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Writ Appeal Nos.1275 & 1276 of 2012
and W.P.No.22270 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.02.2024

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU

Writ Appeal Nos.1275 & 1276 of 2012
and W.P.No.22270 of 2009
and M.P.Nos.1 and 2 of 2012

W.A.Nos.1275 & 1276 of 2012

1. The State of Tamil Nadu,
Rep. By the Secretary to Government,
Commercial Taxes & Registration Department,
Fort St. George, Chennai – 9.
2. The Special Commissioner &
Commissioner Treasuries and Accounts,
Panagal Building, Saidapet,
Chennai – 15.
(Now the Commissioner
Treasuries & Accounts,
Chennai – 15.) ... Appellants in W.A.Nos.1275 & 1276/2012

Vs.

M.Mangayarkarasi .. Respondent in W.A.No.1275/2012

M.Jayalakshmi .. Respondent in W.A.No.1276/2012



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and W.P.No.22270 of 2009

PRAYER: Writ Appeals filed under Clause 15 of Letters Patent, to set aside the order dated 24.01.2012 made in W.P.Nos.5951 and 5952 of 2009.

W.P.No.22270 of 2009

M.Muthuramalingam

.. Petitioner

vs.

1. Government of Tamil Nadu

Represented by

Secretary to Government,

Commercial Taxes and Registration Department,

Secretariat, Chennai – 600 009.

2. Government of Tamil Nadu,

Secretary to Government,

Finance Department, Secretariat,

Chennai – 600 009.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus, to call for the records culminating in the impugned GO.Ms.No.117, Commercial Taxes and Registration, dated 01.12.2008 issued by the first respondent and quash the same and direct respondents to treat me as deemed to have been retired on superannuation with all attendant benefits.

For Appellants
[in both W.As.]

: Mr.Haja Nazirudeen
Additional Advocate General
assisted by Mr.M.Venkateswaran
Special Government Pleader
(Taxes)



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For Respondent : Mr.R.Prem Narayan
[in both W.As.]

For Petitioner : Mr.S.Namasivayam
[in W.P.No.22270 of
2009]

For Respondents [in : Mr.Haja Nazirudeen
W.P.No.22270 of Additional Advocate General
2009] assisted by Mr.M.Venkateswaran
Special Government Pleader
(Taxes)

COMMON JUDGMENT

(Judgment of the Court was delivered by R.SURESH KUMAR,J.)

Since the issue involved in these writ appeals as well as the writ petition is one and the same, with the consent of the learned counsel appearing for the parties, all these cases are disposed of by this common order.

2. The facts in nutshell in all these cases reads thus:

The respondent in W.A.No.1275 of 2012 viz., M.Mangayarkarasi was working as Superintendent and the respondent in W.A.No.1276 of 2012 viz., M.Jayalakshmi was working as Selection Grade Accountant and the petitioner in W.P.No.22270 of 2009 viz., Muthuramalingam was Working as Treasury Officer during the relevant point of time at Salem Treasury Office.



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3. While they were working so, against all the three and some other employees in the same office, disciplinary proceedings were initiated and charge memos have been served on them. Pursuant to the charge memo dated 09.07.2002, enquiry was conducted by the Enquiry Officer appointed in this regard, where the documents, which were relied upon by the prosecution side alone had been placed as evidence and no oral witnesses or evidence had been listed.

4. Based on the documentary evidence produced by the Department/ prosecution against each of the delinquent the respective charges framed against them, according to the Enquiry Officer, had been found to be proved except only one charge in respect of said Muthuramalingam.

5. Before the disciplinary proceedings were concluded all the three have superannuated on the following dates:

1. Mangaiyarkarasi superannuated on 31.01.2007;
2. Jayalakshmi superannuated on 30.04.2004; and
3. Muthuramalingam superannuated on 31.05.2008



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6. Therefore the disciplinary proceedings ended in a punishment, where the punishment of dismissal of service have been imposed against all these delinquents.

7. In respect of Mangayarkarasi, the punishment was awarded on 24.12.2008, against Jayalakshmi on 05.02.2009 and against Muthuramalingam on 01.12.2008.

8. Challenging the said punishment, they filed writ petitions. Insofar as the writ petition filed by the Mangayarkarasi in W.P.No.5951 of 2009 and Jayalakshmi in W.P.No.5952 of 2009 are concerned, those writ petitions were decided by the Writ Court by a common order dated 24.01.2012, whereby the learned Judge, who disposed the said writ petitions having invoked the theory of parity between these delinquents and other some delinquents, against whom some lesser punishments since had been given and accordingly, the learned Judge in the said order dated 24.01.2012 has set aside the punishment of dismissal from service and has substituted the lesser punishment i.e., withholding of increments for two years without cumulative effect.



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9. Aggrieved over the said order passed by the Writ Court dated 24.01.2012, the State filed Writ appeals in W.A.Nos.1275 & 1276 of 2012.

10. The said writ appeals also have been dismissed by confirming the order passed by the Writ Court by a Division Bench of this Court vide its order dated 06.02.2015.

11. Felt aggrieved over the said order passed by the Division Bench confirming the order of the Writ Court, the State preferred SLP before the Hon'ble Supreme Court in SLP(civil) Nos.675 & 676 of 2017, which has been converted in Civil(Appeal Nos.11345 and 11346 of 2018).

12. The said civil appeals were finally disposed of by the Hon'ble Supreme Court vide its order dated 26.11.2018, where the Hon'ble Supreme Court has held as follows:

“There are several reasons, in our view, why the approach of the High Court in the present case cannot be accepted.

First, in seeking to apply the principle of parity of



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treatment, the High Court has manifestly failed to notice that the gravity of misconduct which was established against the appellants was distinct from and of a more serious nature than what was found against the other employees. This ex-facie emerges from a perusal of the chart which has been extracted above. The nature and extent of a dereliction of duty and the consequences of the dereliction are significant matters which can legitimately be borne in mind by the disciplinary authority.

Second, while noticing that such a submission was in fact made before the learned Single Judge, the Division Bench proceeded to apply the yardstick of parity. Parity could not be applied for the simple reason that there is a material distinction in the case of the misconduct alleged against the appellants as compared to the other employees. While the language of the charge may be similar in other cases that does not detract from the fact that the amount involved and the extent of the lack of verification in the case of the respondents is of a much higher order. The Division Bench having notice that in a matter of this nature, the principle of parity cannot be attracted, nonetheless affirmed the view of the learned Single Judge. This is evidently erroneous.



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Third, the approach of both the learned Single Judge and the Division Bench cannot be accepted having due regard to the parameters of judicial review in disciplinary matters. The learned Single Judge substituted the penalty which was imposed by the disciplinary authority, for a penalty which appeared to the Court to be just and proper. The imposition of a penalty in disciplinary proceeding lies in the sole domain of the employer. Unless the penalty is found to be shockingly disproportionate to the charges which are proved, the element of discretion which is attributed to the employer cannot be interfered with.

In this view of the matter, we are of the view that there is merit in the present appeals. However, since the High Court had interfered only on the ground of parity of treatment, it would be appropriate to remand the proceedings back for fresh consideration on the other grounds of challenge to the findings in and outcome of the disciplinary proceedings.

To enable this process to be undertaken, we set aside the impugned judgment of the High Court dated 06.02.2015. The writ appeals shall stand restored to the file of the High Court for disposal afresh upon hearing the



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parties.

Since the employees have retired from service in the meantime, we request the High Court to expedite the disposal of the writ appeals and endeavor an expeditious disposal within six months from the date on which a certified copy of this order is placed on the record of the High Court.

We clarify that while we have disapproved of the view of the High Court on the question of parity, all other contentions of the parties are kept open to be adjudicated upon by the High Court.

The appeals are, accordingly, disposed of. No costs.”

13. That is how these writ appeals have been remanded back for fresh hearing on merits.

14. In the meanwhile, the writ petition also since was ripened for hearing and when it was posted for hearing, it was brought to the notice of the learned Judge, who heard the writ petition that the writ appeals since have been remanded back, a combined hearing of the writ appeals



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as well as the writ petition could be appreciable and accordingly, as per the order of the Hon'ble Chief Justice, the writ appeals and the writ petition were tagged together for combined hearing. Accordingly, both the writ appeals as well as the writ petition are posted for combined hearing before us.

15. We have heard the learned counsel appearing for the writ appellants, petitioner and Mr.Haja Nazirudeen, learned Additional Advocate General appearing for the State.

16. Learned Additional Advocate General appearing for the State would contend that since the charges framed against each of the delinquent are serious in nature, where many number of bills without having been verified properly since has been allowed to be entrusted, the Government incurred a loss of more than a crore rupee and that is the reason why, charges have been framed, enquiry was conducted, where proper opportunity were also given to the delinquents and ultimately, the Enquiry Officer has found that the charges framed against all these delinquents have been proved except one charge in respect of one



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delinquent and based on which after giving the second show cause notice the disciplinary authority having accepted the report of the Enquiry Officer has come to a conclusion that the maximum punishment have to be imposed against these delinquents that is why the dismissal of service have been imposed against all these delinquents.

17. There has been no procedural violations in conducting the disciplinary proceedings and the charges since are serious in nature and it have been proved because of series of documents placed by the prosecution side by the Enquiry Officer, absolutely there has been no room to make any allegations against the manner in which the enquiry was conducted and the materials placed before the Enquiry Officer to come to a conclusion not only on the basis of preponderance of probability but also on the basis of the documents, which were produced before them to come to such a conclusion by the Enquiry Officer that the charges framed against each of the delinquents have been proved. The decision taken by the disciplinary authority imposing the maximum punishment of dismissal from service against all these delinquents are fully justified, he contended.



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18. He has also submitted that since the learned Judge while allowing the two writ petitions has invoked the theory of only parity and how the invocation of theory of parity was erroneous was found out before the Hon'ble Supreme Court and in the order of remand passed by the Hon'ble Supreme Court such an approach of the learned Single Judge as well as the Division Bench in accepting the invocation of theory of parity was found to be erroneous and therefore, since it was directed to be considered on merits by way of rehearing as per the remand order of the Hon'ble Supreme Court, the learned Additional Advocate General would seek indulgence of this Court.

19. On the other hand, Mr.R.Prem Narayan and Mr.S.Namasivayam, learned counsel appearing for the delinquents/writ petitioners, where two of them are respondents in the respective writ appeals have contend that, it is not the three persons i.e., three delinquents alone were charge sheeted, apart from these three, there are number of staff working in that office, against whom also disciplinary proceedings were initiated, in fact the predecessor and successor of the



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Treasury Office i.e., one of the delinquent herein is concerned, had also been proceeded and one of them since is no more against whom the disciplinary proceedings since was not concluded his family was permitted to take family pension without imposing any punishment. Like that, in respect of other delinquents, apart from these three, a lenient view has been taken by the disciplinary authority by imposing minimum punishment or minor punishment and by virtue of that after having undergone the punishment the said delinquents also become entitled to and eligible to get all service benefits. Therefore, insofar as these three delinquents are concerned, since a different yardstick had been adopted by the disciplinary authority that was mainly questioned, therefore, if the principle of parity is not invoked even otherwise also these delinquents are entitled to get some lesser or modified punishment and not the major punishment of dismissal from service.

20. We have considered the said submissions made by the learned counsel appearing for both sides and have perused the materials placed before us.



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21. Insofar the comparison of these three delinquents along with others, who have also involved in this episode of loss made to the Government in clearing the bills without properly verifying the same at various stages are concerned, it is to be noted that the theory of parity if not been invoked even otherwise whether the major punishment of dismissal of service imposed against these delinquents whether is proper or shockingly disproportionate to the conscious of this Court is concerned, it is a settled proposition that a disciplinary authority imposed a punishment based on the proven charges and the charges are proved and if it is accepted by the Court, normally the Court would not substitute its view with regard to the proportionality of the punishment.

22. However, if there are more than one delinquents in the episode, where some of them have been shown leniency and some of them have not been, the reason for such differential treatment can be evaluated by the Court in the Judicial review. However, in the present case, why such a stringent view has been taken against two out of the three delinquents herein and why such a lenient view had been taken in respect of others



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have in fact been justified by the Department/State before the Hon'ble Supreme Court, which is reflected in the order of the Hon'ble Supreme Court, where the comparative table has been shown.

23. In respect of others, the number of bills cleared by them is only less than 20 by each of them, whereas in respect of Mangayarkarasi and Jayalakshmi are concerned, the number of bills cleared by them are 90 and 105 respectively. By virtue of that, a sum of Rs.45,28,003/- and Rs.51,98,403/- had been the alleged loss to the Government.

24. Therefore in view of this intensity of the violations insofar as these two delinquents are concerned such a strong view had been taken by the disciplinary authority by imposing the penalty of dismissal from service. In the case of the Muthuramalingam also similar view has been taken by the disciplinary authority.

25. Therefore, the differential treatment met out by these delinquents cannot be taken as an aid for imposing a lesser punishment on par with the lesser penalty that has been imposed on others can be made that in fact has been indicated by the Hon'ble Supreme Court in the



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order itself.

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26. But at the same time, by virtue of these proven charges against these delinquents whether these delinquents have personally gained has not been the charge or not been proved. If at all there is dereliction of duty caused upon by them by virtue of that these bills since have been cleared, based on which, some amount has been made to be loss to the Government i.e., certainly it is a dereliction on the part of the duty caused upon them, for which they are deserve to be punished. But such a punishment would be to the extent of forfeiting the entire service of these delinquents, which they have rendered to the Department for the whole period till their superannuation except the suspension period is the question.

27. If we look at the issue in that angle, having considered the long service rendered by these delinquents for several years, during which period, to our knowledge there has been no other disciplinary proceedings faced by these delinquents and if at all these delinquency is the only black mark against them, for which, instead of imposing the penalty of dismissal from service against them by forfeiting the entire service of



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them, we feel that an alternative punishment of-course a major punishment can be imposed against them to save some pensionary benefits for these delinquents and their spouse after their demise.

28. If such an approach is adopted that would not any way prejudice the interest of the Government/Department as the disciplinary authority also wanted to impose only a major punishment against these delinquents for the proven charges against them.

29. In this regard, under Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 what are all the penalties both minor as well as major can be imposed against an employee have been enumerated, where the removal of service and dismissal of service are categorized as major punishment and some more major punishments also are there, out of which, compulsory retirement under Clause (vi) is also one of the major punishment.

30. If such a compulsory retirement punishment is imposed against these delinquents, under Rule 39 of the Tamil Nadu Pension Rules, 1978, they would be entitled to get two third of the pension and gratuity and the



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remaining one third, therefore be withheld by the employer.

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31. Therefore, if such a punishment is imposed, the remaining period of service also would not be taken in account for the purpose of any pay and for the rest of the life time i.e., from the superannuation the delinquent would only be entitled to get two third of the pension and gratuity, which itself in our considered view can be the fitting penalty as a major penalty to be imposed against these delinquents for their proven charges.

32. In the result, we dispose of all these cases with the following orders:

- ◆ That the major penalty of dismissal of service imposed against these delinquents in the respective cases by the orders of the employer/State/Government are hereby modified into compulsory retirement with two third pension and gratuity benefits to each of the delinquents.
- ◆ As a sequel there shall be a direction to the State/Employer to impose such a punishment of compulsory retirement and



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accordingly, calculate the two third pension and gratuity with arrears payable to these delinquents and pay the same to these delinquents within a period of three months from the date of receipt of a copy of this order.

- ◆ It is made clear that they are also entitled and continue to get two third pension till their entitlement.

With these modifications and directions, these writ appeals as well as the writ petition are disposed of. No costs.

(R.S.K.,J.)

(K.B., J.)

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Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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