

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

WP.No.23884 of 2009

K.Rajendran

.... Petitioner

Versus

The Secretary to Government,
Home(Tr.II-A Department),
Secretariat,
Chennai-9.

.... Respondent

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Certiorarified Mandamus to call for the records of the respondent herein pertaining to the order passed in G.O.(3D) No.52, Home(Tr.II-A Department), dated 13.10.2009 imposing a punishment of dismissal from service against the petitioner and quash the same and consequently direct the respondent herein to reinstate the petitioner will all consequential monetary and service benefits.

For Petitioner : Mr.Ravi Shanmugam
For Respondent : Mr.T.M.Pappiah, Spl.G.P.

ORDER

Writ Petition has been filed seeking for issuance of a Certiorarified Mandamus to call for the records of the respondent herein pertaining to the order passed in G.O.(3D) No.52, Home(Tr.II-A Department), dated 13.10.2009 imposing a punishment of dismissal from service against the petitioner and quash the same.

2.The case of the petitioner is that he was appointed as typist on 03.09.1977 in Transport Department. Later on, he was promoted as Assistant in the year 1987 and thereafter, as Superintendent on 07.04.1999. On 09.03.2007, he was further promoted as Personal Assistant to Regional Transport Officer. While he was working as Motor Vehicle Inspector, (non technical) in the year 2004 in Kanyakumari District, a surprise inspection was conducted by the Personnel attached to Vigilance and Anti

Correction Department. Subsequently, the matter was referred to the Tribunal for disciplinary proceedings which formulated a charge in TDP No.5 of 2006 against the petitioner and another. Finally, after completion of disciplinary proceedings, the Tribunal held that three counts of charge are not proved and the remaining charges are proved. However, the Government by communication dated 17.10.2007, disagreed with the findings of the Tribunal with regard to the charges not proved and called for the petitioner's explanation on the enquiry report. In response to the same, the petitioner submitted his explanation on 21.01.2008. The disciplinary authority namely the Government had ultimately imposed a penalty of dismissal from service on the petitioner vide G.O.3D No.52, Home (Tr.II-A) Department dated 13.10.2009 after obtaining opinion from the Tamil Nadu Public Service Commission on the penalty to be imposed on the petitioner. According to the petitioner, he was due for retirement on attaining the age of superannuation on 31.10.2011. Since the order of dismissal from service was passed by the Government, no appeal remedy was available and therefore, the dismissal order dated 13.10.2009 is impugned in the present writ petition.

3.Mr.Ravi Shanmugam, learned counsel for the petitioner would submit that without going into the validity of the charges the punishment imposed on the petitioner may be quashed as excessive as the petitioner had put in 32 years of service and he has no other any adverse notice earlier. The learned counsel straightaway relied on the decision of the learned Judge of this Court in W.P.(MD) No.4024 of 2005 dated 01.10.2007, in and by which, the learned Judge in similar circumstances held that the quantum of penalty of removal from service shall be modified into one of compulsory retirement. The learned Judge referred to several decisions before interfering with the quantum of penalty imposed on the petitioner therein. The reasoning of the learned Judge of this Court in W.P.(MD) No.4024 of 2005 dated 01.10.2007 in paragraph Nos.7 to 10 is extracted hereunder:

'7.In any event, In the decision reported in 2007 (2) M.L.J. 278(SC) [Union of India and others v. Dwarka Prasad Tiwari], the Supreme Court held that in an exceptional rare case, the Court can interfere with the disproportionate punishment. The following passages found in paragraphs 15 to 17 may be usefully extracted below:

Para 15: "The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural

impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in *Wednesbury's* (supra) the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision making process and not the decision.

Para 16: To put it differently, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further, to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed.

Para 17: The above position was recently reiterated in *Union of India v. K.G. Sonl* 2006 (2006 (6) Supreme 389 : 2006 - III - LLJ - 802 (SC) following *Damoh Panna Sagar Rural Regional Bank v. Munna Lal Jain* AIR 2005 SC 584 : (2005) 10 SCC 84 : 2005 - I - LLJ 730 (SC)."

8. Under the relevant Service Rules, the imposition of major penalty includes dismissal, compulsory retirement and removal from service. In the present case, considering the fact that the petitioner had worked for more than 29 years there being no previous adverse remarks noted by the disciplinary authority, the disciplinary authority ought to have borne in mind that even if he wants to impose a major penalty as to why he had preferred the penalty of removal from service and not the compulsory retirement. In case of compulsory retirement, at least the petitioner is entitled for terminal benefits and that has not been done in this case. Even in appeal and revision, though the ground of disproportionality was raised, that was not answered by the appellate authority but the

revisional authority rejected it by a one sentence order. This Court is of the view that while the petitioner's misconduct cannot be condoned and he must be imposed only with major penalty, but, however, considering the penalty now imposed, it is clear that it will result in serious consequences of not only depriving the petitioner his employment but also the very survival of the family will be in question. Therefore, applying the ratio laid down by the Supreme Court in its decision referred to above, this Court is of the view that punishment of removal from service requires modification.

9. In this context, it is relevant to refer to a recent decision of the Division Bench of this Court in W.P.No.22983 of 2005, disposed on 13.08.2007, [V.C.Rajamanickam v.State of Tamil Nadu and another] and the following passage found in paragraph 18 of the said order is reproduced below:

'As contended by the learned senior counsel for the petitioner the petitioner has put in a long number of years of service and there is no adverse entries in his annual confidential reports and in such circumstances if the punishment of dismissal from service is imposed not only the petitioner but his entire family will be put to great hardship. Therefore we are of the considered view that the ends of justice will be met if punishment of dismissal from service is modified into one of compulsory retirement since both the penalties are major penalties and the punishment of dismissal from service appears to be disproportionate and not commensurate with the act of delinquency of the petitioner. Hence we modify the dismissal from service into one of compulsory retirement.'

10. Under the above circumstances, the punishment of removal from service ordered against the petitioner is modified into one of compulsory retirement and the writ petition is allowed to the extent indicated above. In all other respects, the writ petition shall stand dismissed. The petitioner is hereby directed to submit his pension papers within a period of four weeks from the date of receipt of a copy of this order and the respondents are directed to

process the same and pass final orders within a period of eight weeks thereafter. However, there will be no order as to costs.

The learned counsel for the petitioner would also submit that more or less, the case of the petitioner herein is similar as cited supra and therefore, urged upon this Court to modify the penalty into one of compulsory retirement which by itself is a major penalty as contemplated in the service rules. The learned counsel also brought to the attention of this Court that in similar circumstances, in the same Department, a fine was imposed with the punishment of compulsory retirement of service by proceedings dated 30.09.2008 in respect of another official. The said fine may also charged on the similar lines as against the petitioner herein. In the said circumstances, he would pray that there need to be a parity in the matter of imposition of punishment and he would not venture into making any arguments on merits and demerits of the case since the crucial witnesses who were produced for establishing charges have not been examined in the enquiry. However, the learned counsel would confine his argument only with regard to penalty of dismissal from service imposed on the petitioner.

4. Upon notice, Mr. T.M. Pappiah, learned Special Government Pleader appearing for the respondent filed a detailed counter affidavit. In the counter affidavit, it has been stated that there are several instances where the petitioner was found to be implicated in charges for having received illegal gratification towards discharge of his official duties as Motor Vehicle Inspector during the relevant period. In the said circumstances, the punishment imposed on the petitioner was proportionate to the gravity of the misconduct alleged against him. The learned Special Government Pleader would further request this Court to dismiss the writ petition as devoid of merits and substance.

5. This Court has given its anxious consideration to the rival submissions of the learned counsel and also perused the materials and the pleadings placed on record. Since the writ petition was not argued on merits, the learned counsel appearing for the petitioner would confine his arguments only with regard to the quantum of penalty imposed on the petitioner. This Court has to see whether the petitioner's conduct warrants any interference in the quantum of penalty imposed on him. The order passed in W.P.No.4024 of 2005 dated 01.10.2007 by the learned Judge of this Court, has dealt with the similar issue by adverting to various decisions of the High Court and the Hon'ble Supreme Court of India and chosen to interfere with the quantum of penalty. Imposition of penalty of compulsory retirement is also one of the major penalties apart from the penalty of removal and dismissal from service. More over, in regard to the similarly placed employees, the same

Transport Department has imposed the penalty of compulsory retirement. That being the case, the case of the present petitioner had to be viewed similarly in the matter of imposition of penalty. Since the petitioner had put in nearly 32 of years of service, the order of dismissal would wipe out his entire service period and as such the extreme punishment would not only affect him but also would affect his family members particularly when the petitioner had attained the age of superannuation in the year 2011 itself and spending his time in the evening of his life.

6. In the above circumstances, this Court by taking guidance from the order passed by the learned Judge of this Court dated 01.10.2007 in W.P.(MD) No.4024 of 2005, is inclined to modify the penalty imposed on the petitioner. Hence, the impugned order dated 13.10.2009 is set aside. The punishment of dismissal of service stands modified into one of compulsory retirement and the same shall take into effect on the petitioner from the date of his dismissal from service. The respondent is directed to pass consequential orders on the basis of present modification of penalty, for sanctioning all monetary benefits, which are otherwise admissible to the petitioner, within a period of two months from the date of receipt of a copy of this order.

7. The writ petition is disposed of, with the above direction. No costs.

Sd/-
Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

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To

The Secretary to Government,
Home (Tr.II-A Department),
Secretariat,
Chennai-9.

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+1 cc to Mr.Ravi Shanmuagam Advocate sr 62271

+1 cc to the Government Pleader sr 63383

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