IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27-04-2007

Coram :

The Hon'ble Mr. Justice F.M.IBRAHIM KALIFULLA
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Petition No.10921 of 2004

1. The Commissioner
   Tiruchirapalli City Municipal Corporation
   Tiruchirapalli.
2. The Health Officer
   Tiruchirapalli City,
   Municipal Corporation,
   Tiruchirapalli ... Petitioners

Vs.

1. G.Joseph

2. The Director of Public Health
   and Preventive Medicine
   Madras - 6.
3. The Registrar
   Tamil Nadu Administrative Tribunal,
   Chennai - 104. .. Respondents

Writ Petition, seeking certiorari is filed by the petitioner, under Article 226 of the Constitution of India, to call for the records, of the third respondent relating to the order, dated 09.10.2003 passed in T.A.No.317 of 1993 and quash the same.

For Petitioners : Mr.K.Rajkumar for M/s. P. Srinivas

For Respondents : Mr.B.S.Gnanadesikan for R1 K. Hemakarthikeyan
Mr.V.Viswanathan, AGP for R2 & R3

O R D E R

(Order of the Court was made by S.TAMILVANAN, J.)

This writ petition is directed against the order, dated 09.10.2003 made in T.A.No.317 of 1993 on the file of the third respondent herein.

2. According to the petitioners, the first respondent was appointed as a Health Assistant in the year 1977 in Manaparai Municipality and thereafter transferred and posted in the erstwhile Tiruchirapalli Municipality on 07.02.1993. While, he was working as Health Assistant, charges were framed against him by the then Municipal Health Officer for certain lapses on his part, regarding registration of birth and death. Hence, charge memo was issued as per Reference No.H2/23681/83, pending enquiry and before passing of final orders, the first respondent herein was kept under suspension, by order, dated 02.06.1983 by the then Municipal Health Officer, the appointing authority as well as the Disciplinary Authority. After the enquiry, by order, dated 22.11.1983, he was removed from service by the first petitioner. Aggrieved by which, the first respondent herein preferred an appeal before the second respondent, who confirmed the original order passed by his proceedings, dated 17.12.1984. According to the petitioners, in view of the G.O.Ms.No.120, Finance Department, dated 02.02.1990, the post of Health Assistant was merged with the post of Sanitary Inspector. Hence, the first respondent was appointed as Health Assistant during 1977 and after the departmental proceedings, he was removed from service in 1983. Aggrieved by the said order, the first respondent herein filed an application before the Tamil Nadu Administrative Tribunal in T.A.No.317/1993, seeking to quash the proceedings.

3. The Tamil Nadu Administrative Tribunal, considering the facts and circumstances of the case has allowed the application on merits, in as much as the impugned order of removal passed against the first respondent is concerned and the orders, dated 22.11.1983 and 17.12.1984 passed by the petitioners herein were also set aside. As per the order of the Tamil Nadu Administrative Tribunal, the first respondent was dealt with the punishment of stoppage of increment for three years without cumulative effect, instead of the order of removal from service. The Tribunal has ordered for reinstatement of the first respondent with back wages. Aggrieved by which, the writ petition has been filed by the petitioners herein.

4. Heard both sides.

5. Mr.K.Rajkumar, learned counsel appearing for the petitioners submits that the impugned order passed by the Tamil Nadu Administrative Tribunal in T.A.No.317/1993, as contrary to law, arbitrary and in excess of jurisdiction. According to him, the Tribunal has failed to see that the illegal action of the first respondent would result in loss of confidence of the public in the registers of birth and death maintained by the authorities.

According to the learned counsel, the Tribunal cannot interfere with the quantum of punishment, imposed on the first respondent by the first petitioner herein.

6. It is seen that the charges 1 and 2 relate to the petitioner's failure to register the births in the birth register, in spite of the files sent by the Municipality to him, which he had received on 03.05.1983 and there was a delay of 35 days in registering the same, after the receipt of the files. The third charge relates to not taking any action for registering the names of the children, whose births have been earlier registered in the birth register, even though notices have been served under the relevant rules to the parents or guardians of the children to come and register the names of their children. The fourth charge is that the appellant had issued notice calling upon one John Joseph, whose wife was reported to have given birth to a child on 03.12.1991, though on 03.12.1991, the said women had not given birth to any child. The charge number five relates to the notice sent to one Velayudan Pillai to an incorrect and wrong address and the first respondent's negligence in not issuing notice, by ascertaining proper address of the party. Another charge is that the applicant has not maintained separate register for issuance of notice under the rules and for not taking up further action with regard to register the names of the children whose births have been registered in the register without their names. The first respondent had issued notice in the printed form, in his own hand writing that the same as final notices and thereby threatened the public. One another charge relates to entries made in Sl.No.33/83 made in the month of February 1983.

7. It is not in dispute that the first respondent was suspended by the Health Officer on 02.06.198, pursuant to the above charges, then, the first respondent submitted his explanation. Ultimately it was decided by the petitioners that the charges levelled against the first respondent have been proved and accordingly, he was removed from service by the order of the disciplinary and appointing authority.

8. As per the findings of the Tamil Nadu Administrative Tribunal, though there were several charges framed against the first respondent, the nature of the charges would show that the same did not even warrant suspension, pending enquiry, but charges were framed under the provisions of Municipal Regulations, which is similar to that of Rule 17 (b) of Tamil Nadu Government Servants' Conduct Rules, 1973 and the departmental proceeding was initiated against him. According to the Administrative Tribunal, minor charges have been exaggerated by the second petitioner herein and disproportionate exorbitant punishment of removal from service has been imposed on the first respondent.

9. As found by the Tribunal, no allegation of fraud or misrepresentation has been made out or atrtibuted against the first respondent herein. It is seen that even in the charges framed, the terms such as fraud, cheating or with dishonest intention are not employed against the first respondent and that there was no loss alleged to have been caused to the Government by the firt respondent. According to the Administrative Tribunal, action should have been initiated only for minor irregularities and lapses, even suspension was not warranted. Though, the first respondent was suspended in the month of February 1983, he was not reinstated till final orders of removal from service was passed by the Municipal Health Officer, the second petitioner herein, in the month of November 1983. It is seen that the Administrative Tribunal has gone in detail on the evidence available on record and has categorically held that the charges levelled against the first respondent / applicant were minor in nature. It is seen that in the notice sent to one John Joseph, calling upon him to come and register the name of his child, as per the finding of the Tribunal, the date of delivery of his wife is stated as 03.12.1981, instead of the actual date of birth, 31.02.1981 and the mistake cannot be construed as a false entry made with malafide intention.

10. The Tribunal has further found that the first respondent had taken steps by issuing notice to the parents or guardians, for entering the names of their children in the concerned register, when their births have already been entered, without their names. The Registrar is empowered to enter the name of the child, within one year after registration, without insisting fee or penalty and hence, the applicant has entered the names of the children whenever parents or guardians came and reported to enter the names and he had also issued notices with regard to the same. It is seen that the first respondent has submitted his explanation in detail, with regard to the same. As per the findings of the Tribunal, the allegation of tampering of birth register and issuing of final warning notice to threaten the public are not sustainable, since there is nothing wrong for the first respondent in writing the word, 'finally' , by his own hand writing in the printed notice and that the same was done only with the intention to get information and the particulars as early as possible. It is not in dispute that there was no complaint from the public, stating that the first respondent had threatened or harassed them. With the detailed and elaborate discussion, based on the evidence, the Tamil Nadu Administrative Tribunal has decided that the punishment of removal from service, imposed on the first respondent herein is disproportionate and exorbitant. The Administrative Tribunal, accordingly has also decided the reasonable and proportionate punishment for the lapses, as stoppage of increment for three

years without cumulative effect, instead of removal from service and directed to reinstate the first respondent with backwages.

11. Considering both the orders passed in the departmental proceedings and also by the Tamil Nadu Administrative Tribunal, with reference to the evidence available on record, we are of the considered view that the petitioners herein have exaggerated the lapses committed by the first respondent, in framing the charges and also imposed disproportionate major punishment of dismissal from service. It is seen that the explanation submitted by the first respondent were not considered by the petitioners properly.

12. Mr.K.Rajkumar, learned counsel for the petitioners submitted that the charges framed against the first respondent under the Municipal Regulations could be similar to that of Rule 17 (b) of the Tamil Nadu Government Servants' Conduct Rules, 1973. Therefore, we are of the considered view that the punishment imposed by the petitioners, as held by the Tamil Nadu Administrative Tribunal is excessive and disproportionate.

13. Mr.K.Rajkumar, learned counsel for the petitioners further submitted that the first respondent was removed from service, by order, dated 17.12.1984, passed by the second petitioner herein and subsequently, he was not reinstated, in view of the stay obtained by the petitioners against the impugned order of the Administrative Tribunal. It is seen that the Administrative Tribunal, by order dated 09.10.2003, has directed the petitioners to pay full back wages to the first respondent. According to the learned counsel for the petitioners, which would be for about 19 years back wages and hence, the same is unreasonable and not sustainable in law. According to him, the Administrative Tribunal cannot convert the punishment of termination from service into stoppage of 3 years increment without cumulative effect and to order for back wages. In support of his contention, the learned counsel cited the following decisions :

1. Om Kumar and others vs. Union of India, (2001) 2 SCC 386.
2. Apparel Export Promotion Council vs. A.K.Chopra, (1999) 1 SCC 759.

14. In the decision Om Kumar and others vs. Union of India, reported in (2001) 2 SCC 386, it has been ruled by the Hon'ble Apex Court that quantum of punishment in disciplinary matters is primarily for the disciplinary authority to decide and the jurisdiction of the High Courts under Article 226 of the Constitution of India or the Administrative Tribunal, is limited and is found to the applicability of one or other of well known principles, known as 'Wednesbury Principles'. The Hon'ble Apex

Court has ruled in the aforesaid judgment at page number 399 as follows :

> " 26. Lord Greene said in 1948 in the Wednesbury case that when a stature gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. He said that interference was not permissible unless one or the other of the following conditions was satisfied, namely the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered; or the decision was one which no reasonable person could have taken. These principles were consistently followed in the UK and in India to judge the validity of administrative action. It is equally well known that in 1983, Lord Diplock in Council for Civil Services Union v. Minister of Civil Service (called the GCHQ case) summarised the principles of judicial review of administrative action as based upon one or other of the following viz., illegality, procedural irregularity and irrationality. He, however, opined that "proportionality" was a "future possibility".
>
> (b) Proportionality
>
> 27. The principle originated in Prussia in the nineteenth century and has since been adopted in Germany, France and other European countries. The European Court of Justice at Luxembourg and the European Court of Human Rights at Strasbourg have applied the principle while judging the validity of administrative action. But even long before that, the Indian Supreme Court has applied the principle of "proportionality" to legislative action since 1950, as stated in detail below.
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> 28. By "proportionality", we mean the question whether, while regulating exercise of fundamental rights, the appropriate or least-restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the court will see that the legislature and the administrative authority "maintain a proper balance between the adverse effects which the legislation or the administrative order may

> have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve". The legislature and the administrative authority are, however, given an area of discretion or a range of choices but as to whether the choice made infringes the rights excessively or not is for the court. That is what is mean by proportionality."

According to the doctrine of Wednesbury Principles on proportionality as enunciated by the Hon'ble Apex Court, we hold that when the choice made by the Administrative Authority infringes the rights excessively, it would not limit the jurisdiction of this Court under Article 226 of the Constitution of India.

15. Learned counsel for the first respondent would contend that the second petitioner has arbitrarily exaggerated the minor lapses, and after holding guilty, removed the first respondent from service arbitrarily, so as to victimise him. According to him, the Administrative Tribunal has categorically given its finding that the first respondent could not have been suspended, on the basis of the minor charges.

16. As discussed earlier, considering the detailed discussions and findings of the Administrative Tribunal and the earlier orders passed by the petitioners, we are of the considered view that the second petitioner has exaggerated the charges and imposed major punishment of removing the first respondent from service, which is exorbitant and disproportionate. But, as per the decisions of the Hon'ble Apex Court, the quantum of punishment in disciplinary matters is primarily for the administrative authority and the jurisdiction of the Tribunal in deciding the quantum of punishment is only limited.

17. The decision, Om Kumar and others vs. Union of India, reported in (2001) 2 SCC 386, is squarely applicable for the facts and circumstances of the case, wherein the Hon'ble Supreme Court has ruled that the legislature and the administrative authority are, however, given an area of discretion or a range of choices but as to whether the choice made infringes the rights excessively or not is for the court to decide. Thus, the Court and the Tribunal are competent to find out whether the administrative authority has made infringes the rights excessively.

18. It is clear that only the legislature and the administrative authority are given an area of discretion or choice with regard to the proportionality of punishment, but at the same

time, when such action infringes the rights excessively, the same can be set right by courts, by way of the legal dictum of proportionality.

19.In the instant case, as held by the Administrative Tribunal, minor lapses of the first respondent have been exaggerated by the petitioners and major punishment of removal from service has been imposed. Though the first respondent preferred an appeal and then sought relief before the Administrative Tribunal and before this Court, remedy was not available to him. We are of the considered view that the court should also consider the Maxin, 'ubi jus ibi remedium', the meaning is, where there is a right, there is a remedy. The exorbitant punishment imposed on the first respondent certainly infringed the rights of the first respondent excessively, at the same time, it would over burden the petitioners directing to pay back wages for about 19 years.

20. Considering the arguments advanced by both the learned counsel, we are of the considered view that it would meet the ends of justice, if it is balanced as per the legal concept of proportionality and accordingly holding it proper that awarding a minimum compensation of Rs.1,00,000/- (Rupees One lakh only) in favour of the first respondent would be reasonable, since the first respondent has been victimised by excessive punishment. If the petitioner has not attained superannuation, he should be reinstated in service forthwith with continuity of service and other attendant benefits, except the back wages for the period actually not rendered his service.

21. It is made clear that though we declined to grant back wages, it is clarified that what ever benefits available / eligible during the pendency of the writ proceedings shall be paid to the first respondent, apart from the compensation of Rs.1,00,000/- (Rupees One lakh only) awarded in this writ petition.

22. With the above observations, the writ petition is disposed of. No costs.

tsvn

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government
   Home [Transport II] Department,
   State of Tamil Nadu
   Fort St. George,
   Chennai - 600 009.

2. The Transport Commissioner
   Chepauk,
   Chennai - 600 005.

3. The Registrar
   Tamil Nadu Administrative Tribunal
   Chennai - 600 104.

+ 1 cc to the Government Pleader, SR No.29971

+ 1 cc to Mr. P. Srinivas, Advocate SR No. 29585

+ 1 cc to Mr. B. S. Gnanaderikan, Advocate SR No. 29389

Order in
W.P.No.10921 of 2004

VRK(CO)
SR/6.6.2007