IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2018

CORAM:

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

Writ Appeal No.1604 of 2018

1. The Government of Tamil Nadu,
rep. by its Secretary to Government,
Finance Department,
Fort St. George,
Chennai 600 009.

2. The Chief Internal Auditor and Chief
Auditor of Statutory Boards,
807, Chengalvarayan Buildings,
7th Floor, Anna Salai,
Chennai 600 002.

3. The Deputy Director,
Internal Audit,
Erode. ... Appellants

Vs.

R.Selvaraj ... Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 15.09.2017 passed by a learned Single Judge of this Court in W.P.No.4768 of 2014.

W.P.No.4768 of 2014:

Writ of Certiorarified Mandamus, call for the records pertaining to the proceedings bearing No. Se.Mu.Aa. No.6851/ E2/2009 dated 27.9.2012 issued by the 2nd respondent read with order in G.O.(Ms) NO.364 dated 27.8.2013 issued by the 1st respondent quash the same and consequently direct the respondents to allow the petitioner to retire with effect from 30.11.2010 with all other attendant benefits.

For Appellants : Mr.P.S.Sivashanmugasundaram,
Special Government Pleader

For Respondent : Mr.S.Namasivayam

J U D G M E N T

(Judgment delivered by Huluvadi G.Ramesh,J.)

Being aggrieved by the order dated 15.09.2017 passed by the learned Single Judge in W.P.No.4768 of 2014, Respondents therein have come up with the present Writ Appeal.

2. It is seen that the Writ Petitioner, who was working as a Deputy Inspector, Internal Audit Department, Erode, was issued with a Charge Memo, dated 21.01.2010 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, for the alleged charges. Though the Writ Petitioner denied the charges and an enquiry was conducted, he was placed under suspension by proceedings dated 24.11.2010. The Writ Petitioner was also due for retirement on attaining the age of superannuation on 30.11.2010. However, by proceedings dated 24.11.2010 of the second Appellant herein, the Writ Petitioner was not allowed to retire and was retained in service and was paid subsistence allowance.

3. It is further seen that on completion of the Departmental Enquiry, the charges against the Writ Petitioner were held to be proved and the second Appellant herein, who was the Disciplinary Authority, imposed a penalty of dismissal from service, by proceedings dated 27.09.2012, against which, an Appeal was filed by the Writ Petitioner on 24.10.2012 to the first Appellant. Since no order was passed in the Appeal, the Writ Petitioner filed W.P.No.6951 of 2013 and this Court, by an order dated 22.03.2013, disposed of the said Writ Petition with a direction to the first Appellant herein to consider his Appeal on merits within a period of 12 weeks.

4. In pursuance of the direction issued by this Court, the first Appellant herein passed G.O.Ms.No.364, dated 27.08.2013, rejecting the Writ Petitioner's Appeal, after obtaining advice from the Tamil Nadu Public Service Commission (TNPSC). Challenging the orders dated 27.09.2012 and 27.08.2013 passed by the Disciplinary and Appellate Authorities, the Writ Petitioner filed W.P.No.4768 of 2014 and this Court, by an order dated 15.09.2017, allowed the Writ Petition. Relevant portion of the said order reads as under:

> "17. Therefore, to that extent, this Court finds that the appellate authority has abdicated his statutory role to the external agency viz., Tamil Nadu Public Service Commission, while discharging his duties in the matter of disposing of the appeal preferred to him under the statute by the petitioner. Although this Court finds that the

order passed by the both disciplinary authority and the appellate authority are contrary to law as stated above but still this Court is of the opinion that in respect of the proved charge, the petitioner has to suffer some penalty. Since the petitioner had attained the age of superannuation in 2010 itself and nearly seven years have gone by, it is not fair for this Court to remit the matter back to the authorities for fresh consideration.

18. Therefore, this Court is of the considered view that the punishment of dismissal from service imposed on the petitioner is excessive and harsh in the circumstances of the case. The impugned punishment cannot stand the test of "doctrine of proportionality" as propounded by the Hon'ble Supreme Court of India and such the penalty has to be necessarily interfered with. While doing so, this Court is also concious of the fact that the employee cannot be left let off the hook in view of the proved charges against him.

19. Therefore, in the fitness of the case, this Court is of the view that the penalty of compulsory retirement which is one of the major penalties enumerated in the service rules shall be imposed on the petitioner from the date while he was dismissed from service. In the above circumstances, the impugned orders dated 27.09.2012 and 27.08.2013 are set aside and the employee shall be imposed with the penalty of compulsory retirement from service from the date of imposition of penalty of dismissal from service and he shall be paid all retirement benefits with arrears and pension as admissible to him. The said direction shall be complied with by the respondents within a period of two months from the date of receipt of a copy of this order."

5. Heard the learned counsel for the parties and perused the material documents available on record.

6. Of the four charges levelled against the Writ Petitioner, the main Charge against him is that, he issued Certificates on the gross balance of Provident Funds to the Teachers, without obtaining work plan permission from the Deputy Director, Internal Audit, Erode. According to the Writ Petitioner, Provident Fund Certificate can only be issued by an Officer in the rank of an Inspector and he, being a Deputy Inspector, has no authority to issue Certificates on the Provident Fund Final Balance. In his explanation to the Charge Memo, the Writ Petitioner has further stated that he has affixed his signature in the Provident Fund Certificates separately, which shows that he only assisted the Teachers in calculating their Provident Fund, which has nothing to do with the issuance of Certificates.

7. Although the Disciplinary Authority had accepted the findings of the Departmental Enquiry, while imposing penalty, the authority had not taken into consideration the mitigating circumstances in favour of the Writ Petitioner for adopting a lenient approach in the matter of ordering penalty to the Writ Petitioner. Undoubtedly, as held by the learned Single Judge, the award of penalty of dismissal from service by the Disciplinary Authority does not stand the test of "doctrine of proportionality" and the penalty of dismissal from service has been mechanically passed without proper application of mind. In such view of the matter, the learned Single Judge, interfered with the punishment of dismissal from service imposed on the Writ Petitioner and imposed the penalty of compulsory retirement from service, from the date of imposition of penalty of dismissal from service, however, with all retirement benefits, arrears and pension, as admissible to him.

8. Learned Special Government Pleader appearing for the Appellants submitted that no monetary loss is caused to the Government due to the act of the Writ Petitioner, which has resulted in the framing of charges against him.

9. Taking into account the totality of the facts and circumstances of the case, this Court is of the view that the penalty of 'compulsory retirement' imposed on the Writ Petitioner is still harsh, as the gravity of the charges alleged against him is not severe. The attitude of the Appellants in this regard, is deprecated.

10. Thus, in the light of the discussion made above, this Court confirms the order dated 15.09.2017 passed by the learned Single Judge in W.P.No.4768 of 2014 and, accordingly, the Writ

Appeal is dismissed, making it clear that the Writ Petitioner is entitled to all retirement benefits, as admissible to him and the Appellants cannot be allowed to deduct or withhold any amount due to him. No costs. Consequently, connected C.M.P.No.12895 of 2018 is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

aeb)

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rep. by its Secretary to Government,
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3. The Deputy Director,
Internal Audit,
Erode.

+1cc to Mr.S.Namasivayam, Advocate sr.no.57587

W.A.No.1604 of 2018

rk(co)
nr 28/09/2018