

Madras High Court

A. Veeriyar Perumal vs The Secretary To Government, ... on 20 July, 2006

Equivalent citations: (2006) 4 MLJ 335

Author: D Murugesan

Bench: A Shah, D Murugesan

JUDGMENT D. Murugesan, J.

1. The appellant joined in the Medical Department on 4.8.66. He was issued with a Charge Memo dated 28.5.99 containing six charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules. As all the charges were held to be proved in the enquiry, finally, the Government in G.O.(D) No. 1074, Health and Family Welfare (I-1) Department dated 5.10.2004 imposed the punishment of Censure on the appellant. He was also issued with another Charge Memo dated 14.12.99 containing one charge, which was also held to be proved. Finally the Government in G.O.(D) No. 214, Health and Family Welfare (I-1) Department dated 17.3.2006 imposed the punishment of Censure. The appellant was also issued with another Charge Memo dated 30.6.99 containing twelve charges. In the enquiry all the charges were held to be proved, as could be seen from the report of the enquiry officer dated 2.2.2002. While the matter was pending before the Government, a clarification was sought regarding the retirement of the appellant on medical invalidation. However, the Government refused to retire the appellant from service on the ground that the orders are to be passed in respect of the Charge Memo dated 30.6.99. Ultimately, by order dated 11.7.2006, the appellant was permitted to retire from service on medical invalidation with effect from 22.2.2002 A.N. without prejudice to the disciplinary proceedings pending against him with a further direction permitting the appellant to draw provisional pension at the rate of Rs. 3,255/-.

2. We have heard the learned Counsel for the appellant and the learned Government Pleader for the respondent.

3. Insofar as the punishments of Censure imposed on the appellant on 5.10.04 and 17.3.2006, we are of the considered view that those punishments are liable to be set aside in view of the fact that they were inflicted even after holding that the appellant was mentally unsound when he had committed the misconduct, as contained in both the Charge Memos dated 28.5.99 and 14.12.99. Hence we set aside both the orders imposing punishment of Censure on the appellant.

4. In view of the above, the only question that remains to be considered is whether the Charge Memo dated 30.6.99 and the final order dated 11.7.2006 permitting the appellant to retire from service on medical invalidation with effect from 22.2.2002 A.N. are valid and could be sustained in the eye of law.

5. By an order dated 11.7.2006, the appellant was permitted to retire from service on medical invalidation. By the proceedings of the Regional Medical Board, Government General Hospital held on 22.2.2002, the Medical Board found that the appellant was unfit to continue in service, as he has a large ischemic infarction left middle cerebral artery territory causing severe aphasia and he is also

hypertensive and diabetic. But for the medical invalidation, the appellant would attain the age of superannuation only on 31.8.2006.

6. On the above facts, it is now to be considered as to whether the appellant could be deprived of the benefit to alternate employment and consequently the salary and other benefits attached to such post on the ground of medical invalidation till the date of superannuation on 31.8.2006.

7. The right of the appellant to continue in employment shall be considered with reference to his right to livelihood. Article 21 of the Constitution of India reads as follows:

Article 21: Protection of life and personal liberty:- No person shall be deprived of his life or personal liberty except according to procedure established by law

8. Article 21 protects "the right to livelihood as an integral facet of right to life". Such right includes the right to live with human dignity. Such human dignity could be achieved only if there is a protection to the employment, of course, subject to disciplinary proceedings.

9. The Apex Court, while considering the absorption of an employee who is physically incapacitated due to disease while in service, in Narendra Kumar Chandla v. State of Haryana and Ors. has held as follows:

Article 21 protects the right to livelihood as an integral facet of right to life. When an employee is afflicted with unfortunate disease due to which, when he is unable to perform the duties of the posts he was holding, the employer must make every endeavour to adjust him in a post in which the employee would be suitable to discharge the duties. Asking the appellant to discharge the duties as a carrier Attendant is unjust. Since he is a matriculate, he is eligible for the post of LDC. For LDC, apart from matriculation, passing in typing test either in Hindi or English at the speed of 15/30 words per minute is necessary. For a clerk, typing generally is not a must. In view of the facts and circumstances of this case, we direct the respondent Board to relax his passing of typing test and to appoint him as LDC. Admittedly, on the date when he had unfortunate operation, he was drawing the salary in the pay scale of Rs. 1400-2300. Necessarily, therefore, his last drawn pay has to be protected. Since he has been rehabilitated in the post of LDC we direct the respondent to appoint him to the post of LDC protecting his scale of pay of Rs. 1400-2300 and direct to pay all the arrears of salary

10. Keeping the disability sustained by the employee while in service and the possibility of the employee losing his livelihood in mind, the Legislature enacted the "Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Section 47 of the said Act reads as under:

47. Non discrimination in Government employments: (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available, or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this Section.

11. Sub-section (1) of Section 47 is clear in terms that "no establishment shall dispense with or reduce in rank, an employee who acquires a disability during his service. In fact under Sub-section (2), there is a right conferred to a person who sustained disablement even for promotion and no establishment shall deny promotion to a person merely on the ground of his disability. In fact, the scope of Section 47 came up for consideration before the Apex Court in the judgment in Kunal Singh v. Union of India 2003 AIR SCW 1013, wherein the Apex Court has held as follows:

An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of Section reads "no establishment shall dispense with, or reduce in rank, an employee who acquires disability during his service". The Section further provides that if an employee after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from Sub-section (2) of Section 47. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purposes of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service.

12. The right to livelihood which is an integral facet of right to life as guaranteed under Article 21, coupled with the protection under Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 entitles the employee who was incapacitated during service for continuance of service in suitable alternative post with same scale of pay drawn by him and other service benefits.

13. From the above discussions, we are of the considered view that the appellant's right to alternate employment cannot be deprived of solely on the ground of medical invalidation, as his right is protected under Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. However, as the appellant is due to retire on 31.8.2006, we are not inclined to direct the respondent to provide him with alternate employment, except directing that the appellant is entitled to pension as per the last drawn salary for the entire period of service calculated till the date of superannuation and the arrears of salary as furnished before us in a sum of Rs. 1,86,608/-.

14. Accordingly, the writ appeal is disposed of with a direction to the respondent to pay the balance salary amount of Rs. 1,86,608/- to the appellant within a period of three months from the date of receipt of a copy of this order and as well pay the pension calculated on the basis of the last drawn salary to the appellant. No costs.