

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:29.02.2016

Coram

THE HONOURABLE Mr. JUSTICE SATISH K.AGNIHOTRI
AND
THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.A.No.208 of 2016
and
C.M.P. No.3018 of 2016

- 1.The Secretary to Government,
Finance Department,
Fort St. George, Chennai - 9.
- 2.The Commissioner of Treasuries and Accounts,
Chennai 35.
(Now Director of Treasuries and Accounts,
Saidapet, Chennai - 15.) ...Appellants/Respondents

V.

R.Lakshmanan ... Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent Act, against the order of this Court dated 12.11.2013 made in W.P.No.10684 of 2007.

W.P.No.10684/2007:- Petition filed under Article 226 of the constitution of India praying for the issuance of writ of certiorari to call for the records in connection with the Govt. order issued in G.O.(2D) No.26 Finance Dept. dated 17.9.2003 and G.O.(2D) No.11 Finance Dept. dated 12.2.2007 and quash the same.

For Appellants : Mrs.A.Sri Jayanthi
Special Government Pleader

For Respondent : Mr.S.J.Ilamvazhudhi

JUDGMENT

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

The Appellants/Respondents have preferred the present Writ Appeal as against the order dated 12.11.2013 in W.P.No.10684 of 2007 passed by the Learned Single Judge.

2.The Learned Single Judge, while passing the impugned order on 12.11.2013 in W.P.No.10684 of 2007 (filed by the Respondent/ Petitioner) at paragraphs 9 and 10, had observed the following:

"9.At this juncture, the learned counsel appearing for the petitioner also fairly concedes that the petitioner has violated the provisions of the Treasury Code. However, I am of the view that considering the fact that the petitioner was retired from service in the year 2009 on his attaining the age of superannuation, for the proved charges 1 and 2 under 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules instead punishment imposed of stoppage of increment for three years with cumulative effect, in the interest of justice, punishment of stoppage of increment for one year with cumulative effect alone is sufficient.

10.In the result, the punishment imposed by the second respondent is modified as punishment of stoppage of increment for one year with cumulative effect, instead punishment of stoppage of increment for three years with cumulative effect."

and disposed of the Writ Petition without costs.

3.Challenging the order dated 12.11.2013 in W.P.No.10684 of 2007 passed by the Learned Single Judge, the Appellants have preferred the intra-Court Writ Appeal mainly contending that the punishment of stoppage of increment for three years with cumulative effect imposed by the 2nd Appellant/2nd Respondent on the Respondent /Petitioner is in order and the order of modification passed by the Learned Single Judge viz., as punishment of stoppage of increment for one year with cumulative effect is per se not maintainable either in Law or on Facts.

4.The Learned Special Government Pleader for the Appellants submits that the Learned Single Judge had failed to appreciate the implication involved in the provision prescribed for making the payment to the retired Government servants by means of Demand Draft/Banker's cheque and in reality, this kind of payment ensures the beneficiaries to receive their retirement benefits in the safest manner. Also that, if the payment is made by means of cash, then, the beneficiaries may or may not receive the total amount to which they are entitled to and only for this reason the payment through Demand Draft/Banker's cheque has been brought into force and this provision was violated by the Respondent/Petitioner.

5.The Learned Special Government Pleader for the Appellants contends that the punishment of stoppage of increment for three

years with cumulative effect imposed on the Petitioner by the 2nd Appellant/ 2nd Respondent is quite commensurate with the gravity of the lapses committed by the Respondent. Furthermore, the Learned Single Judge, after observing that the imposition of punishment by the 2nd Appellant is in order, had proceeded to modify the punishment and passed the impugned order in the Writ Petition, which is not sustainable in the eye of Law.

6.The Learned Special Government Pleader for the Appellants brings it to the notice of this Court that all the nine delinquents involved in the malpractice right from the level of Treasury Officer to the level of Accountant were awarded with the same punishment of stoppage of increment for three years with cumulative effect and no one was spared. Unfortunately, these aspects were not taken into account by the Learned Single Judge at the time of passing the impugned order.

7.The Learned Special Government Pleader for the Appellants proceeds to take a stand that the 'Malpractice Episode' came to light only on receipt of complaint preferred by one of the beneficiaries, (friend of the 2nd Appellant) that the retirement benefits claimed in respect of retired Government Officials by the Departmental Officers of Industrial Training Institute, Erode, had not reached the retired Government servants. In fact, the 2nd Appellant made a surprise inspection at the District Treasury, Erode to ascertain the fact and found that the procedural lapses committed by the Treasury Officials paved way for the departmental staff C.Chandrasekaran, Accountant of Government Industrial Training Institute, Erode to swindle the money entitled to the retired Government servants. Only for the above lapses, a disciplinary action was initiated against the Treasury Staff and after following the procedures, the punishment was awarded. However, these aspects were not taken into account by the Learned Single Judge at the time of passing the impugned order.

8.Lastly, it is the plea of the Appellants that the Learned Single Judge had failed to remit back the matter to the disciplinary authority, if any procedural violation is involved in conducting the disciplinary proceedings and the resultant order passed by the 2nd Appellant, but modified the orders in the Writ Petition, which is not in order.

9.The Respondent/Petitioner, in his affidavit in W.P.No.10684 of 2007 filed by him, had taken a ground that the 1st Charge was that one Dasan, Accountant, District Treasury, Erode and the Petitioner (Superintendent) and one P.Thangaiyan, Assistant Treasury Officer issued MTC70 to the bearer of the office of Industrial Training Institute to get cash from the Bank and in the charge memo itself it was coated that the amount payable to the pensioners can be issued by way of Cheque, Demand

Draft or by cash and in fact, there is a provision in the Treasury Code that in the aforesaid three methods the amount can be disbursed.

10. That apart, the Respondent/Petitioner had taken a plea in the Writ Petition that the Junior Assistants or Assistants coming from the Industrial Training Institute asked the Treasury Officer that the amount may be paid by cash and that there is no paying system in the Treasury and only an endorsement would be made how the amount should be paid to the individuals.

11. Further, the stand of the Respondent/Petitioner is that he was no way connected for the loss or the fraud committed by the person who is working in the Industrial Training Institute. Also that, the bearer of MTC 70 coming from the Industrial Training Institute encash the amount from the Bank and he had not remitted the same to his office. Besides this, the person, who was involved in the affair, was imposed with the punishment of stoppage of increment of one year, whereas the Petitioner was imposed with the punishment of stoppage of increment for a period of three years with cumulative effect.

12. It is the case of the Respondent/Petitioner that the Enquiry Officer, having arrived at a conclusion that the 3rd Charge was not proved, had opined that without any basis Charges 1 and 2 were proved.

13. At this stage, this Court points out that the Charges 1 to 3 levelled against the Respondent/Petitioner runs as under:
CHARGE -1

Thiru. R.Lakshmanan, while working as Superintendent, has made misappropriation of Government money in the way of violated the Government rules issued in the G.O.Mis.No.651 Finance (kk2) Department, dated 11.06.1990 when scrutinizing the following bill submitted by the Principal, Government Industrial Training Institute.

Final payment order of General Provident Fund

Thiru. N.Balakrishnan, Training Officer, Government Industrial Training Institute, Erode. Tamil Nadu Accountant General Letter Finance/28/2/5-6/99-200/TC2/RBI 3/ 12 dated 19.04.1999. Rs.55368/-. Token. No.844 dated 14.05.1999, Rs.55368/-.

CHARGE -2

Thiru.R.Lakshmanan has violated the Government rules when approving the payment order to pay the amount as cash, instead of cheque even though there is a specific rule to sanction the pensionary benefit to the pensioner by way of A/C payee cheque.

CHARGE -3

The responsible officer in the post of superintendent has caused bad name to the department and Government by committing above said lapse.

14. In fact, the Respondent/Petitioner, in respect of the 1st Charge, had furnished his explanation stating that the instructions were given in G.O.780 dated 08.11.1993, that the amount to be paid to the Government Servant, after receiving the authorisation from the Accountant General and further, in that G.O., it was mentioned that the post dated cheque, to be given for the Service Gratuity, Special Provident Fund and Earned Leave Bill. Apart from that, in the letter No.19749/95/D3 dated 24.05.1995 of the Commissioner of Treasuries and Accounts, an explanation was given that the Part Final Payment of GPF and Pensionary benefits may be given in cash and therefore, in terms of the G.O. and explanation of the Commissioner of Treasuries and Accounts, the bill amount was paid in cash.

15. The Enquiry Officer, in respect of 1st Charge, had submitted his findings to the effect that no instruction was given in G.O.No.780, Finance Department dated 08.11.1993 that the retired amount was to be paid in cash and as per instruction of Commissioner of Treasuries and Accounts, the bill amount of Service Gratuity may be given as cash subject to some condition. But the sanctioned amount also was not a Service Gratuity and therefore, the Charge was proved.

16. Insofar as the 2nd Charge was concerned, the explanation of the Respondent/Petitioner was that the admitted bill of General Provident Fund dated 14.05.1999, Rs.55368/- was received and signed by the Principal, ITI, Erode in Column No.12 of M.T.C.-70, the amount was also disbursed to the appropriate person, then authentication was also issued in office copy as per T.R.32, SR 4 and made proper entry in Cash Register, Un Disbursed Payment Register. Further, the bill amount was received by the appropriate officer, so misappropriation of Government money is not done in Treasuries and Accounts Department. The Enquiry Officer ultimately found that the 2nd Charge was proved.

17. As regards the 3rd Charge, the explanation of the Respondent /Petitioner was that he had not abetted in regard to the misappropriation of Government money etc. Finally, the finding of the Enquiry Officer was that the bill amount had not reached the beneficiary due to the fraud committed by the servant of the Drawing Officer and that the individual had made a payment order in cash etc. and it was held that the 3rd Charge was not proved.

18. At this stage, this Court pertinently points out that the scope of 'Judicial Review' is limited. In this connection, this Court cites the decision in State of West Bengal V. Atul Krishna Shaw and another, AIR 1990 Supreme Court 2205, wherein it is held that 'In a Quasi-Judicial proceeding, Courts/Tribunals would be

slow to interfere with the findings of fact unless such findings are based on no evidence or beset with surmises or conjectures.

19.Also, this Court aptly recollects and recalls the decision of the Hon'ble Supreme Court in Tata Cellular V. Union of India, AIR 1996 Supreme Court 11 at special page 12, it is observed as follows:

"Judicial quest in administrative matters has been to find the right balance between the administrative discretion to decide matters whether contractual or political in nature or issues of social policy; thus they are not essentially justifiable and the need to remedy any unfairness. Such an unfairness is set right by judicial review. The judicial power of review is exercised to rein in any unbridled executive functioning. The restraint has two contemporary manifestations. One is the ambit of judicial intervention; the other covers the scope of the court's ability to quash an administrative decision on its merits. These restraints bear the hallmarks of judicial control over administrative action. Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself."

20.Further, in the decision B.C.Chaturvedi V. Union of India and others, (1995) 6 Supreme Court Cases 749 at special pages 750 & 751, wherein it is held as follows:

"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 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 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 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. The Court/Tribunal in its power of judicial review does not act as appellate authority to re- appreciate 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."

21. Added further, in the decision Union of India and others V. Upendra Singh, (1994) 3 Supreme Court Cases 357, it is held as under:

"In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal,

they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be.

The jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under [Article 226](#) of the Constitution. Therefore, the principles, norms and the constraints which apply to the said jurisdiction apply equally to the Tribunal. If the original application of the respondent were to be filed in the High Court it would have been termed, properly speaking, as a writ of prohibition. A writ of prohibition is issued only when patent lack of jurisdiction is made out. It is true that a High Court acting under [Article 226](#) is not bound by the technical rules applying to the issuance of prerogative writs like certiorari, prohibition and mandamus in United Kingdom, yet the basic principles and norms applying to the said writs must be kept in view.

22. Moreover, in the decision *Ranjit Thakur V. Union of India and others*, AIR 1987 Supreme Court 2386, at special page 2388, it is observed and held as follows:

"Judicial review generally speaking, is not directed against a decision, but is directed against the "decision making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from

correction. Irrationality and perversity are recognised grounds of judicial review. (1984) 3 WLR 1174 (HL) and AIR 1983 Special Court 454, Foll.

In the instant case, the punishment is so strikingly disproportionate as to call for and justify interference. It cannot be allowed to remain uncorrected in judicial review."

23. It is to be noted that the Power of Judicial Review is exercised to ensure that a person receives fair treatment and not to ensure that the conclusion with the authority reaches is necessarily correct in the eye of the Court. Further, it is to be pointed out that if there is power to decide much to the prejudice of an individual, then duty to act judicially is implicit in exercise of such power, in the considered opinion of this Court.

24. In Law, an execution/administration action can be subject to control by means of Judicial Review based on the grounds (i) illegality; (ii) irrationality; and (iii) procedural impropriety. Also that, the object of the rules of Natural Justice is to secure Justice and they are meant to supplement the Law and not to supplant it.

25. In the instant case on hand, in the Revision Petition before the 1st Appellant/1st Respondent, the Respondent/Petitioner was not successful. When there is a provision in the Treasury Code that the amount due and payable to the pensioners should be paid by way of Cheque or Demand Draft, then, it is the prime duty of the Respondent/ Petitioner to adhere to the same and that he cannot wriggled out of the rules and regulations to be followed in true letter and spirit.

26. On a careful consideration of the respective contentions and this Court taking note of the fact that Charges 1 and 2 were proved and the 3rd Charge was not proved against the Respondent/Petitioner and this Court, keeping in mind yet another fact that the Respondent/ Petitioner had retired from service during the year 2009 after attaining superannuation and also consideration the facts and circumstances of the present case, holds that the order of the Learned Single Judge dated 12.11.2013 in W.P.No.10684 of 2007, in modifying the punishment of stoppage of increment for one year with cumulative effect [from that of punishment of the stoppage of increment for three years with cumulative effect], does not require any interference in the hands of this Court sitting in Appellate Jurisdiction because of

the reason the same is just, valid and legally tenable one. Consequently, the Writ Appeal fails.

27.In fine, the Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS IV)

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Sub Asst. Registrar

Sgl

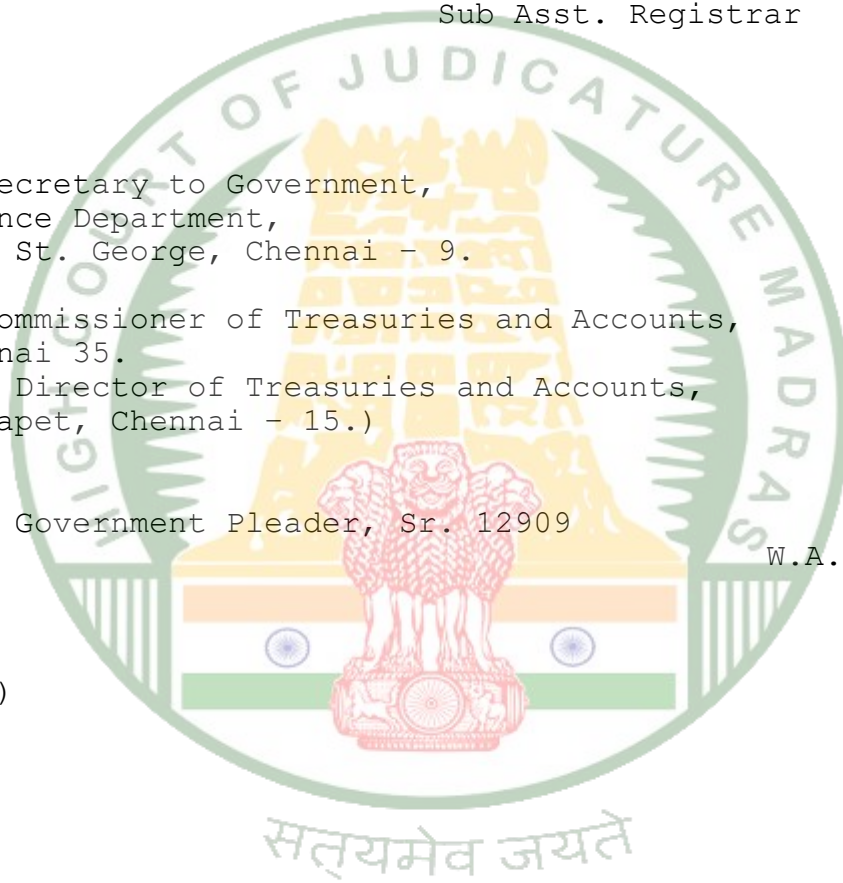
To

- 1.The Secretary to Government,
Finance Department,
Fort St. George, Chennai - 9.
- 2.The Commissioner of Treasuries and Accounts,
Chennai 35.
(Now Director of Treasuries and Accounts,
Saidapet, Chennai - 15.)

1 cc to Government Pleader, Sr. 12909

W.A.No.208 of 2016

LRS (CO)
kk 21/3



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