

PETITIONER:
THE MANAGING DIRECTOR, MADRASMETROPOLITAN WATER SUPPLY ANDSE

Vs.

RESPONDENT:
R.RAJAN ETC.

DATE OF JUDGMENT28/11/1995

BENCH:
JEEVAN REDDY, B.P. (J)
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JEEVAN REDDY, B.P. (J)
MAJMUDAR S.B. (J)

CITATION:
1996 SCC (1) 338 JT 1995 (8) 447
1995 SCALE (6)723

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

B.P.JEEVAN REDDY,J.

Leave granted. Heard counsel for the parties.

These appeals are preferred against the judgment of the Division Bench of the Madras High Court disposing of writ appeals, preferred by the respondents, with certain directions.

The respondents, R.Rajan and C.A.Rajan, are the Secretary and President respectively of the Association of Assistant Engineers in the service of the Madras Metropolitan Water Supply and Sewerage Board (The Board). Disciplinary action has been initiated against them under the Madras Metropolitan Water Supply and Sewerage Board Employees (Discipline and Appeal) Regulations, 1978 (Regulations). After the receipt of the Enquiry Officer's report, the General Manager of the Board issued notices to the respondents calling upon them to submit their defence, if any within seven days of the receipt of the said notices. A copy of the Enquiry Officer's report along with depositions of witnesses was enclosed to the said notices. At that stage, the respondent approached the Madras High Court by way of writ petitions contending that the Board is bent upon dismissing them from service, that they were being victimised for union activities and that the General Manager who has issued the aforesaid notices has no jurisdiction to impose the punishment of dismissal. They also raised several grounds with respect to the regularity and validity of the manner in which the enquiry against them was conducted. The appellants (respondents in the writ petitions) opposed the writ petitions inter alia on the ground that the High Court ought not have interfered at that stage of disciplinary proceedings. They denied the charges of victimisation or unfair labour practice levelled by the respondents. They also denied that the Board had already made up its mind to dismiss the respondents. While affirming the power of the

General Manager to impose the penalty of dismissal upon the respondents, the learned counsel for the Board appears to have stated before the learned Single Judge that the Board does not propose to impose the punishment of dismissal on the respondents (writ petitioners) even if the charges against them are established - vide Para 29 of the judgment of the learned Single Judge.

The learned Single Judge dismissed the writ petitions on the ground that no interference is called for at that stage of the disciplinary proceedings but observed at the same time that "even if the charges are held proved against the petitioners, the punishment of dismissal from service shall not be imposed on the petitioners in the light of the statement made on behalf of the respondents". (In the above extract, the expression "petitioners" means the writ petitioners who are respondents in these appeals and the expression "respondents" means the appellants herein.)

The respondents filed two writ appeals against the judgment of the learned Single Judge. The Division Bench was also of the opinion that at the present stage of disciplinary proceedings, no interference is warranted by the Court under Article 226 of the Constitution of India. The Bench observed that "this is not the stage at which the Court can issue a direction as to what punishment should be imposed and what not". But then, it noted, "however, in the light of the assertion on the part of the Managing Director that he has powers to impose a penalty of compulsory retirement, it becomes necessary to indicate what are his powers relating to the officers having revised pay scales of Rs.2000-760-2300-75-3200-100-3500."* The Bench examined the relevant regulations, the old and the revised pay scales and concluded that the Managing Director is not competent to impose the penalty of dismissal or compulsory retirement upon the respondents. The Division Bench held:

"The Managing Director is not competent authority to impose penalties mentioned in (f), (g) and (h), viz., with-holding otherwise than on attaining the age of superannuation and dismissal from service respectively. According to the regulations, Board is the competent authority to impose penalties mentioned in (f) and (g) and Government is the competent authority to impose the penalty mentioned in (h)."

*The respondents are in this pay scale.

The writ appeals were accordingly disposed of with the above observations.

In the present appeals preferred by the Board, the holding of the Division Bench with respect to the powers of the Managing Director is called in question.

As rightly held by the learned Single Judge and the Division Bench, no interference was called for at an interlocutory stage of the disciplinary proceedings. The enquiry was no doubt over but the competent authority was yet to decide whether the charges against the respondents are established either wholly or partly and what punishment, if any, is called for. At this stage of proceedings, it was wholly unnecessary to go into the question as to who is competent to impose which punishment upon the respondents. Such an exercise is purely academic at this age of the disciplinary proceedings. So far as the learned Single Judge is concerned, he did not examine the regulations nor did he record any finding as to the powers of the General Manager,

the Board or the Government, as the case may be. He merely directed that in view of the statement made by the learned counsel for the Board, the punishment of dismissal shall not be imposed upon the respondents even if the charges against them are established. When the respondents filed writ appeals, the Division Bench was also of the opinion that this was not the stage to interfere under Article 226 of the Constitution nor was it a stage at which one should speculate as to the punishment that may be imposed. But it appears that the Board insisted upon a decision on the question of power. It is because of the assertion on the part of the appellants (that the Managing Director has the power to impose the penalty of compulsory retirement) that the Division Bench examined the question of power on merits. The said assertion of the Managing Director that he has the power to impose the punishment of compulsory retirement probably created an impression in the mind of the Court that the Board has already decided to impose the said punishment upon the respondents and probably it is for the said reason that they examined the said question on merits. (Insofar as the respondents are concerned, it was their refrain throughout that the Board had already decided to impose the punishment of dismissal/compulsory retirement upon them and that the enquiry and all the other proceedings were merely an eye-wash.)

While we agree that expression of any opinion on the question of powers of the Managing Director, the Board or the Government in the matter of imposition of penalties under the regulations was unnecessary at this stage, we are of the opinion that the Board cannot complain of it when it itself has invited the decision of the Division Bench on the said question. On our part, we refuse to make any pronouncement on such an academic question at this stage and leave it open. Accordingly, we dismiss these appeals without expressing any opinion on the correctness or otherwise of the holding of the Division Bench with respect to the powers of the Managing Director, the Board or the Government in the matter of imposition of punishments/penalties upon the respondents under the aforesaid regulations. We only affirm the view of the learned Single Judge and the Division Bench that at this stage of the disciplinary proceedings, no interference is warranted by the High Court under Article 226 of the Constitution.

No costs.