



Writ Appeal No.2423 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON
26.06.2024

PRONOUNCED ON
16.07.2024

CORAM

**THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal No.2423 of 2022
and C.M.P.No.18740 of 2022**

1.The Secretary to Government,
Public Works Department,
Fort St.George,
Chennai – 600 009.

2.The Engineer-in-Chief, (Buildings) and
Chief Engineer, (Buildings), Chennai Region and,
Chief Engineer (General), Public Works Department,
Chepauk, Chennai – 600 005. ... Appellants

Vs

K.Devasena

... Respondent

PRAYER:- Writ Appeal has been filed under Clause 15 of Letter Patent to set aside the order dated 24.02.2022 made in W.P.No.32575 of 2012 and pass such further order.

For Appellants : Mr.Bindran
Additional Government Pleader

For Respondent : Mr.J.Thilagaraj



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JUDGMENT

(Judgment of the Court was made by Mr.K.KUMARESH BABU.,J.)

This instant Intra-Court Appeal had been filed challenging the order of the learned Single Judge, wherein, the punishment imposed against the respondent herein had been set aside with a direction to reinstate him in service together with all service and monetary benefits.

2. Heard Mr.Bindran, learned Additional Government Pleader for the appellants and Mr.J.Thilagaraj, learned counsel appearing on behalf of the sole respondent and perused the materials available on record.

3. A perusal of the order impugned before us would indicate that the learned Single Judge had held that the proceedings of the Disciplinary Authority had suffered from the vice of arbitrariness and unreasonableness. The learned Single Judge had specifically indicated that the order of punishment even though runs to about 6 pages there has been no



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independent application of mind of the Disciplinary Authority to hold that the findings of the Enquiry Officer is correct and no reasons have been attributed as to why the explanation submitted by the delinquent/ respondent had been rejected. The said order of punishment, as rightly observed by the learned single Judge simply records the various facts and the opinion of the TNPSC which had been followed. Hence, there is no application of mind as required under law that had been exercised by the Disciplinary Authority and for that reason alone, we do not find any necessity to interfere with the order of the learned Single Judge.

4. The learned Single Judge had also given a findings that the enquiry report was based on no evidence at all. Even though, an attempt had been made by the learned Additional Government Pleader to substantiate that the report is only based on the evidence, we are not inclined to accept the same. It is to be seen that the respondent/ delinquent officer even in his explanation had sought to examine the witnessess and had named three witnessess and during the course of enquiry, he had also sought to examine further witnessess. None of the witnessess sought for by



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the delinquent officer was summoned by the Enquiry Officer. The witnessess that were sought to be examined by the delinquent officer were all Official witnessess and when that being so, it is the duty of the Enquiry Officer to summon them for deposing evidence. This procedure had not been followed. It has been admitted in the grounds that it is not mandatory on the part of the Enquiry Officer to summon every witnessess required to be summoned by the delinquent officer and that the Enquiry Officer is competent to refuse to call a witness. For better appreciation, the relevant ground is extracted hereunder:-

“8. The Hon'ble Judge ought to have appreciated the facts that it is not mandatory for the inquiry officer to summon every witness required to be summoned by the delinquent officer. The Inquiry Officer is competent to refuse to call a witness as per Rul 17(b)(i) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.”

When it is an admitted case that the witnessess that were sought to be summoned by the delinquent officer have not been summoned, the enquiry would amounts to an non-est enquiry. Further, a reading of the Enquiry Officer's Report also do not suggest that he had given reasons as to why he



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had not summoned the witnessess who were sought to be examined by the delinquent officer. In such an event, we are also of the view that the Report of the Enquiry Officer is also perverse.

5. For these reasons, we do not see any reasons to interfere with the order passed by the learned Single Judge. The learned Single Judge had further given liberty to the appellants herein, if they so desire to proceed against the respondent delinquent officer for the same charges. However, not exhausting such direction, the appellants have come before this Court. It is also brought to our notice that during the pendency of this appeal proceedings, the respondent had attained the age of superannuation. Orders have also been issued by the Government pending the Writ Petition to recover the alleged loss that had occurred to the Government by the conduct of the respondent delinquent officer.

6. An affidavit had also been filed by the respondent delinquent officer on 07.02.2023 indicating that the respondent is willing to fore-go all the backwages for the period, he was out of service till the date of his



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reinstatement. He had also indicated that the penal amount had been already deducted from his Death-Cum-Retirement and Gratuity benefits by order of the Government dated 19.01.2006.

7. A reply had been filed by the Department to the said affidavit that since the nature of charges were all grave and had been held to be proved, it could not be proper for this Court to uphold the order of the learned Single Judge.

8. We have already indicated that the Report of the Enquiry Officer, was perverse and also the order of punishment suffers from vice of arbitrariness and unreasonableness. The learned Single Judge has also rightly held so. But, however, considering the fact that the respondent delinquent officer had already attained the age of superannuation, we also do not propose to further direct the appellants to proceed with the enquiry for the reason that the respondent had attained the age of superannuation. But, considering the facts of the case, we direct the appellants to reinstate the respondent into service, with no backwages to him, he would be



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entitled for notional fixation of all other attendant benefits. The respondent would also not be entitled to any promotion, if he would have been otherwise eligible to have earned during the period of his punishment till the date of his superannuation. Since, it is also been admitted by the delinquent officer that the loss that had occurred to the Government had already been recovered, we do not also propose to direct the appellants to refund the said amount, in the peculiar facts and circumstances of the case.

9. For the above observations, we are inclined to dismiss this Writ Appeal, however, with the following directions:-

(a) The appellants shall reinstate the respondent, permitting to retire on the date of superannuation.

(b) The respondent would not be entitled to any monetary benefits whatsoever and also would not be entitled for any promotion that he would have acquired if he had been in service.



(c) The respondent would be entitled to notionally refix his salary from the date of punishment till the date of his superannuation together with the increments that he would have earned including any other increase in his payscale. Based upon such fixation, the pensionary benefits of the respondent shall be worked out and his pension be refixed.

(d) The quantified amount of Rs.6,73,729/- which is the alleged loss amount, which is charged to have been accumulated for the act of the respondent shall be recovered from his pensionary benefits as permitted under the law.

The aforesaid exercise shall be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order.

10. With the aforesaid directions, this Writ Appeal is dismissed. However there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.,J.) (K.B., J.)
16.07.2024



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Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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To

- 1.The Secretary to Government,
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- 2.The Engineer-in-Chief, (Buildings) and
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D. KRISHNAKUMAR., J.
and
K.KUMARESH BABU.,J.

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A Pre-delivery Judgment made in
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