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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.04.2022

PRONOUNCED ON : 06.06.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.19795 of 2010

Rohini

... Petitioner

Versus

1. The District Collector,
Coimbatore District,
Coimbatore.
2. The Joint Director/Project Officer,
District Rural Development Agency,
Coimbatore.
3. The Block Development Officer,
(Village Panchayat),
Annur Block,
Coimbatore North Taluk,
Coimbatore District.
4. The President,
Kattampatti Panchayat,
Annur Block,
Coimbatore North Taluk,
Coimbatore District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the first respondent in Na.Ka.No.4060/2010/K5, dated 12.08.2010 and to quash the same and consequently direct the respondents to pay all the monetary benefits which are entitled to the petitioner.

For Petitioner : Mr.C.Prabakaran

For Respondents : Ms.E.Renganayaki, (for R1 & R2)
Additional Government Pleader.

: No Appearance (R3 & R4)



ORDER

The petitioner was appointed as Makkal Nala Paniyalar by order dated 08.02.2007. As per the appointment order, they are appointed for a period of one year on contract basis on payment of honorarium of a consolidated sum of Rs.950/- (Rupees Nine Hundred and Fifty Only) per month along with traveling allowance. While so, on 17.07.2010, an order was passed suspending the petitioner from service in contemplation of enquiry into grave charges. Subsequently, on 19.07.2010, a show cause notice was issued containing allegation that the Block Development Officer, Annur inspected the work being undertaken under Mahathma Gandhi National Rural Employment Guarantee Scheme (MGNREGS) in Kovilpalayam to Karamadai Road on 16.07.2010. It was mentioned in the attendance register as if 16 male persons and 121 female persons were at work. However at the time of inspection only 128 persons were working and 9 persons were not present even though their thumb impression was affixed in the register. Therefore, it was found that the petitioner is creating false records and has committed misconduct and was called upon to submit her response within ten days from the date of receipt of the order. The petitioner submitted her response on 28.07.2010 and it was her explanation that these nine persons had left work to include their names in the Voters list and at that time the inspection took place and she has not committed any mis-conduct whatsoever. Upon considering the said explanation, the first respondent passed the impugned order dated 12.08.2010 removing the petitioner from service. Aggrieved by which, the present Writ Petition is filed.

2. The Writ Petition is resisted by the respondents by filing a counter affidavit, essentially reiterating the above facts and submitted that upon due inspection, since it was found that there was a shortage of nine persons, considering the seriousness of the irregularities, the impugned order of removal from service was passed.

3. It is the further contention in the counter affidavit that subsequently, after the impugned order was passed, by G.O. (M.S).No.86, Rural Development and Panchayat Raj (E5) Department, dated 08.11.2011, the very post of Makkal Nala Paniyalarkal was disbanded and all the employees were discharged from the service and therefore, nothing survives in this Writ Petition to be decided.

4. Heard Mr.C.Prabakaran, Learned Counsel for the petitioner and Ms.E.Renganayaki, Learned Additional Government Pleader, appearing for the first and second respondents.

5. Mr.C.Prabakaran, Learned Counsel for the petitioner would submit that the petitioner was removed from service without conduct of an enquiry and the punishment of the removal cannot be imposed without conduct of full-fledged enquiry. He would submit that the subsequent disbandment of the post will not have any effect as the petitioner has to be reinstated into



the service till the date of disbandment and the Government is also considering re-employment of these Makkal Nala Paniyalargal and what happens to the other similar employees will also be followed in the case of the petitioner and therefore, prayed that this Court should decide the case on merits.

6. Per contra, Ms.E.Renganayaki, Learned Additional Government Pleader, appearing for the first and second respondents, would submit that the post itself is a temporary post and the petitioner was appointed on contract basis. Therefore, minimum compliance of principles of natural justice is enough and the petitioner was given a show cause notice and after receipt of her explanation and consideration of the same, the order of removal from service is passed and therefore, no further detailed enquiry is necessary in this case. She would also further submit that in any event, the petitioner cannot now be re-instated into service as the post itself is disbanded.

7. I have considered the rival submissions made on either side and perused the material records of the case.

8. The petitioner even though was holder of a temporary post, the same is a civil post within the meaning of Article 311 of Constitution of India and therefore, if the petitioner is dismissed, removed from service or reduced in rank, the provisions of Article 311(2) protects the petitioner that she shall not be removed from service except after an enquiry, in which, she had been informed of the charges and given a reasonable opportunity of being heard in respect of those charges. In the instant case, the said procedure of framing of charges and conduct of an enquiry was not followed and only a show cause notice is issued and the impugned order is passed. Therefore, the same is violative of Article 311(2) of the Constitution of India.

9. The contention raised by the Learned Additional Government Pleader that the petitioner is only holding a temporary post that too on contract basis for an honorarium will not in any manner alter the position. The law was laid down by the Hon'ble Supreme Court in the Constitution Bench judgment of Parshotam Lal Dhingra Vs. Union of India¹, which still holds the field and is followed up to date. It was categorically held that even if a person is on temporary post or on officiating basis, once there is a provision under the contract to discharge the employee from service without taking disciplinary action, the Government may choose to do so, but, if the Government decides not to go with the simple termination of service, the Article 311(2) applies. It is essential to extract paragraph Nos.27 and 28 of the said judgment, which reads as hereunder :-

"27.It does not, however, follow that, except in the three cases mentioned above, in all other cases, termination of service of a



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government servant who has no right to his post. e.g., where he was appointed to a post, temporary or permanent, either on probation or on an officiating basis and had not acquired a quasi-permanent status, the termination cannot, in any circumstance, be a dismissal or removal from service by way of punishment. Cases may arise where the government may find a servant unsuitable for the post on account of misconduct, negligence, inefficiency or other disqualification. If such a servant was appointed to a post, permanent or temporary, either on probation or on an officiating basis, then the very transitory character of the employment implies that the employment was terminable at any time on reasonable notice given by the Government. Again if the servant was appointed to a post, permanent or temporary, on the express condition or term that the employment would be terminable on say a month's notice as in the case of *Satish Chander Anand v. Union of India* [(1953) SCR 655] then the Government might at any time serve the requisite notice. In both cases the Government may proceed to take action against the servant in exercise of its powers under the terms of the contract of employment, express or implied, or under the rules regulating the conditions of service, if any be applicable, and ordinarily in such a situation the Government will take this course. But the Government may take the view that a simple termination of service is not enough and that the conduct of the servant has been such that he deserves a punishment entailing penal consequences. In such a case the Government may choose to proceed against the servant on the basis of his misconduct, negligence, inefficiency or the like and inflict on him the punishment of dismissal, removal or reduction carrying with it the penal consequences. In such a case the servant will be entitled to the protection of Article 311(2).

28. The position may, therefore, be summed up as follows: Any and every termination of service is not a dismissal, removal or reduction in rank. A termination of service brought about by the exercise of a contractual right is not per se dismissal or removal, as has been held by this Court in *Satish Chander Anand v. Union of India* [(1953) SCR 655]. Likewise the termination of service by compulsory retirement in terms of a specific rule regulating the conditions of service is not tantamount to the infliction of a punishment and does not attract Article 311(2), as has also been held by this Court in *Shyam Lal*



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v. State of Uttar Pradesh [(1955) 1 SCR 26] . In either of the two above mentioned cases the termination of the service did not carry with it the penal consequences of loss of pay, or allowances under Rule 52 of the Fundamental Rules. It is true that the misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists, under the contract or the rules, to terminate the service the motive operating on the mind of the Government is, as Chagla, C.J., has said in Shrinivas Ganesh v. Union of India [LR 58 Bom 673 : AIR (1956) Bom 455] wholly irrelevant. In short, if the termination of service is founded on the right flowing from contract or the service rules then, prima facie, the termination is not a punishment and carries with it no evil consequences and so Article 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Article 311 must be complied with. As already stated if the servant has got a right to continue in the post, then, unless the contract of employment or the rules provide to the contrary, his services cannot be terminated otherwise than for misconduct, negligence, inefficiency or other good and sufficient cause. A termination of the service of such a servant on such grounds must be a punishment and, therefore, a dismissal or removal within Article 311, for it operates as a forfeiture of his right and he is visited with the evil consequences of loss of pay and allowances. It puts an indelible stigma on the officer affecting his future career. A reduction in rank likewise may be by way of punishment or it may be an innocuous thing. If the government servant has a right to a particular rank, then the very reduction from that rank will operate as a penalty, for he will then lose the emoluments and privileges of that rank. If, however, he has no right to the particular rank, his reduction from an officiating higher rank to his substantive lower rank will not ordinarily be a



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punishment. But the mere fact that the servant has no title to the post or the rank and the Government has, by contract, express or implied, or under the rules, the right to reduce him to a lower post does not mean that an order of reduction of a servant to a lower post or rank cannot in any circumstances be a punishment. The real test for determining whether the reduction in such cases is or is not by way of punishment is to find out if the order for the reduction also visits the servant with any penal consequences. Thus if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion, then that circumstance may indicate that although in form the Government had purported to exercise its right to terminate the employment or to reduce the servant to a lower rank under the terms of the contract of employment or under the rules, in truth and reality the Government has terminated the employment as and by way of penalty. The use of the expression "terminate" or "discharge" is not conclusive. In spite of the use of such innocuous expressions, the court has to apply the two tests mentioned above, namely, (1) whether the servant had a right to the post or the rank, or (2) whether he has been visited with evil consequences of the kind hereinbefore referred to? If the case satisfies either of the two tests then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service or the reversion to his substantive rank must be regarded as a reduction in rank and if the requirements of the rules and Article 311, which give protection to government servant have not been complied with, the termination of the service or the reduction in rank must be held to be wrongful and in violation of the constitutional right of the servant."

(emphasis supplied)

Therefore, the action of the respondents is erroneous in law. The Learned Counsel for the petitioner had also placed reliance on the judgment of Hon'ble Supreme Court in *Nar Singh Pal Vs. Union of India and others*², *Davinder Singh and others Vs. State of Punjab and others*³, *State Bank of India and others Vs. Palak Modi and another*⁴, judgment of the High Court of Andhra Pradesh in *S.Zabeda Parveen Vs. A.P. Womens Cooperative*



Finance Corporation Hyderabad and others⁵ and the judgment of High Court of Gujarat in Dineshbhai Dhudabhai Patel Vs. State of Gujarat⁶.

10. In view of the authoritative pronouncement of the Constitution Bench of the Hon'ble Supreme Court in Parshotam Lal Dhingra, being applicable to the present case it is not necessary to once again deal with the above judgments submitted by the Learned Counsel for the petitioner. In this case, there is no dispute that the impugned order is an order of punishment as it expressly say so on the basis of the allegations and imposes a punishment of removal from service. Admittedly, no enquiry as contemplated under Article 311(2) was conducted and therefore, the impugned action is bad in law.

11. Coming to the second contention that the post itself it disbanded, I hold that the same will not render the writ petition infructuous. As a matter of fact, the petitioner will be entitled to reinstatement till the date of disbandment of the post and liberty also be given to the respondents to once again conduct a proper enquiry and impose the punishment if they choose to. Otherwise, the petitioner would be deemed to be in service till the date of disbandment and whatever the future course of action happens to the similarly situated other Makkal Nala Paniyalargal, the same will flow to the petitioner also.

12. In view of the same, I am inclined to allow this Writ Petition on the following terms :

(i) The impugned order dated 12.08.2010 bearing Na.Ka.No.4060/2010/K5 passed by the first respondent is hereby quashed;

(ii) The petitioner will be reinstated into service as Makkal Nala Paniyalar with all back wages, until the date of relief of all other similarly situated Makkal Nala Paniyalargal by virtue of G.O. (M.S).No.86, dated 08.11.2011;

(iii) The petitioner will be entitled to the same benefit as any other Makkal Nala Paniyalar, who is since been discharged by the Government;

(iv) However, this order will not preclude the first respondent from issuing a charge memorandum and conducting an enquiry afresh and pass orders thereon in accordance with law.

(v) There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//



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Coimbatore District.

+lcc to Mr.R.Murali, Advocate SR. No. 32146
+lcc to Mr.C.Prabakaran, Advocate SR. No. 32341
+lcc to Government Pleader SR. No. 32562

W.P.No.19795 of 2010

GPL (CO)
PR (14/06/2022)