



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBBIAH**

AND

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU****W.A. [MD] .No.58 of 2011**

WEB COPY

1.The Principal Secretary to the Government of Tamil Nadu,
Home (SC) Department,
Fort St. George, Chennai-9.

2.Pradeep V.Philip, IPS,
The Enquiry Officer,
Deputy Inspector General of Police,
Tamil Nadu Police Department,
Tirunelveli Range.

: Appellants/Respondents

Vs.

J.Joseph Vaz

: Respondent/Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order of a learned Single Judge of this Court dated 21.07.2009, made in W.P.(MD).No.4705 of 2004.

Prayer in WP(MD) . 4705/ 2004 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari or any other appropriate Writ or order or direction in the nature of a Writ calling or the records in G.O.(D) 1207 Home (SC) Department dated 9.12.2004 on the file of the 1st respondent and quash the same.

For Appellants	: Mr.N.S.Karthikeyan, Additional Government Pleader
For Respondent	: Mr.R.Anand

JUDGMENT

[Judgment of the Court was delivered by R.SUBBIAH, J.]

The present Writ Appeal has been filed as against the order of the learned Single Judge dated 21.07.2009, made in W.P.(MD).No.4705 of 2004.

2. The short facts, which are necessary to dispose of the present Writ Appeal, are as follows:

2.1. The respondent herein joined the service as Station Fire Officer on 27.07.1966 and later on, he was promoted as Assistant Divisional Fire Officer on 31.01.1977. The respondent was subsequently promoted as Divisional Fire Officer on 01.10.1982. Ever since his promotion, he had discharged his duties without any default. While so, he was served with an order of suspension on 28.09.2001 stating that an enquiry into grave charges is



contemplated against him and the reason for the suspension cannot be furnished in larger public interest.

2.2. The first appellant herein has issued a charge memo against the respondent on 23.10.2001 framing the following charges:

"CHARGE - I

That the said Thiru.J.Joseph Vaz, while working as Divisional Fire Officer, Trichy, on 9.5.99 through Tvl.A.Mohanraj, Fireman 1824 and K.Ramachandran, Driver Mechanic 2639 of Trichy Fire Division, demanded Rs.10,000/- from Thiru Francis David John, S/o.David John, No.96, Rayar Thoppu, Trichy-8 for issuing 'No Objection Certificate' for a godown for storing LP Gas Cylinder in TS No.857 in Vellithirumutham Village situated in Trichy-Chennai Bye-pass road and received Rs.4,000/- as bribe in 2 installments i.e. Rs.3,000/- and then Rs.1,000/- in the month of June 1999 through the above said 2 fire service personnel and issued a 'No Objection Certificate' for the residence at No.96, Rayar Thoppu, Trichy -8 and not for the actual place for which the 'No Objection Certificate' was applied for and thereby he had failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a member of the Tamil Nadu Civil Services and thus committed a grave misconduct.

CHARGE-II

That the said Thiru Joseph Vaz, while working as Divisional Fire Officer, Trichy had allowed Thiru.K.Ramachandran, Driver Mechanic 2639 of Srirangam Fire Station, Trichy Division to retire on voluntary retirement when a detailed enquiry was pending against him with the Directorate of Vigilance and Anti-Corruption, Chennai-6 and thereby he had failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a member of the Tamil Nadu Civil Supplies and thus committed a grave misconduct."

2.3. The respondent was called upon to submit his explanation in respect of the charges levelled against him.

2.4. Thereafter, since the respondent attained the age of superannuation, during the pendency of the disciplinary proceedings, the first appellant has issued an order permitting the respondent to retire from service from the date of superannuation i.e., on 31.10.2001, subject to the final orders to be passed by the competent authority in the disciplinary proceedings.

2.5. Challenging the vires of the proceedings, the respondent filed an application in O.A.Nos.7080 and 7081 of 2001 and the same were dismissed.

<https://hcservices.ecourts.gov.in/hcservices/>

2.6. The second appellant herein was appointed as Enquiry Officer. Apart from the respondent, charges were also framed against four other delinquent officials, namely A.Mohanraj - Fireman, K.Ramachandran - formerly Driver Mechanic, Hilda Manoharan - B-1 Assistant and A.S.Kanchana - Superintendent Assistant.



2.7. To substantiate the charges framed against the respondent, eight witnesses were examined.

2.8. On completion of enquiry, the Enquiry Officer submitted his report dated 16.07.2003, holding that the charges framed against the respondent have been proved and submitted a report to the disciplinary authority, viz., the first appellant herein. In that regard, the first appellant has called upon the explanation of the respondent, for which, the respondent has submitted his further representation on 04.02.2004.

2.9. Thereafter, the opinion of the Tamil Nadu Public Service Commission was also sought for and they agreed with the view taken by the Enquiry Officer. The first appellant, based on the enquiry report and also the recommendation made by the Commission, has removed the respondent from service, vide order dated 09.12.2004. Challenging the legality of the same, the Writ Petition was filed.

3. The learned Single Judge, by discussing the evidence of the witnesses adduced before the Enquiry Officer in detail, has come to the conclusion that the charges framed against the respondent have not been proved. The learned Single Judge has also observed in the order that the testimonies of witnesses have not been considered at all and the findings of the Enquiry Officer were based upon surmises and conjectures and the Tamil Nadu Public Service Commission also merely went by the report. The disciplinary authority has also failed to consider the material points and simply accepted the findings of the Enquiry Officer. By observing so, the Writ Petition was allowed by the learned Single Judge, by order dated 21.07.2009. Aggrieved over the same, the present Writ Appeal has been filed.

4. Today, when the matter was taken up for consideration, the only submission made by the learned Additional Government Pleader appearing for the appellants is that the learned Single Judge, by sitting as an appellate authority and by re-appreciating the entire evidence adduced before the Enquiry Officer, interfered with the finding of the Enquiry Officer and quashed the impugned order removing the respondent from service.

5. In this regard, the learned Additional Government Pleader, by placing reliance upon a judgment of the Hon'ble Supreme Court in the case of **Union of India v P.Gunasekaran** reported in **2015(2) SCC 610**, submitted that while exercising power under Article 226 of the Constitution of India, the Court cannot venture into re-appreciation of evidence or interfere with conclusions in enquiry proceedings, if the same are conducted in accordance with law, or go into reliability/adequacy of evidence, or interfere if there is some legal evidence on which findings are based, or correct error of fact however grave it may be, or go into proportionality of punishment unless it shocks conscience of court. The Court can consider whether enquiry held by competent authority was in accordance with procedure established by law and principles of natural justice, whether irrelevant or extraneous considerations and/or exclusion of admissible or material evidence or admission of inadmissible evidence have influenced decision rendering it



vulnerable. To sum up, he contended that in disciplinary proceedings, this Court cannot sit as an appellate authority and re-appreciate the evidence. Therefore, the order passed by the learned Single Judge is liable to be set aside.

6. Per contra, the learned counsel for the respondent, by placing reliance upon the unreported judgment of the Hon'ble Supreme Court dated **02.01.2017, in Civil Appeal No.7600 of 2014** in the case of **Allahabad Bank & Ors. vs. Krishna Narayan Tewari**, submitted that the Writ Court can interfere with the disciplinary enquiry on the ground of non-application of mind on the part of the enquiry officer or the disciplinary authority or for non-recording of reasons in support of conclusion arrived at by them. The relevant portion from the said judgment reads thus:

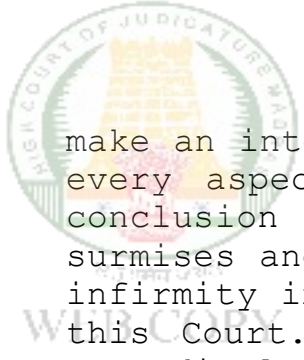
"7. We have given our anxious consideration to the submissions at the bar. It is true that a writ court is very slow in interfering with the findings of facts recorded by a Departmental Authority on the basis of evidence available on record. But it is equally true that in a case where the Disciplinary Authority records a finding that is unsupported by any evidence whatsoever or a finding which no reasonable person could have arrived at, the writ court would be justified if not duty bound to examine the matter and grant relief in appropriate cases. The writ court will certainly interfere with disciplinary enquiry or the resultant orders passed by the competent authority on that basis if the enquiry itself was vitiated on account of violation of principles of natural justice, as is alleged to be the position in the present case. Non-application of mind by the Enquiry Officer or the Disciplinary Authority, non-recording of reasons in support of the conclusion arrived at by them are also grounds on which the writ courts are justified in interfering with the orders of punishment....."

Thus, he prayed for dismissal of the Writ Appeal.

7. Keeping in mind the submissions made by the learned counsel on either side, we have carefully gone through the entire materials available on record.

8. On perusal of the materials available on record, we find that the learned Single judge, by relying upon the entire evidence, has arrived at a finding that the Enquiry Officer has not considered the testimonies of witnesses in proper perspective. The findings of the Enquiry Officer were based on surmises and conjectures and the disciplinary authority also simply agreed with the findings of the Enquiry Officer and went through the report of the Tamil Nadu Public Service Commission and ordered for removal

from service. The learned Single Judge has also come to the conclusion that the disciplinary authority has failed to consider the material points and simply accepted the findings of the Enquiry Officer. Therefore, in our considered view, if the finding of the Enquiry Officer is not supported by any evidence, the Court can



make an interference. In the instant case, by dealing with each and every aspect, the learned Single Judge has come to the correct conclusion that the Enquiry Officer rendered a finding based on surmises and conjectures. Therefore, absolutely, we do not find any infirmity in the said order warranting interference at the hands of this Court. Thus, the Writ Appeal is liable to be dismissed and accordingly, it is dismissed. The appellants are directed to disburse the retirement benefits, within a period of six weeks from the date of receipt of a copy of this judgment. No costs.

Sd/-
Assistant Registrar(CS-I)

/TRUE COPY/

Sub Assistant Registrar

To
The Principal Secretary to Government of TamilNadu,
Home(SC) Department,
Chennai-3.

JUDGMENT MADE IN
W.A. (MD) No.58 of 2011
Dated: 15.02.2017

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