

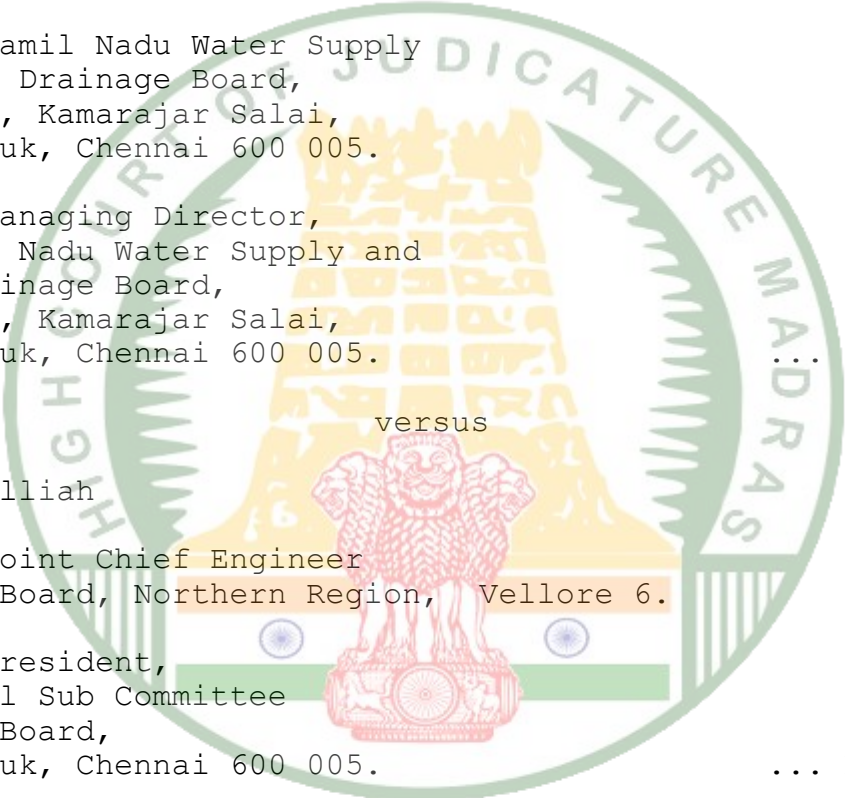
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.132 of 2015
and MP No.1 of 2015

- 
1. The Tamil Nadu Water Supply and Drainage Board,
No.31, Kamarajar Salai,
Chepauk, Chennai 600 005.
2. The Managing Director,
Tamil Nadu Water Supply and
Drainage Board,
No.31, Kamarajar Salai,
Chepauk, Chennai 600 005. ... Appellants
- versus
1. S.Chelliah
2. The Joint Chief Engineer
TWAD Board, Northern Region, Vellore 6.
3. The President,
Appeal Sub Committee
TWAD Board,
Chepauk, Chennai 600 005. ... Respondents

Appeal filed under clause 15 of letters patent against the order passed by this Court dated 14.03.2012 passed in W.P.No.16194 of 2004.

Prayer in W.P.No.16194 of 2004:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified mandamus calling for the records of the 2nd Respondent relating to his proceedings in No.19972- Estt (DPI)/A3/2001, dated 25.06.2002 which came to be confirmed by the 1st Respondent in his proceedings in BPMS.No.87(Twad-Estt.(DP)Wing) dated 18.08.2003 and quash the same and consequently, direct the respondents to forthwith reinstate the petitioner in service together with full back wages and all attendant benefits.

For Appellants : No appearance

For Respondents : Mrs. A.L.Ganthimathi

J U D G M E N T

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

The challenge in this Intra Court Appeal is to the order of the learned Single Judge dated 14.03.2012, in and by which, the learned Single Judge modified the punishment of removal from service into one of compulsory retirement with effect from 25.06.2002.

2. The 1st respondent herein, who was working as a Junior Engineer in the Tamil Nadu Water Supply and Drainage Board in the RWS Division, Vellore, during the year 1999-2000 and was subsequently posted as Junior Engineer, P.S. Division, Thanjavur. While so, by proceedings dated 15.03.2001, he was suspended pending enquiry, in to grave irregularities said to have been committed by him in the work of open wells in Peenjamandhai Panchayat in Anaicut Union of Vellore District. A charge Memo was issued on 15.03.2001, containing six charges against the 1st respondent herein.

3. The substance of the charges was that the 1st respondent herein, has colluded with the contractors, by giving false measurement in the depth of the open wells that were dug in Peenjamandhai Panchayat in Annaikut Union, Vellore District and caused a loss to the Board to the tune of Rs.28,58,793/-. He has failed to carry out the construction of platform around the wells at ground level, as per agreement conditions and specifications, which resulted in a loss to the tune of Rs.2,90,212/- to the Board. He has also recorded false measurements, which resulted in excess payment of about Rs.96,569/- to the contractor. In collusion with the contractor, the 1st respondent had provided substandard well steining, which resulted in wasteful expenditure of Rs.5,30,096/- to the Board.

4. Based on the charge memo, an enquiry was conducted and the Enquiry Officer filed a report on 28.11.2001. A copy of the said report was furnished to the 1st respondent herein and on receipt of his reply, the 1st appellant by its order dated 25.06.2002, imposed a punishment of removal from service. The Disciplinary Authority, viz. the 1st appellant examined the enquiry report along with explanation of the 1st respondent and found that the explanation afforded by the 1st respondent was totally unsatisfactory and concurred with the findings of the

Enquiry Officer that all the six charges stood proved. Taking into account the financial loss caused to the Board, the Disciplinary Authority, viz. the 1st appellant imposed a punishment of removal from service.

5. Aggrieved, the 1st respondent filed an appeal to the Appeal Committee of the TWAD Board. The Appeal Committee by its order dated 18.08.2003, after considering the report of the Enquiry Officer, the conclusion of the Disciplinary Authority which was challenged in the Appeal, concurred with the Disciplinary Authority and confirmed the punishment of removal from service. Aggrieved, the 1st respondent moved this Court in WP No.16194 of 2004.

6. Though several contentions were raised by the 1st respondent, before the Writ Court, the learned Single Judge, who heard the Writ Petition, rejected all the contentions and found that there is nothing on record to interfere with the findings that the 1st respondent is guilty of all the above charges. In Paragraph 12 of the order of the Writ Petition, the learned Single Judge had observed as follows:

"12. At this juncture, I want to mention that it is not a case of no evidence. If it is the case of no evidence, then, this court can interfere with the findings of the enquiry officer as well as the respondents 1 and 2 on the ground that the conclusion is perverse. But, it is the case of some evidence. In such event, it is not permissible for this court to re-appreciate the entire evidence and to substitute its own conclusion in the place of the conclusion arrived at by the authorities below. The learned counsel for the petitioner is not able to point out any material on record so as to hold that the finding is perverse. In such view of the matter, I do not find anything on record to interfere with the findings that the petitioner is guilty of all the charges."

7. The claim of the 1st respondent that the principles of natural justice were not followed was also rejected by the learned Single Judge in the following words:

"13. Insofar as the principles of natural justice is concerned, a perusal of the records would go to show that the same have been followed by the respondents. As I have already pointed out, during the enquiry, the petitioner fully participated and he never raised an objection that he was not afforded any opportunity. But, for the first time, he is raising such an objection before this court. Curiously, for the charges the petitioner gave explanation. Thereafter, enquiry was held and the petitioner was given full opportunity.

In respect of the findings of the enquiry officer also, the petitioner was called upon to submit his explanation, which was also submitted by him. The same was also considered by the 2nd respondent. Thus, in my considered opinion, the respondents have followed the principles of natural justice scrupulously. "

8. These factual findings of the learned Single Judge are not challenged by the 1st respondent. However, the learned Single Judge regarding the proportionality of the punishment concluded as follows:

"15....This question is to be resolved going by the facts and circumstances of each case. In this case, in my considered opinion, going by the age of the petitioner, long service put by him, economic status, nature of the allegations, which are the foundation for the proved charges and all other attending circumstances, I am of the view that removal from service is shockingly disproportionate and instead, in my considered opinion, it would be appropriate to impose a punishment of compulsory retirement upon the petitioner for the proved charges."

9. After reaching the aforesaid conclusion, the learned Single Judge confirmed the findings of the Disciplinary Authority and the Appellate Authority regarding the guilt of the 1st respondent herein, and modified the punishment into one of compulsory retirement with effect from 25.06.2002. This modification is questioned in this appeal.

10. We have heard Mrs.A.L.Ganthimathi, learned counsel for the 1st respondent and none appeared for the appellants.

11. Mrs.A.L.Ganthimath, learned counsel appearing for the 1st respondent would invite our attention to the judgment of the Hon'ble Supreme Court in S.R.Tewari v. Union of India and another, reported in 2013 (6) SCC 602, regarding the issue of proportionality of punishment. The Hon'ble Supreme Court, while reiterating the Law relating to proportionality of punishment and the power of the Court to interfere with the quantum of punishment had observed as follows:

"28. The role of the court in the matter of departmental proceedings is very limited and the court cannot substitute its own views or findings by replacing the findings arrived at by the authority on detailed appreciation of the evidence on record. In the matter of imposition of sentence, the scope for interference by the court is very limited and restricted to exceptional cases. The punishment imposed

by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. The court has to record reasons as to why the punishment is disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice".

The Hon'ble Supreme Court had further observed as follows:

"29. In Union of India & Ors. v. R.K. Sharma, this Court explained the observations made in Ranjit Thakur, observing that if the charge was ridiculous, the punishment was harsh or strikingly disproportionate it would warrant interference. However, the said observations in Ranjit Thakur, are not to be taken to mean that a court can, while exercising the power of judicial review, interfere with the punishment merely because it considers the punishment to be disproportionate. It was held that only in extreme cases, which on their face, show perversity or irrationality, there could be judicial review and courts should not interfere merely on compassionate grounds."

12. On the facts of the case in S.R.Tewari, reported in 2013 (6) SCC 602, (cited supra), the Hon'ble Supreme Court found that the misconducts are only administrative in nature and did not involve financial implications. In the back drop of such a finding, the Hon'ble Supreme Court chose to interfere with the quantum of punishment.

13. The facts narrated above, would show that the charges levelled in this case are very serious charges and are not merely administrative. It is also borne out by records that the action/in action on the part of the 1st respondent, had resulted in huge financial losses to the Board. In fact, the finding of the facts rendered by the Disciplinary Authority, which has been confirmed by the learned Single Judge would show that nearly 28 open wells that were dug, during the relevant period were found to be actually of a lesser depth than the measurements recorded in the measurement book by the 1st respondent. The shortage in depth varies from 1.4 meters to 8.35 meters. It is found that the excess payment made to the contractors in that category alone amounts to Rs.28,58,793/-. The charge is that the 1st respondent in collusion with the contractors has shown excess depth in each of the wells and have felicitated payment of excess amount to the contractors. This charge, in our considered opinion, is very serious and amounts to a corrupt

practice, on the part of the 1st respondent. Such corrupt practices cannot be condoned, by this Court, in the exercise of the power of limited Judicial Review under Article 226 of the Constitution of India. Even, the learned Single Judge has not given any finding, with reference to the proportionality of the punishment in the light of the charges that are held to have been proved. We have extracted the portion of the order of the learned Single Judge, in and by which, he chose to reduce the punishment. We are constrained to point out that the learned Single Judge has not adhered to the restrictions, imposed by the preponderance of judicial opinion on the proportionality of the punishment. Even in S.R.Tewari's case, reported in 2013 (6) SCC 602, (cited supra), the Hon'ble Supreme Court has laid down the requisites for interference with the quantum of punishment.

14. On the facts of this case, we are satisfied that those requisites are not satisfied and hence, we are constrained observe that the learned Single Judge exceeded his Jurisdiction, in exercising the power of the judicial review and modifying the punishment to one of compulsory retirement from that of removal from service. In view of the above, we are constrained to set aside the order of the learned Single Judge, impugned in this Appeal. This appeal will stand allowed. The Writ Petition in WP No.16194 of 2004 will stand dismissed. However, in the circumstances of the case, we do not make any order as to costs.

Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

jv
To

1. The Tamil Nadu Water Supply
and Drainage Board,
No.31, Kamarajar Salai,
Chepauk, Chennai 600 005.
2. The Managing Director,
Tamil Nadu Water Supply and
Drainage Board,
No.31, Kamarajar Salai,
Chepauk, Chennai 600 005.

3. The Joint Chief Engineer
TWAD Board, Northern Region,
Vellore 6.

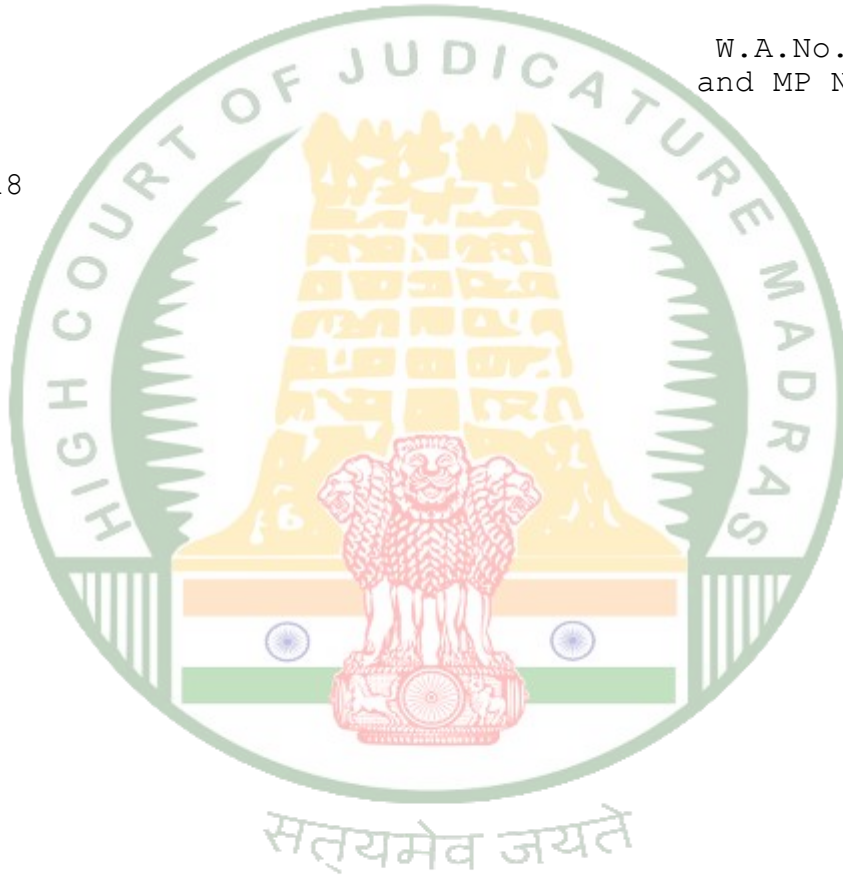
4. The President,
Appeal Sub Committee
TWAD Board,
Chepauk, Chennai 600 005.

+1cc to M/s.A.L.Ganthimathi, Advocate, S.R.No.30171

+1cc to Mr.S.Thamizharasi, Advocate, S.R.No.30189

W.A.No.132 of 2015
and MP No.1 of 2015

GMR(CO)
CS/18/05/18



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