the State is bound to. With these observations, we allow the appeal but the parties will bear their costs throughout."

11. Heard both sides and perused the materials available on record.

12. It is evident from the above decisions of the Honourable Supreme Court that this Court has only limited power to interfere with the decision taken by the respondents in a departmental enquiry and to substitute its own conclusion. In such cases, judicial review is only meant to ensure that the delinquent receives fair treatment in the departmental enquiry conducted against him and that the conclusion which the authority reached is based on semblance of evidence. In the present case, as mentioned above, there are evidences made available against the petitioner, based on which, the respondents have come to a conclusion to impose the punishment of dismissal from service. While so, we cannot interfere with such a conclusion arrived at by the respondents.

13. Hence, for the reasons stated above and in view of the law laid down in the above judgments of the Supreme Court, which are squarely applicable to the case on hand, we find no merit in the present Writ Petition, which is liable to be dismissed. Accordingly, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

CS
To

1. The Registrar General,
High Court, Madras.
2. The Principal District Judge-cum-
Disciplinary Authority,
Vellore District, Vellore.

+1cc to M/s.D.R.Arun Kumar, Advocate Sr.80407

W.P.No.15449 of 2017

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