

Madras High Court

Thiru N.Vasudevan vs The Registrar General on 10 July, 2017

In the High Court of Judicature at Madras

Dated : 10.7.2017

Coram :

The Honourable Mr.Justice NOOTY.RAMAMOHANA RAO

and

The Honourable Mr.Justice M.DHANDAPANI

Writ Petition No.17326 of 2017 & WMP.No.18834 of 2017

Thiru N.Vasudevan, District Munsif-
cum-Judicial Magistrate, Pennagaram,
Dharmapuri District.

...Petitioner

Vs

The Registrar General, High Court
of Judicature at Madras, Chennai-104.

...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ

For Petitioner : Sri.T.Mohan for
Ms.Swarnam J.Rajagopalan

For Respondent : Sri.P.K.Rajagopal

ORDER

(Order of the Court was made by NOOTY.RAMAMOHANA RAO,J) This writ petition is directed against the order passed on 01.4.2016 imposing the punishment of withholding one increment for a period of one year without cumulative effect on the writ petitioner.

2. The order dated 01.4.2016 was communicated by the Registrar General of this High Court. The Honourable Administrative Committee, upon finding the explanation offered by the writ petitioner, who was working, at the relevant point of time, as the Principal District Munsif, Gingee, was not satisfactory, decided to proceed against him under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, according to which, orders can be passed by the Disciplinary Authority, wherever it is proposed to impose on a member of a service, any of the penalties specified under Sub-Rules (i), (ii), (iii), (v) and (ix) in Rule 8, such a member of service shall be given a reasonable opportunity of making any representation that he may desire to make and such

representation may be taken into consideration before the order imposing penalty is passed. The above set out penalties are known as minor penalties.

3. The following facts are not in dispute :

The writ petitioner was working, at the relevant point of time, as the Principal District Munsif, Gingee. A complaint dated 11.11.2013 made by one Sri.M.Sakthivelu was received against the officer. It is alleged by the complainant that one Sri.T.H.Vadivelu filed a civil suit seeking a decree to be passed for payment of a debt due by the complainant on the foot of a promissory note said to have been executed by him. The suit appears to have been filed on 17.9.2013. According to the complainant, the case was posted to 27.10.2013. But, it was taken up for hearing on 05.11.2013. It also appears that the complainant Sri.M.Sakthivelu attended the call work and when the matter was called, as per the complaint, the Presiding Officer - the writ petitioner herein had enquired him as to whether he had borrowed money from the plaintiff. As per the complaint, the complainant answered that he has not borrowed the amount.

4. The complaint thereafter proceeds that the Presiding Officer/the writ petitioner herein threatened him saying that he has truly borrowed Rs.50,000/- from the plaintiff and that he should remit the entire suit amount within two months' time, otherwise, the complainant would be imprisoned and hence, the complainant was asked to make an endorsement on the court record admitting the suit claim. As per the complaint, the complainant had left the court wondering as to why he should pay the suit amount to the plaintiff and that too, within two months' time and as to why the judge was asking him to admit the suit claim. It was thereafter the complainant learnt that the suit has been decreed in his absence. He, therefore, prayed in his complaint that suitable action be taken in the matter.

5. It was pursuant to this complaint, action has been initiated by this Court. As a culmination thereof, the Administrative Committee, upon being not satisfied by the explanation offered by the writ petitioner, decided to impose a minor punishment. The decision taken by the Administrative Committee has been placed before the Full Court and the Full Court approved the resolution of the Administrative Committee and consequently, the decision taken by the High Court has been communicated by the Registrar General through the impugned order.

6. Heard Sri.T.Mohan, learned counsel appearing on behalf of the learned counsel for the petitioner on record, at great length.

7. The learned counsel appearing on behalf of the petitioner would attack the impugned order for more than one reason. He would submit that the writ petitioner has merely followed the guidelines issued from time to time for disposal of the civil cases and that he has not committed any misconduct while deciding the case that was brought before him, that for his judicial conduct and an order passed on the Judicial Side, he cannot be subjected to any disciplinary action and that while initiating disciplinary action, the instructions passed on through the Official Memorandum bearing R.O.C.No.26/2014 - Con.B2 dated 09.10.2014 of the Madras High Court have not been adhered to or followed. Hence, the impugned order deserves to be set at naught.

8. The learned counsel appearing on behalf of the petitioner would further submit that because of the impugned order of punishment, the case of the petitioner for promotion as a Senior Civil Judge has been unjustly ignored and but for the impugned order of punishment, the record of service of the writ petitioner would have fetched him such a promotion. Therefore, the impugned order has visited the writ petitioner with far greater evil consequences than they appear on record.

9. Since this matter was taken up by us earlier on 07.7.2017, at our request, the learned Standing Counsel for the High Court took notice on behalf of the sole respondent and produced relevant records before us today.

10. At the very outset, we point out the infirmity in settling the parties to this lis. The High Court of Madras has not been impleaded as a party. The decision to impose penalty on the writ petitioner was taken by the High Court of Madras, but not by its Registrar General. The Registrar General is only an Official Communicating Agency, through whom, the decision of the High Court taken on the Administrative Side would get communicated. In spite of the above said infirmity of not impleading proper and absolutely necessary party namely the High Court of Madras, we have proceeded further to consider the matter on merits instead of dismissing this case on such a technical ground.

11. The complaint lodged on 13.11.2013 against the writ petitioner was placed for consideration on the Administrative Side of the then learned Portfolio Judge (V.Dhanapalan,J). The learned Judge passed an order to call for explanation from the officer concerned and to submit the same. Accordingly, the explanation offered by the writ petitioner was placed before another learned Judge (V.Ramasubramanian,J), who was the then Portfolio Judge for Villupuram District. The learned Judge, after recording his opinion that the procedure adopted by the Judicial Officer does not appear to be in accordance with law, called for the entire case papers and A-Diary Extract to examine the genuineness of the complaint in great detail. The learned Judge accordingly passed orders on 05.5.2015. When the entire case papers were later on placed before the same learned Judge, the learned Judge recorded a prima facie satisfaction that the complaint against the writ petitioner appears to be justified and hence, directed the papers to be placed before the Honourable Chief Justice for initiating appropriate disciplinary action against the writ petitioner. That order was passed on 30.10.2015.

12. The Honourable Chief Justice, after considering the entire matter in detail, passed an order on 27.11.2015 to place the matter before the Administrative Committee. The Administrative Committee, at its meeting held on 08.12.2015, resolved to proceed against the writ petitioner in terms of Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. As per the resolution of the Administrative Committee, a show cause notice was drawn against the writ petitioner on 04.1.2016. The writ petitioner furnished his explanation thereto on 18.1.2016. Thereafter, the entire matter was placed for consideration of the Administrative Committee, which, at its meeting held on 09.3.2016, found the explanation submitted by the writ petitioner as not satisfactory and hence, decided to reject the same. The Administrative Committee also resolved to impose on the writ petitioner a punishment of withholding one increment for one year without cumulative effect. The resolution of the Administrative Committee has been placed for consideration of the Full Court of the High Court at its meeting held on 29.3.2016 at 5 PM. Excepting S.Palanivelu,J, all other learned Judges of the

High Court attended the said meeting and they unanimously resolved to approve the minutes of the Administrative Committee meeting dated 09.3.2016. Accordingly, the punishment of withholding of one increment for a period of one year without cumulative effect came to be imposed on the writ petitioner. That decision of the High Court of Madras is what has been communicated through the impugned proceedings by its Registrar General.

13. We deal with the first technical objection raised by the learned counsel for the petitioner that the disciplinary action taken against the writ petitioner is contrary to the instructions contained in the Official Memorandum bearing R.O.C.No.26/2014 - Con.B2 dated 09.10.2014. It is no doubt true that the Official Memorandum dated 09.10.2014 of the High Court has laid down the guidelines for taking cognizance of complaints received against the Judicial Officers complaining about their judicial orders.

14. The point to be noted here is that much prior to 09.10.2014, action has already been initiated against the writ petitioner based upon the complaint dated 11.11.2013 made against the writ petitioner. Therefore, setting at naught the proceedings, which were initiated much prior to 09.10.2014, on the alleged ground of non adherence to the said guidelines-circular conveyed in the Official Memorandum dated 09.10.2014, simply does not arise. Hence, the objection in this regard is without any merit. At any rate, the circular instructions dated 09.10.2014 lay down the procedure to be followed, but it does not lay down any substantial right.

15. We take up the next submission of the learned counsel appearing on behalf of the writ petitioner that the conduct of a Presiding Officer in passing a particular judicial order cannot be made the subject matter of disciplinary proceedings. The learned counsel has also pressed into service the judgment of the Supreme Court in the case of Ramesh Chander Singh Vs. High Court of Allahabad [reported in 2007 (4) SCC 247] where in paragraph 11, it has been held as follows :

"We fail to understand as to how the High Court arrived at a decision to initiate disciplinary proceedings solely based on the complaint, the contents of which were not believed to be true by the High Court. If the High Court were to initiate disciplinary proceedings based on the judicial order, there should have been strong grounds to suspect officer's bona fides and the order itself should have been actuated by malice, bias or integrity."

The point to be noted from the above judgment is that so long as there are no strong grounds to suspect the officer's bona fides, the decision to initiate disciplinary proceedings against a Judicial Officer for the judicial work should not be normally undertaken.

16. From the narration of facts made by us supra, the disciplinary action against the writ petitioner has not been initiated either mechanically or for the mere asking by the complainant. The High Court has carefully studied the entire matter. After the explanation was called for from the officer initially, the matter was once again studied by the then learned Portfolio Judge of Villupuram District. Not finding the explanation of the writ petitioner satisfactory, the entire case papers including A-Diary Extract from the Court below were called for. They were examined. It is only thereafter a strong suspicion about the conduct of the Judicial Officer has arisen in the mind of the

learned Portfolio Judge and accordingly, the matter was placed before the Honourable Chief Justice for consideration, who, in turn, placed the papers for consideration of the Administrative Committee.

17. The Administrative Committee, upon a careful scrutiny of the entire material, suspected that there was something amiss in the entire episode. Thus, the disciplinary proceedings came to be initiated against the writ petitioner only upon studying carefully the entire case papers and upon a strong suspicion that the conduct of the Judicial Officer in passing a particular order lacks bona fides. Therefore, the principle enunciated by the Supreme Court in Ramesh Chander Singh's case has, in fact, been followed meticulously in the above case.

18. We have also independently applied our mind to the grounds urged by the learned counsel for the petitioner. We are conscious that the order passed by a Presiding Officer of a Court should normally be tested only on the Judicial Side, but it shall not be examined for its correctness or sustainability generally or normally on the Administrative Side of a Superior Court. We are also conscious that every disappointed party tends to make one allegation or the other against the Presiding Officer, whose judgment has gone contrary to his wishes. Therefore, entertaining complaints about the judicial order passed by a Presiding Officers, if were to be liberally entertained, it would open up a Pandora's box, if not, a bottomless pit.

19. The precious little time available to the Presiding Officer would then be entirely consumed only in offering their explanations instead of concentrating and carrying on with the balance work load. Therefore, orders passed by Presiding Officers or judgments rendered by the Courts are not normally made the subject matter of disciplinary proceedings unless the conduct of the officer in the process of passing such an order or judgment does not exactly meet the standards required to be maintained by a Judicial Officer. Every Judicial Officer is expected to maintain complete neutrality in every matter that is brought before him for his consideration.

20. A Judicial Officer is not supposed to take sides in favour of one party or the other and then proceed to deciding the lis brought before him. Even if he has arrived at a correct conclusion in deciding the lis, the partisan attitude adopted in doing so would not meet the standard expected of a Judicial Officer. The Courts have consistently been following the principle that justice must not only be done, but must appear to have been so done. Therefore, the standard of a reasonable person has got to be taken into account and consideration. We go by that standard and judge the conduct of the writ petitioner in the instant case.

21. There is no dispute that the suit in O.S.No.179 of 2013 on the file of the Principal District Munsif Court, Gingee, Villupuram District was instituted on 17.9.2013 based upon a promissory note. The notice was set to return on 27.10.2013. The matter was taken up for consideration during the call work on 05.11.2013. Even according to the Presiding Officer, he has put a question to the complainant - the sole defendant in the suit as to whether he was admitting the suit claim or not. According to the writ petitioner, the sole defendant admitted the suit claim, but prayed time to make the repayments. It is thereafter what has happened, we prefer to describe in the own words of the writ petitioner as follows :

"He admitted the suit claim and sought time to make payments. The case was passed over and the defendant was directed to enclose his submission in writing. But, the defendant did not make any endorsement nor was he present, when the matter was again taken up at 12 PM, 3 PM and 5.30 PM. Hence, in view of the oral submission made before this Court, the suit is decreed as prayed for with costs. The defendant is granted two months' time to make payment."

22. In the words of the writ petitioner - Presiding Officer, he asked the sole defendant to make an endorsement on the docket of the court file that he is admitting the suit claim and for that purpose, he passed over the matter during the call work. Thus, the admitted position is that during the call work, the writ petitioner - Presiding Officer did not pass the judgment and decree. He afforded an opportunity to the defendant to make an endorsement admitting the suit claim. If the defendant had made any such endorsement admitting the suit claim, there would not have been anything improper in the Presiding Officer decreeing the suit. But, in the instant case, the Presiding Officer/writ petitioner has admitted that no such endorsement was made by the defendant admitting the suit claim. In such an event, how unsafe it is to rely upon an oral submission said to have been made by a party during the call work, for a decree to be drawn hours later on and that too when he was not present in the Court.

23. Admittedly, judgment was not passed and decree was not drawn during the call work. The matter was passed over. Again when it was called at 12 PM, 3 PM and 5.30 PM, the defendant was not present. Then, passing a judgment and decree at that hour in the absence of the defendant is certainly improper. The Court time was up by then. It sends a wrong message across. When a party is not present to make an endorsement as suggested by the Presiding Officer, relying upon an oral admission of a party for drawing a judgment and decree is fraught with risk and danger leading to a possible error. Therefore, by his own conduct, the writ petitioner - Presiding Officer of the Court has left great room to suspect his bona fides.

24. More importantly, if a party at the very first instance admits the suit claim and prays for time, the Presiding Officer is supposed to draw a deferred decree providing for instalments for paying the suit claim. Seldom a Presiding Officer would also award complete suit costs, when, at the very first instance, the opposite party admits the suit claim. One can understand costs to the extent of the court fee paid thereon being allowed completely or at least the Court directing a certain percentage of the court fee to be refunded for the admission made by the defendant.

25. In the instant case, the suit was decreed in toto with costs. There is no examination on the part of the Court independently as to whether the suit claim is otherwise allowable at all. There is also no examination that the pronote, on the foot of which, the suit is filed, is inspiring the confidence in the mind of the Court to accept the same. Further, there is no examination made by the writ petitioner - Presiding Officer as to whether the interest claim in the suit is reasonable or not. There is no endorsement either that the plaintiff was present all through either.

26. For the aforesaid reasons, we see no merit in the writ petition and accordingly, we have no hesitation to dismiss the writ petition. Hence, the writ petition is dismissed. Consequently, the above WMP is also dismissed.

27. Before we part with the case, we must also note that a word of caution was administered to the writ petitioner by us on the last occasion that if we were to set aside a simple order of punishment, which is a minor punishment as per Rule 8 of the said Rules and if the disciplinary proceedings were to be drawn afresh again, there is no guarantee that this time around the proceedings need be confined leading only upto imposition of minor punishment. But, in spite of that, the writ petitioner, we believe, instructed the learned counsel to proceed with the matter regardless. Hence, we dealt with the issue at length. If one were to follow the standard adopted by the writ petitioner, the writ petition should be dismissed with exemplary costs. But, we exercise our discretion in the matter and leave him to bear his own costs.

10.7.2017 Speaking Order Index : Yes Internet : Yes To The Registrar General, High Court of Judicature at Madras, Chennai-104.

RS NOOTY.RAMAMOHANA RAO,J AND M.DHANDAPANI,J RS WP.No.17326 of 2017 & WMP.No.18834 of 2017 10.7.2017