



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 10.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

W.P(MD)No.17706 of 2021

and

W.M.P(MD)Nos.14602 and 14603 of 2021

S.Gnanaseelan

... Petitioner

Vs

1.The Government of Tamil Nadu,
represented by its Secretary,
Printing and Stationery Department,
Secretariat, Chennai.

2.The Government of Tamil Nadu,
Represented by the Commissioner,
Department of Stationery and Printing,
110, Anna Salai,
Chennai - 600 002.

3.The Joint Director,
Department of Stationery and Printing,
110, Anna Salai,
Chennai - 600 002.

4.The Branch Manager,
Government Branch Press,
Tiruchirappalli,
Thuvakudi,
Trichy- 620 015.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records pertaining to the impugned order in No.A1/1114/2020, dated 06.03.2020 on the file of the respondent Commissionerate Se.Moo.No.E1/7930/2020, dated 18.01.2021 on the file of the respondent No.3 and quash the same as illegal.

For Petitioner : Mr.T.Aswin Rajasimman
for Mr.T.Lajapathi Roy

For Respondents : Mr.G.V.Vairam Santhosh,
Additional Government Pleader



ORDER

This writ petition is filed challenging the charge memo dated 06.03.2020 issued by the first respondent.

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2.The learned Counsel for the petitioner submits that the petitioner has filed this writ petition on behalf of his son, namely, G.Shelburne Right, who is differently abled with 60% permanent disability of Chronic Schizophrenia, which is a serious mental disorder, where people interpret reality abnormally. The learned Counsel further submits that the petitioner's son was recruited through Tamil Nadu Public Service Commission in Group-IV examination and was posted as Junior Assistant in Government Branch Press, Trichy on 22.02.2019 and he has been working as such. While being so, he was issued with a charge memo dated 06.03.2020 alleging inappropriate behaviour. Therefore, the petitioner is before this Court.

3.The learned Counsel for the petitioner further submits that initiating disciplinary proceedings against a person affected with chronic schizophrenia is contrary to the principles of natural justice and also violative of Articles 14 and 16 of the Constitution of India. The learned Counsel has placed reliance on the decision of the Hon'ble Supreme Court in Ravinder Kumar Dhariwal and Anr Vs The Union of India and Others [Civil Appeal No.6924 of 2021, dated 17.12.2021], submits that departmental proceedings cannot be initiated against the persons with 50% permanent disability, wherein it has been held as follows:

"90. The question that comes up before this Court is whether it is sufficient for the appellant to show that his mental health disorder was one of the factors that led to the initiation of disciplinary proceedings against him for misconduct or is he required to prove that his disability was the sole cause of disciplinary proceedings being instituted against him. Section 3 of the RPwD Act provides a general guarantee against non-discrimination and equality to persons with a disability. Section 20 specifically provides that no government establishment shall discriminate against any person who has acquired a disability in any matter relating to employment. Discrimination has been given an expansive definition under Section 2(h) of the RPwD Act, which states thus:

(h) "discrimination" in relation to disability, means any distinction, exclusion, restriction on the basis of disability which is the purpose or effect of impairing or nullifying the recognition,



enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination and denial of reasonable accommodation"

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91. Section 2(h) prohibits discrimination on the basis of disability. It is pertinent to note that the provision does not use the phrase 'only' on the basis of disability. This Court in its decisions has observed that while a causal connection may need to be established between the ground for discrimination and the discriminatory act, it is not required to be shown that the discrimination occurred solely on the basis of the forbidden ground. As long as it can be shown that the forbidden ground played a role in the discriminatory action, the action will violate the guarantee against non-discrimination.

92. In **Navtej Johar** (supra), one of us (Dr DY Chandrachud) in the concurring opinion expressed in the context of interpreting Article 15 of the Constitution that the non-discrimination clause does not permit only single ground claims. Article 15 states that "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them". The concurring opinion observed that limiting discrimination-related, which held that socially ascribed gender roles or stereotypes regarding sex would not be distinguishable from discrimination solely based on sex. The relevant extract of the opinion is reproduced below:

on a specific ground may be absent or difficult to prove." While interpreting Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989 (prior to the amendment in 2015), this Court observed that the terms "on the ground of" would not entail proving that the offence against a person belonging to a Scheduled Caste or Scheduled Tribe took place solely on the ground of their caste or tribal identity. If it is one of the factors, it will fall within the ambit of Section 3(2)(v). This Court held thus:



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"62. In the above two extracts, this Court has interpreted Section 3(2)(v) to mean that the offence should have been committed "only on the ground that the victim was a member of the Scheduled Caste." The correctness of this exposition. Is debatable. The statutory provision does not utilize the expression "only on the ground". Reading the expression "only" would be to add a restriction which is not found in the statute. The statute undoubtedly uses the words "on the ground" but the juxtaposition of "the" before "ground" does not invariably mean that the offence ought to have been committed only on that ground. To read the provision in that manner will dilute a statutory provision which is meant to safeguard the Scheduled Castes and Scheduled Tribes against acts of violence which pose a threat to their dignity. As we have emphasized before in the judgment, an intersectional lens enables us to view oppression as a sum of disadvantage resulting from multiple marginalized identities. To deny the protection of Section 3 (2) (v) on the premise that the crime was not committed against an SC & ST person solely on the ground of their caste identity is to deny how social inequalities function in a cumulative fashion. It is to render the experiences of the most marginalized invisible. It is to grant impunity to perpetrators who on account of their privileged social status feel entitled to commit atrocities against socially and economically vulnerable communities. This is not to say that there is no requirement to establish a causal link between the harm suffered and the ground, but it is to recognize that how a person was treated or impacted was a result of interaction of multiple grounds or identities. A true reading of Section 3(2)(v) would entail that conviction under this provision can be sustained as long as caste identity is one of the grounds for the occurrence of the offence. In the view which we ultimately take, a reference of these decisions to a larger bench in this case is unnecessary. We keep that open and the debate alive for a later date and case."



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94. Similar considerations would govern our understanding of discrimination under the RPwD Act. A person with a disability is not required to prove that discrimination occurred solely on the basis that they had a disability. Disability needs to be one of the factors that led to the discriminatory act. Thus, in the present case, the appellant is only required to prove that disability was one of the factors that led to the institution of disciplinary proceedings against him on the charge of misconduct. A related enquiry then is to examine whether the conduct of the employee with a mental disability must be solely a consequence of their disability or it is sufficient to show that the disability was one of the factors for the conduct.

95. An interpretation that the conduct should solely be a result of an employee's mental disability would place many persons with mental disabilities outside the scope of human rights protection. It is possible that the appellant was able to exercise some agency over his actions. But the appellant was still a person who was experiencing disabling effects of his condition. Thus in any event his agency was diminished. The over-emphasis on the choice or agency of a person with a mental health disorder furthers the stigma



against them. As Justice Gascon's minority opinion in **Stewart** (supra) states, it furthers the stereotype that persons with mental health conditions are "the authors of their own misfortune" (para 58).

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96. This is not to say that persons with mental health disorders are never in control of their actions. This may perpetuate another stereotype that such Further, we would like to emphasize that persons with mental disabilities are not static entities. Earlier in the judgment, we had discussed how employment opportunities and affirmative workplace policies help persons with disabilities in coping with their illness and improving their mental health. Thus, what is required is a nuanced and individualized approach to mental disabilities related discrimination claims, which requires understanding the nature of the disadvantage that such persons suffer. 97. The South African jurisprudence in assessing claims of misconduct relating to disability presents a middle path where an enquiry is to be conducted to assess whether the mental disability is incapacitating, which would then nullify the charge of misconduct. In the event, it is not incapacitating, the mental disability would still serve as a mitigating factor in the imposition of sanctions. However, this approach also has a limitation where it focuses too much on the nature of impairment than the disadvantage. It has the possibility of making disability rights adjudication more complex and less accessible since it would require reliance on medical experts to assess how debilitating the mental disability is. This also makes the disability regime vulnerable to being relegated to a medical model of disability rather than a social model. Thus, in the Indian context, a person with a mental disability is entitled to the protection of the rights under the RPwD Act as long they meet the definitional criteria of what constitutes a 'person with a disability' under Section 2(s).

98. Having regard to the complex nature of mental health disorders, any residual control that persons with mental disabilities have over their conduct merely diminishes the extent to which the disability contributed to the conduct, it does not eliminate it as a factor. The appellant has been undergoing treatment for mental health disorders



for a long time, since 2009. He has been diagnosed with 40 to 70 percent of permanent disability by a government hospital. While all CRPF personnel may be subject to disciplinary proceedings on charges of misconduct, the appellant is more vulnerable to engage in behavior that can be classified as misconduct because of his mental disability. He is at a disproportionate disadvantage of being subjected to such proceedings in comparison to his able-bodied counterparts. The concept of indirect discrimination has been recognized by this Court in

Ltd. Col. Nitisha and Ors. v. Union of India¹¹², which is closely tied with the conception of substantive equality that pervades the international and Indian disability-rights regime. Thus, the disciplinary proceeding against the appellant is discriminatory and must be set aside."

3.The Additional Government Pleader appearing for the respondents sought a short accommodation to file his counter in this regard.

4.The petitioner's son, who is affected with 60% disability of schizophrenia is facing the charges for inappropriate behaviour. The grievance of the petitioner is that in view of the decision of the Hon'ble Supreme Court and also in view of the Rights of Persons with Disabilities Act, there should not be any discrimination on the persons with disability and disciplinary proceedings cannot be initiated against those persons.

5.In view of the submission made on either side and also in view of the above decision of the Hon'ble Supreme Court, this writ petition is disposed of by directing the fourth respondent to refer the petitioner's son to the Medical Board to ascertain the mental status of the petitioner's son and based on the report of the Medical Board, the first respondent shall take a decision and also keeping in mind the above cited judgment. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(T & P)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

dsk



Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Secretary,
Printing and Stationery Department,
Secretariat, Chennai.
- 2.The Commissioner,
Department of Stationery and Printing,
110, Anna Salai,
Chennai - 600 002.
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- 4.The Branch Manager,
Government Branch Press,
Tiruchirappalli,
Thuvakudi,Trichy- 620 015.

+1 CC to M/s.SPL GP (SR-1320[F] dated 11/01/2022)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-1112[F] dated 11/01/2022)

W.P(MD)No.17706 of 2021
10.01.2022

SB(CO)
TR(17.02.2022) 9P 7C