

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 27.03.2018
CORAM
THE HONOURABLE Mr.JUSTICE V.PARTHIBAN
W.P.No.7533 of 2011

T.Amudha

... Petitioner

Vs

1.The Director of Public Health &
Preventive Medicine,
Chennai-6.

2.The Secretary to Government,
Health & Family Welfare (D2) Department,
Fort St.George, Chennai-9.

3.The Deputy Director of Health Services,
Villupuram.

4.The District Entomologist,
O/o. the Deputy Director of Health Services,
Villupuram.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the respondents in connection with the impugned orders passed by the respondents 1 & 2 in R.No.13481/DA/2002/S3/25 dated 26.03.2004 and G.O (D) No.265, Health & Family Welfare (D2) Department, dated 23.02.2007 (received on 08.07.2008) respectively and quash the same.

For Petitioner : Mr.K.Venkataramani (SC) for
Mr.M.Muthappan
For Respondents : Mr.T.M.Pappiah,
Special Government Pleader

ORDER

Heard Mr.K.Venkataramani, learned counsel for the petitioner and Mr.T.M.Pappiah, learned counsel appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorari, to call for the records of the respondents in connection with the impugned orders passed by the respondents 1 & 2 in R.No.13481/DA/2002/S3/25 dated 26.03.2004 and G.O (D) No.265, Health & Family Welfare (D2) Department, dated 23.02.2007 (received on 08.07.2008) respectively and

quash the same."

3. The case of the petitioner is as follows:-

The petitioner was appointed as Junior Assistant through employment exchange by the District Collector, Villupuram District. On 23.07.1981, her service came to be regularised vide G.O.Ms.No.994, P&AR Department, dated 22.08.1984. She was promoted as Assistant in the year 1993. While working as Assistant, the petitioner was issued with the charge memo under Rule 17(b) of the Tamil Nadu Civil Service (D&A) Rules by the third respondent framing two articles of charges. The charges as contained in the charge memo are extracted hereunder:-

"Charge-I: That the said Tmt.T.Amudha, while functioning as Assistant in Primary Health Centre, Mailam had misappropriated the General Provident Fund amount and leave salary of the staff attached to Mailam Main and additional Primary Health Centres. She had misappropriated Rs.44,845/- (Rupees forty four thousand eight hundred and forth five only) approximately from the General Provident Fund amount and Rs.19,374/- (Rupees nineteen thousand three hundred and seventy four only) from the salary of Tmt.N.Vasantha, Sanitary Worker, Primary Health Centre, Mannampoondi, who was on unauthorized absence.

Charge-II: She had tampered the office copy of the pay bills, Primary Health Centre, Mailam. She had show in the office copy of the pay bill for the months from August 2001 to December 2001 that the first instalment of aggregate amount of General Provident Fund temporary advance was recovered from the pay and allowances of the individuals, who had been granted and paid General Provident Fund temporary advance. But in the fair copy of the pay bill it was shown that the temporary advance instalment was not recovered from the individuals as they had applied for temporary advance during that month. The difference of amount from the office copy and the fair copy of the pay bill was misappropriated by her, after encashment. The office copy of the pay bill was tampered as if the temporary advance was not recovered from the individuals after the stamped acquittance."

4. The petitioner submitted her representation by way of written statement of defence on 16.10.2002. However, not satisfied with the explanation, the Enquiry Officer submitted a report on 10.08.2003, holding the charges proved against the petitioner. On 24.10.2003, the Enquiry Officer's report was communicated to the petitioner and was directed to submit her representation on the enquiry report. In response to the same, the petitioner submitted her representation on 06.12.2003,

pointing out several defects and infirmities in the conduct of the enquiry. According to the petitioner, the witnesses were examined behind the back of the petitioner and the petitioner was also not allowed to cross examine the witnesses and therefore, the findings of the Enquiry Officer was invalid and perverse and requested the disciplinary authority not to accept such flawed findings.

5. The disciplinary authority, the first respondent herein, without considering the valid objection raised by the petitioner, had passed an order on 26.03.2004, imposing a punishment of dismissal from service on the petitioner. As against such penalty, the petitioner preferred an appeal to the second respondent on 02.06.2004. The appeal was rejected by the second respondent, the appellate authority, by passing a non-speaking order after obtaining opinion from the Tamil Nadu Public Service Commission on 23.02.2007. Both the orders are put to challenge in the present writ petition.

6. The learned senior counsel for the petitioner would submit that the enquiry was not conducted in the manner known to law as no witnesses were examined in the presence of the petitioner nor the petitioner was allowed to cross examine the witnesses. Even, the petitioner was not allowed to examine herself and the Enquiry Officer had merely obtained a statement and thereafter concluded the enquiry, holding the charges proved. In spite of the petitioner pointing out grave infirmities with the conduct of the enquiry, the disciplinary authority, the first respondent herein passed an order on 26.03.2004, by imposing the impugned penalty of dismissal from service, overlooking the grave errors pointed out by the petitioner about the conduct of the enquiry as well as the findings rendered by the Enquiry Officer. The disciplinary authority has not specifically addressed the issue about the examination of witnesses behind the back of the petitioner and the absence of opportunity to the petitioner to cross examine the witnesses.

7. The second respondent, the appellate authority, has also passed a non-speaking order by rejecting the appeal filed by the petitioner vide proceedings dated 23.02.2007. The appellate authority merely incorporated the views of the Tamil Nadu Public Service Commission and finally concluded without addressing any of the points raised by the petitioner and rejected the appeal. The learned senior counsel would draw the attention of this Court to the orders passed by the disciplinary authority as well as the appellate authority and also would draw the attention of this Court to the findings rendered by the Enquiry Officer.

8. Upon notice, learned Special Government Pleader appearing for the respondents, entered appearance and filed a detailed counter affidavit.

9. The learned Special Government Pleader would submit that the charges framed against the petitioner were serious in nature and therefore, the first respondent imposed the penalty of dismissal from service for the proved misconduct and the appellate authority rightly confirmed the same after obtaining the views of the Tamil Nadu Public Service Commission. The views of the Tamil Nadu Public Service Commission assumed important significance, since the Commission had adverted to all the materials including the deposition, findings of the enquiry and the gravity of the misconduct alleged and had come to the conclusion against the petitioner and rightly rendered an opinion that the petitioner was not fit to be a Government servant. Therefore, the appellate authority has rightly followed the advice of the Tamil Nadu Public Service Commission and therefore, the punishment imposed on the petitioner cannot be faulted with and the writ petition is liable to be rejected.

10. At this, learned senior counsel for the petitioner would submit that in terms of the disciplinary and appeal rules, it is imperative on the part of the authority to consider every point in issue and the appellate authority must pass a speaking order and cannot be guided solely on the basis of the advice rendered by the Tamil Nadu Public Service Commission. Lastly, the learned senior counsel would submit that even otherwise the punishment imposed on the petitioner viz., dismissal from service is rather harsh and excessive and does not meet the requirements of "Proportionality Test". Therefore, he would request this Court to modify the penalty. In support of his submission, the learned counsel would rely on the recent decision passed by this Court in W.P.No.9294 of 2008, dated 05.12.2017, wherein, the learned Judge of this Court has modified the penalty of removal from service into one of compulsory retirement by following the strong observation made by the learned Division Bench of this Court in the case of RM.Palaniappan Vs. The Transport Commissioner, Chepauk & Others, reported in 2006 (1) MLJ 48. The learned Judge of this Court in the above said decision has incorporated the observations of the learned Division Bench and finally set aside the penalty of removal from service and substituted the compulsory retirement. The findings and the decision of the learned Judge as found in paragraph Nos.8 to 12, are reproduced below:-

"8. On the other hand, the learned counsel for the petitioner would rely upon the order passed by the Hon'ble Division Bench of this Court, in the case of RM.Palaniappan Vs. The Transport Commissioner, Chepauk, Chennai and others, reported in (2006)1 MLJ 48, he would draw the attention of this Court to paragraphs 26 to 30 of the above judgment. The same is extracted below:-

"26. No doubt, the shameful act committed by the petitioner is so serious in nature. However, the extreme punishment of dismissal from service imposed on the petitioner, in our view, is disproportionate for the reason that the main object and thrust behind awarding of a punishment to an offender is only to mend him and not to strangulate. Otherwise, the very purpose of awarding punishment would not be served.

27. Further, when most of the unemployed educated youth are searching for any kind of work for their livelihood even for a meagre salary irrespective of their educational qualifications, the attitude of the petitioner, who is in Government Service, abusing of his official position by engaging a tout to grab money illegally and in a shameful way from all walks of people, is really the worst disturbing feature.

28. Moreover, when the petitioner is vested with the power of issuing licenses to the persons and the vehicles as well, it cannot be expected of him that he would give licence to the persons who are eligible in all aspects or the vehicles fit for running on the road, when he has decided to mint money by engaging a tout. This is not a good omen to the civilized and democratic Society, when especially, the nature of work of the petitioner directly plays a vital role with the lives of the people moving on the road.

29. Considering the above aspects, though we are disinclined to impose extreme punishment of dismissal from service, we are of the view that the imposition of stringent punishment on the petitioner would meet the ends of justice.

30. Accordingly, the first and the second respondents are directed not to give any effect to and pay Annual Increments, Dearness Allowance, Bonus, if any, and any other monetary benefits alike, due after the date of this order with cumulative effect and also any service benefits like considering his name for promotion etc., for five years from the date of this order. In other words, the petitioner has to go home with his monthly salary alone i.e., what is drawing as on date for five years from the

date of this order. The orders of the first respondent as well as the Tribunal with regard to punishment are set aside."

9. According to the learned counsel for the petitioner that the facts of the above case were also identical, but still the Hon'ble Division Bench of this Court thought fit to interfere with the quantum of punishment imposed on the petitioner. The learned counsel would also rely on two other decisions of this Court, in the case of V.R.Palanisamy Vs. Director of Collegiate Education, Chennai and others, reported in (2009) 1 MLJ 1071 and in the case of T.Arumai Sounder Rajan Vs. State of Tamil Nadu, rep by its Secretary to Government, Transport Department, Chennai and others, reported in (2009) 1 MLJ 1283. In both the decisions, this Court has applied the principles of "shocking the conscience" theory and interfered with the quantum of penalty imposed on the petitioner.

10. As rightly contended by the learned Additional Government Pleader that in the matters of corruption, no lenient view could be taken and theory of "shocking the conscience" cannot be applied in the instant case. Nevertheless, it has to be seen that the petitioner had admittedly rendered blemishless record of service over 30 years and he was in receipt of several rewards as stated above. The past records always taken into consideration while considering the quantum of penalty ultimately imposed on the employee. As rightly held by the Hon'ble Division Bench of this Court in paragraph 26 of the above cited decision, that "the purpose of thrust of imposition of penalty of the delinquent is only to mend and not to strangle".

11. In these circumstances, in the case of the petitioner, the punishment of removal from service is rather excessive and the same is not warranted for punishing the petitioner who had otherwise rendered creditable service all through his tenure. It is represented by the learned counsel for the petitioner that the petitioner had attained the age of superannuation on 31.12.2007.

12. In the light of the above circumstances and the decisions, this Court is of the considered view that the punishment of removal from service shall be substituted as one of compulsory retirement in terms of the service rules on the date when the petitioner was removed from service by proceedings dated 20.12.2007. In view of the same, the impugned orders in Rc.No.5161/B1/2007, SO No.254/2007, dated 20.12.2007 and Rc.No.23336/B4/07, dated 31.12.2007,

are set aside and the respondents are directed to pass orders of compulsory retirement of the petitioner from the date when he was originally removed from service and grant him all attendant benefits on such modified penalty imposed on the petitioner. The above direction shall be complied with by the respondents, within a period of eight weeks from the date of receipt of a copy of this order."

11. Therefore, the learned senior counsel for the petitioner would submit that the order of dismissal from service can be substituted by one of compulsory retirement as provided under the rules, particularly, in view of the fact that during the pendency of the writ petition, the petitioner had attained the age of superannuation.

12. This Court has considered the rival submissions of the learned senior counsel for the petitioner as well as the learned Special Government Pleader appearing for the respondents. As rightly contended by the learned senior counsel, the enquiry has not been conducted in terms of the procedure contemplated under the disciplinary rules in respect of the major penalty proceedings and from the records, it could be seen that the witnesses were examined not in the presence of the petitioner and the petitioner was not allowed to cross examine the witnesses. Moreover, the petitioner was not allowed to examine herself and merely a statement has been obtained by the Enquiry Officer. Further, the Enquiry Officer appears to have not considered the explanation offered by the petitioner to the charges framed against her. On the whole, this Court is of the considered view that the findings of the Enquiry Officer cannot held to be valid and the same is nothing, but, a perverse finding.

13. While holding as such, the order of the disciplinary authority imposing a severe penalty of dismissal from service on the basis of such flawed findings, cannot be countenanced in law. From the order passed by the disciplinary authority, this Court is unable to see whether the disciplinary authority has appreciated the infirmities pointed out by the petitioner in the conduct of the enquiry. That being the case, this Court is unable to sustain the order of dismissal from service by the disciplinary authority, the first respondent herein. It appears that the disciplinary authority have overlooked all the vital issues raised against the enquiry findings by the petitioner. Therefore, the disciplinary authority has not discharged his quasi-judicial power properly in a manner known to law. Moreover, as rightly contended by the learned senior counsel, the appellate authority has merely followed the opinion expressed by the Tamil Nadu Public Service Commission without

taking any independent view in the matter. Such action on the part of the appellate authority, the second respondent herein, is contrary to the disciplinary and appeal rules where the appellate authority is empowered to deal with the important and vital issues raised by the delinquent employee.

14. In this case, the appellate authority has abdicated his statutory responsibility and passed a non speaking order. Therefore, on this ground alone the order passed by the appellate authority could be interfered with. However, in view of the fact that the petitioner has attained the age of superannuation during the pendency of the writ petition, no useful purpose would be served by remitting the matter back to the Enquiry Officer or to the disciplinary authority to proceed with the enquiry afresh at this distant of time.

15. While so, this Court after going through the materials and pleadings placed on record, is of the view that dehors the defects in the enquiry, the order passed by the appellate authority, particularly, there is some evidence against the petitioner in respect of the charges framed against her. Therefore, the petitioner cannot be completely absolved from the charges, notwithstanding the various infractions pointed out by the petitioner in the conduct of the enquiry and the orders passed by the disciplinary and the appellate authority.

16. Such being the case, this Court is of the considered view that instead of dismissal from service imposed on the petitioner, the ends of justice could be held the same shall be substituted by the punishment of compulsory retirement on the petitioner. In fact, in similar circumstances only, the learned Judge of this Court has passed orders by following the rule laid down by the learned Division Bench of this Court as extracted supra.

17. In view of the above discussion and narrative, this Court quashes the order of the first and second respondents herein in R.No.13481/DA/2002/S3/25 dated 26.03.2004 and G.O (D) No.265, Health & Family Welfare (D2) Department, dated 23.02.2007 (received on 08.07.2008), imposing the penalty of dismissal from service. The punishment of dismissal from service shall be substituted as one of compulsory retirement in terms of the service rules from the date when the petitioner was dismissed from service on 26.03.2004. The respondents are therefore directed to pass orders of compulsory retirement of the petitioner from the date when she was dismissed from service and grant her all attendant benefits on such modified penalty imposed on the petitioner. The above direction shall be complied with by the respondents, within a period of eight weeks from the date of receipt of a copy of this order.

18. With the above direction, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

gsk

To

- 1.The Director of Public Health & Preventive Medicine, Chennai-6.
- 2.The Secretary to Government, Health & Family Welfare (D2) Department, Fort St.George, Chennai-9.
- 3.The Deputy Director of Health Services, Villupuram.
- 4.The District Entomologist, O/o. the Deputy Director of Health Services, Villupuram.

+1 cc to Mr.M.Muthappan Advocate sr 24066
+1 cc to Govt Pleader sr 23947

W.P.No.7533 of 2011

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