



W.A.(MD).No.885 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 18.12.2023

CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MRS.JUSTICE L.VICTORIA GOWRI

W.A.(MD).No.885 of 2023
and C.M.P.(MD) No.7068 of 2023

1.The State of Tamil Nadu,
Represented by its Principal Secretary,
Department of Municipal Administration and Water Supply,
Fort St.George,
Chennai – 600 009.

2.The Commissioner / Director of Municipal Administration,
Ezhilagam Annex, 6th Floor,
Kamarajar Salai, Chepauk,
Chennai – 600 005.

.. Appellants/Respondents 1 & 2

Vs.

1.M.Srinivasa Raghavan

... 1st Respondent/Writ Petitioner

2.The Municipal Commissioner,
Dharapuram Municipality,
Thirupur District.

4.The Commissioner,
Padmanabhapuram Municipality,
Thuckalay – 629 175,
Kanyakumari District.

... Respondents 2 & 3/
Respondents 3 & 4



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PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order dated 02.01.2023 in W.P.(MD) No.24773 of 2019 on the file of this Court.

For Appellants : Mr.Veera Kathiravan
Additional Advocate General,
Assisted by Mr.T.Amjadkhan
Government Advocate

For Respondents : Mr.Ragadeesh Kumar for R1

Mr.P.Srinivas,
Standing Counsel for R2

JUDGMENT

(Judgment of the Court was delivered by S.M.SUBRAMANIAM,J.)

The Writ Appeal has been instituted against the order dated 02.01.2023 in W.P.(MD) No.24773 of 2019.

2. The State preferred the present appeal challenging the order of the learned Single Judge dated 02.01.2023, setting aside the punishment of compulsory retirement imposed on the first respondent and to reinstate him with 50% back wages.



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3. Learned Additional Advocate General appearing on behalf of the appellants would submit that the first respondent was holding the post of Assistant Engineer in Dharapuram Municipality, in Tirupur District and subsequently transferred to Padmanabhapuram Municipality at Kanyakumari District. A charge memo was issued against the first respondent / writ petitioner. Originally three charges were framed and the first charge was dropped against the delinquent officials. Against the first respondent / writ petitioner charge No.2 was framed. The said charge reads as under:-

“That actuated by corrupt motive and in abuse of official position and authority while you (AO-1) Tmt.G.Chitra, working as Commissioner, Dharapuram Municipality, Erode District and you (AO-2) Thiru.M.Srinivasa Raghavan, while working as Assistant Engineer, Dharapuram Municipality, Erode District, you (AO-1) Tmt.G.Chitra, on 5.10.2004 at your office - (I) demanded Rs.6,000/- as bribe from Thiru.Devaraj S/o.Ayyasamy, 55 MSP Nagar, Dharapuram, Erode District for issuing the cheque for Rs. 88,525/- towards first and part payment for the contract work of the construction of Sanitary Complex under Centrally sponsored scheme by name VAMBAY scheme at Devendra Street, Dharapuram taken in the name of his wife Tmt.Sumitha and



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directed him to pay the amount to (AO-2) Thiru.Srinivasa Raghavan, Assistant Engineer, Dharapuram Municipality, in pursuance of the said demand on 5.10.2004, you (AO-2) Thiru.M.Srinivasa Raghavan accepted Rs.6,000/- on behalf of you (AO-1) at your office and on 4.7.2005 you (AO-2) at your office demanded Rs.14,000/- as bribe for (AO-1) and as Rs.6,000/- for yourself from Thiru.Devaraj S/o. Ayyasamy, 55, MSP Nagar, Dharapuram, Erode District for issuing the cheque for Rs. 1,92,216/- towards the 2nd and final payment for Rs.14,000/- as bribe for yourselves and in pursuance of the above demand on 14.7.2006 you (AO-2) at your office accepted Rs.14,000/- for (AO-1) and Rs.6,000/- for yourselves as bribe from Thiru.Devaraj S/o. Ayyasamy, 55 MSP Nagar, Dharapuram, Erode District.

ii) You (AO-1) Tmt.Chitra on 14.12.2004 at your office demanded Rs.3500/- as bribe from Thiru. Devaraj for issuing the work order in the name of his wife Tmt.Sumitha for the contract work of Repair and Maintenance of Noon Meal Centre at Kottaimedu, Dharapuram worth Rs.35,000/- and reduced it to Rs. 2800/- in pursuance of the said demand you (AO-1) on 21.12.2004 at your office accepted Rs.2800/- as bribe from Thiru.Devaraj.”

Since the allegations are relating to illegal demand and acceptance of illegal gratification, the Government referred the matter for conducting enquiry by



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the Tribunal for Disciplinary Proceedings. The Tribunal for Disciplinary Proceedings conducted an enquiry by affording opportunity to all the parties and submitted a final report which is elaborate in proceedings dated 28.08.2014.

4. Learned Additional Advocate General would rely on the facts established by the prosecution by the Tribunal for Disciplinary Proceedings and contended that charge - 2 against the first respondent / writ petitioner has been proved beyond doubt. Since the allegations were serious and relating to acceptance of illegal gratification and considering the facts and circumstances the punishment of compulsory retirement was imposed on the first respondent / writ petitioner.

5. Learned Additional Advocate General would contend that the learned Single Judge has appreciated the evidences recorded by the Tribunal for Disciplinary proceedings which is beyond the scope of power of judicial review. Re-appreciating the evidence by sitting in the place of an appellate authority is improper and therefore, the order of learned Single Judge is liable to be set aside.



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6. In support of the contentions, learned Additional Advocate General

relied on the Judgment of the Supreme Court of India in the case of ***Union of India and others v. Subrata Nath*** reported in ***2022 LiveLaw (SC) 998***.

The Supreme Court considered the principles and held that the High Court is not or cannot act as a Second Court of First appeal. The scope of Judicial Review under Article 226 / 227 of the Constitution of India also has been settled by the Supreme of India in the above judgment. Relying on the principles, the learned Additional Advocate General seeks to assail the order impugned.

7. Learned counsel for the first respondent would oppose the submission made by the Additional Advocate General mainly on the ground that there is no evidence to prove the demand and acceptance of illegal gratification against the first respondent. Learned Additional Advocate General only referred the statements made by the prosecution, therefore, the same need not be considered.



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8. The order of compulsory retirement passed by the appellant is also cryptic in nature and no reason has been assigned for imposing the penalty of compulsory retirement. Except recording the findings of the Tribunal for Disciplinary Proceedings, the Government has not gone into the facts and circumstances as well as the objections submitted by the first respondent against the findings in the enquiry report. Thus, the learned Single Judge is right in setting aside the punishment of compulsory retirement. When there is no direct evidence against the first respondent proving, the allegations of corruption, the learned Single Judge considered the same and granted the relief.

9. We have carefully considered the arguments as advanced before us and the materials available on record.

10. Undoubtedly, the charges are serious in nature. Demand and acceptance of illegal gratification was the allegation and based on the complaint by an aggrieved person, the departmental disciplinary proceedings were instituted and a charge memo was issued. Charge No.1



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was dropped. Charge Nos.2 and 3 were proceeded against the delinquent officials. As far as the first respondent is concerned charge No.2 alone is held as proved.

11. The Tribunal for Disciplinary Proceedings conducted a trial natured proceedings by following the procedures as contemplated under the Rules. Parties were afforded an opportunity to establish their case. Since it is a trial natured proceedings and the Tribunal for Disciplinary Proceedings is a specialized Tribunal constituted to deal with the corruption cases, the Government formed an opinion with reference to the proved charges and accepted the finding of the Tribunal for Disciplinary Proceedings for its report.

12. As rightly pointed out by the learned counsel for the first respondent that certain statements on the side of prosecution alone cannot be considered by the competent authority while imposing the penalty. However, in the present case the Tribunal for Disciplinary Proceedings has gone into the facts with reference to the documents, evidences and



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depositions of the witnesses and formed an opinion that Charge No.2 is held as proved against the first respondent / writ petitioner. The analysis made by the Tribunal for Disciplinary Proceedings would be sufficient to form an opinion that the documents and evidences were considered for the purpose of holding that the charge Nos.2 and 3 held as proved.

13. Let us now consider the power of judicial review under Article 226 of the Constitution of India. The power of judicial review is to scrutinize the processes through which a decision has been taken by the competent authority in consonance with the Statutes and Rules in force, but not the decision itself. Therefore, High Court cannot expand the scope of judicial review so as to re-appreciate the evidences recorded in departmental disciplinary proceedings. Departmental disciplinary proceedings cannot be equated with Criminal trial. The procedures for criminal trial and departmental proceedings are different and distinct. High standard of proof is required to convict a person under Criminal law, however, preponderance probability would be enough to punish a public servant under the Discipline and Appeal Rules. Therefore, various circumstances, certain evidences



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recorded regarding demand and acceptance of illegal gratification would be enough to impose a penalty under the discipline and Appeal Rules. The preponderance of probability can be considered by analysing the circumstances and the other factors placed before the enquiring authority. In the present case, the enquiring authority is the Tribunal for Disciplinary Proceedings, who in turn gone into the evidences based on the deposition of witnesses. Therefore, we do not find any infirmity in respect of order of compulsory retirement passed accepting the findings of the Tribunal for Disciplinary Proceedings in its report.

14. Regarding the legal position in disciplinary matters the Supreme Court in the case of ***Subrata Nath*** (cited supra) has settled in paragraphs 16, 18 to 20 which reads as under:-

“16. In the above context, following are the observations made by a three-Judge Bench of this Court in ***B.C. Chaturvedi v. Union of India and Others*** [(2017) 4 SCC 507] :

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives



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fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of [Evidence Act](#) nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as



no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. [In Union of India v. H.C. Goel \[\(1964\) 4 SCR 718\]](#) this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.

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18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High



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Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

[Emphasis laid]

...

18. In Chairman & Managing Director, V.S.P. and Others v. Goparaju Sri Prabhakara Hari Babu [(2015) 2 SCC 610], a two Judge Bench of this Court referred to several precedents on the Doctrine of Proportionality of the order of punishment passed by the Disciplinary Authority and held that :

“21. Once it is found that all the procedural requirements have been complied with, the courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. The superior courts only in some cases may invoke the doctrine of proportionality. If the decision of an employer is found to be within the legal parameters, the jurisdiction



would ordinarily not be invoked when the misconduct stands proved.”

19. Laying down the broad parameters within which the High Court ought to exercise its powers under [Article 226/227](#) of the Constitution of India and matters relating to disciplinary proceedings, a two Judge Bench of this Court in [Union of India and Others v. P. Gunasekaran \[\(2015\) 2 SCC 610\]](#) held thus :

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;



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- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- (i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) reappreciate the evidence;
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii) go into the adequacy of the evidence;
- (iv) go into the reliability of the evidence;
- (v) interfere, if there be some legal evidence on which findings can be based.



- (vi) correct the error of fact however grave it may appear to be;
- (vii) go into the proportionality of punishment unless it shocks its conscience.”

20. In *Union of India and Others v. Ex. Constable Ram Karan* [(2022) 1 SCC 373], a two Judge Bench of this Court made the following pertinent observations :

“23. The well-ingrained principle of law is that it is the disciplinary authority, or the appellate authority in appeal, which is to decide the nature of punishment to be given to the delinquent employee. Keeping in view the seriousness of the misconduct committed by such an employee, it is not open for the courts to assume and usurp the function of the disciplinary authority.

24. Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the court, normally the disciplinary authority or the appellate authority should be directed to reconsider the question of imposition of penalty. The scope of judicial review on the quantum of punishment is available but with a limited scope. It is only when the penalty imposed appears to be shockingly disproportionate to the nature of misconduct that the courts would frown upon. Even in such a case, after setting aside the penalty order, it is to be left to the disciplinary/appellate authority to take a call and it is not for the court to substitute



its decision by prescribing the quantum of punishment. However, it is only in rare and exceptional cases where the court might to shorten the litigation may think of substituting its own view as to the quantum of punishment in place of punishment awarded by the competent authority that too after assigning cogent reasons.”

15. Yet another ground raised by the first respondent writ petitioner is that the Government has not assigned any reason independently for the purpose of imposing the punishment of compulsory retirement.

16. A careful perusal of the order of the Government would reveal that the Government examined the charges framed against the delinquent officers, defence statements, findings of the Commissioner for Disciplinary proceedings. The very reference about the enquiry report of the Tribunal for disciplinary proceedings would be sufficient and moreso, the Government considered imposing the penalty of compulsory retirement taking note of fact that there is no direct evidence of acceptance of bribe by the first respondent / writ petitioner. That exactly the reason why the punishment of



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compulsory retirement was imposed. If it is a straight case of demand and acceptance of bribe and it is proved, then the punishment normally would be dismissal from service. In present case the Government has stated that they have considered the finding of the enquiry officer and decided to inflict the punishment of compulsory retirement against the first respondent / writ petitioner. This itself is a lenient view taken by the Government. Since the first respondent would be eligible to receive the terminal and pensionary benefits, including pension as applicable. Since the Government itself has taken a lenient view in the present matter, we do not think any further concession is required and the learned Single Judge has appreciated the evidence, which is beyond the scope of power of judicial review. Such appreciation lead into setting aside the punishment of compulsory retirement.

17. Any lenient view in the matter of corruption is impermissible. In the present case no direct evidence was made available, but circumstantial evidence were taken into consideration by the Tribunal for Disciplinary Proceedings. The said circumstances were taken into consideration by the



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Government and by taking a lenient view, punishment of compulsory retirement was imposed. Thus, we are inclined to consider the Writ Appeal.

18. Accordingly, the impugned order dated 02.01.2023 in W.P.(MD) No.24773 of 2019 stands set aside and the Writ Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

(S.M.S.,J.) (L.V.G.,J.)
18.12.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
SJ

To

1.The State of Tamil Nadu,
Represented by its Principal Secretary,
Department of Municipal Administration and Water Supply,
Fort St.George,
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2.The Commissioner / Director of Municipal Administration,
Ezhilagam Annex, 6th Floor,
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