

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.06.2018

Pronounced on : 20 .06.2018

CORAM

THE HONOURABLE Mr. JUSTICE V.PARTHIBAN

W.P.No.1425 of 2012

1.V.Thiruvengadam (Deceased)

2.Neela

3.Senthil

4.Sarguna

5.Malaravan ... Petitioners

[P2 to P5 are substituted as LR's of
deceased P1-V.Thiruvengadam
per order dated 10.04.2018]

Vs

The Principal Secretary,
Commissioner of Revenue Administration,
Disaster Management and Mitigation Department,
Ezhigilam, Chennai-5.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari and Mandamus, to quash the proceedings of the respondent in Ref. Ser 5(3) 49556/1999 dated 31.10.2011 and quash the same as illegal, incompetent and without jurisdiction and further direct the respondent to pay the service benefits to the petitioner as per law.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.J.Pothiraj,
Spl. Govt. Pleader

O R D E R

Heard Mr.V.Raghavachari, learned counsel for the petitioner and Mr.J.Pothiraj, learned Special Government Pleader for the respondents.

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

"To issue a Writ of Certiorarified Mandamus, to quash the proceedings of the respondent in Ref. Ser 5 (3) 49556/1999 dated 31.10.2011 and quash the same as illegal, incompetent and without jurisdiction and further direct the respondent to pay the service benefits to the petitioner as per law. "

3. The original petitioner (deceased) while working as Village Administrative Officer, Sengunam Village, Polur Taluk, Thiruvannamalai District, was issued with a charge memorandum on 15.09.1999 consisting of two articles of charges. The charges were relating to demand of illegal gratification from the members of the public in the matter of disbursement of Distress Relief Fund. The matter was referred to before the Tribunal for disciplinary proceedings and the Tribunal for disciplinary proceedings, by its conclusion held that the charge No.1 was proved while charge No.2 was partly proved vide its report dated 25.01.2000. However, in respect of 2nd charge, it was disagreed by the disciplinary authority and was ultimately held as proved and no opportunity was given to the original petitioner in respect of such disagreement. On obtaining further explanation from the deceased employee, the impugned order was passed on 22.09.2000, imposing the penalty of removing him from service.

4. The deceased employee filed an Original Application in O.A.No.404 of 2001 before the Tamil Nadu Administrative Tribunal, challenging the order of removal dated 22.09.2000, on various grounds. After abolition of the Tribunal, the said Original Application has been transferred to this Court and re-numbered as Writ Petition No.39017 of 2004. This Court, after advertng to various materials and pleadings placed on record, passed a detailed order on 28.04.2011, allowing the writ petition. This Court, while allowing the writ petition, has made strong observations in favour of the petitioner stating that the report of the enquiry officer was not based on the circumstantial evidence of the case and no further opportunity was given to the petitioner by the disciplinary authority while disagreeing in respect of second charge which was held to be only partly proved. The learned Judge also observed very strongly saying that in the matters of gratification, the same is required to be proved to the hilt. The elaborate observations made by the learned Judge in W.P.No.39017 of 2004 dated 28.04.2011 as found in paragraphs Nos.13 to 23, are extracted hereunder:

"13.The Supreme Court, in Union of India v. Gyan Chand Chattar, cited above, has held that serious charge of corruption requires

to be proved to the hilt, as it brings civil and criminal consequences upon the employee concerned. He would be liable to be prosecuted and would also be liable to suffer severest penalty awardable in such cases. Therefore, such a grave charge of quasi-criminal nature is required to be proved beyond any shadow of doubt and to the hilt. It cannot be proved on mere probabilities.

14. Even in a domestic enquiry, the charge must be clear, definite and specific, as it would be difficult for any delinquent to meet the vague charges. Evidence adduced should not be perfunctory even if the delinquent does not take the defence or make a protest against the charges. If charges are vague, that does not save the enquiry from being vitiated for the reason that there must be fair play in action, particularly, in respect of an order involving adverse of penal consequences.

15. An enquiry is to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice. The charges should be specific, definite and giving details of the incident which formed the basis of charges. No enquiry can be sustained on vague charges. Enquiry has to be conducted fairly, objectively and not subjectively. Finding should not be perverse or unreasonable, nor the same should be based on conjectures and surmises. There is a distinction in proof and suspicion. Every act or omission on the part of the delinquent cannot be a misconduct. The authority must record reasons for arriving at the finding of the fact in the context of the statute defining the misconduct.

16. The doctrine of proportionality as future possibility is now a well-recognized ground on which a writ court can interfere with the order of punishment imposed upon an employee if the same is so outrageously disproportionate to the nature of misconduct that it shocks the conscience of the court. The punishment imposed upon a delinquent

should be commensurate to the nature and generally of the misconduct is not only a requirement of fairness, objectivity, and non-discriminatory treatment which even those form part of a misdemeanour are entitled to claim but the same is recognized as being a part of Article 14 of the Constitution. It is also well settled that the doctrine of proportionality is one of the group for judicial review. The jurisdiction of a writ court or Administrative Tribunal for that matter is limited to finding whether the punishment is so outrageously disproportionate as to suggestive of lack of good faith.

17. While judicially reviewing an order of punishment imposed upon a delinquent employee, the writ court would not assume the role of an appellate authority. It would not impose a lesser punishment merely because it considers the same to be more reasonable than what the disciplinary authority has imposed. It is only in cases where the punishment is so disproportionate to the gravity of charges that a reasonable person placed in the position of the disciplinary authority could have imposed such a punishment that a writ court to step into interfere with the same.

18. The materials brought on record pointing out the guilt as required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceedings but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmise an conjectures, the same could not have been sustained. The inference drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as it well known however high may be, can under no circumstances be held to be a substitute for legal proof.

19. In the instant case, the disciplinary authority, while disagreeing with the second charge, has not given an opportunity of hearing to the petitioner.

It is a settled principle that when the disciplinary authority disagrees with the findings of the enquiry officer and arrives at a conclusion adverse to the delinquent, it is mandatory on the part of the authority to give a reasonable opportunity of hearing to the delinquent. Therefore, in the absence of any such opportunity, the order passed by the respondent is legally infirmed. This is also a case, where the punishment is so disproportionate to the gravity of charges and no reasonable person placed in the position of the disciplinary authority could have imposed such a punishment.

20. Though this matter has not been taken on appeal by the petitioner to agitate all the issues before the appellate authority which is also competent enough to look into the matter, in view of the consistent plea taken by the petitioner that there was denial of opportunity, non-examination of proper witnesses and violation of principles of natural justice, the matter was admitted by this Court and Rule NISI issued.

21. Normally, this Court would not interfere with the proportionality of the quantum of punishment and it is for the competent authority to decide in accordance with the rules. However, it is seen from the material documents that the conclusion arrived at by the disciplinary authority on the preponderance of probabilities and also presumptions and assumptions to impose the punishment of removal from service is harsh and excessive. The power of this Court to interfere with the proportionality of the quantum of punishment has been time and again considered by the Supreme Court in a catena of decisions, one of which being the case of Commissioner of Police v. Syed Hussain, referred to above, wherein it has been categorically held that the doctrine of proportionality has to be applied in appropriate cases, and another being the case of B.C.Chaturvedi v. Union of India, 1995 (6) SCC 749, in which it is held that if the punishment imposed by the disciplinary authority or the appellate

authority shocks to the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary authority/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, imposes appropriate punishment with cogent reasons in support thereof. Therefore, when the punishment imposed by the disciplinary authority or the appellate authority is shockingly disproportionate to the given facts and circumstances of the case, this Court while giving due consideration, can certainly interfere with such punishment and remand the matter to the authority to decide what appropriate punishment could be imposed on the delinquent.

22. In view of my above discussion and upon considering the facts and circumstances of the case, the impugned order passed by the respondent, imposing the punishment of removal from service on the petitioner, warrants interference, suffers from legal infirmity and requires reconsideration. Accordingly, it is set aside and the matter is remanded to the respondent to look into afresh for imposing appropriate punishment, which, this Court feels, that the punishment of removal from service shall be reduced or modified to the proportionality of charges framed against the petitioner, and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order, after affording an opportunity of being heard to the petitioner.

23. Writ Petition is allowed on the above terms. No costs."

5. While setting aside the order of removal from service, the learned Judge has given direction to the authority concerned to impose another penalty on the petitioner. In pursuance of the order passed by the learned Judge, the respondent by its proceedings, dated 31.10.2011, modified the penalty of removal from service into one 'compulsory retirement' and also ordered Rs.10,000/- to be cut from the Death-cum-Retirement-Gratuity payable to the petitioner. As per the order of compulsory retirement, the petitioner became entitled to receive only

minimum pension of Rs.1,250/- p.m. based on his qualifying service. The said modified order is put to challenge in the present writ petition.

6. Upon notice, Mr.J.Pothiraj, the learned Special Government Pleader entered appearance and made his submissions.

7. Mr.V.Raghavachari, learned counsel for the petitioner would strenuously contend that in view of elaborate observation of this Court in the earlier proceedings of the Court intended that the petitioner ought to have been imposed with the minor penalty and not with another major penalty of compulsory retirement. According to the learned counsel, this Court in the earlier proceedings had quashed the punishment and came to the conclusion fully in favour of the petitioner, however, the disciplinary authority who had imposed punishment, ought to have considered for imposing any minor punishment by taking into consideration the observation made in the earlier order of this Court, but, unfortunately, the respondent without complying with the order in letter and spirit, had converted the same into another major penalty by imposing the punishment of compulsory retirement on the petitioner and such action on the part of the respondent runs contrary to the essence of the order made by the learned Judge of this Court.

8. Mr.V.Raghavachari, learned counsel for the petitioner would further contend that the entire charge was concocted at the instance of a politician and there was no material evidence to establish the factum of demand by the petitioner of any illegal gratification from any member of the public. He would therefore submit that this was the case with no evidence or insufficient of evidence and therefore, the punishment which was presently imposed viz., compulsory retirement, is unsustainable both in law and on facts. However, this Court is unable to appreciate such submissions in view of the fact that the employee had already approached the Tribunal in O.A.No. 404 of 2001 which was transferred and re-numbered as W.P.No.39017 of 2004 and this Court has dealt with all the submissions and therefore, it was not open to the counsel to re-argue the matter before this Court in the present writ petition.

9. However, as regards the submissions of the learned counsel that the punishment of compulsory retirement once again, is excessive and harsh particularly in the light of the observation of this Court in the aforesaid writ petition, this Court has to see whether there is any substance in such argument and whether it is open to this Court to give any further direction in regard to the quantum of punishment to be imposed.

10. As rightly urged by the learned counsel for the petitioner, the intention of this Court in the earlier

proceedings was very clear that the order of removal from service was found to be too excessive and harsh particularly, when very grave infirmities were found in conduct of enquiry proceedings and the conduct of the disciplinary authority in having imposed on the deceased employee. When such view of the finding of this Court, this Court does not see what is justification for the respondent to come up with another major penalty, i.e. compulsory retirement in the place of major penalty of removal from service and thereby denied the deceased employee to get the benefit of lenient view taken in the matter in furtherance of the strong observation made by this Court in the earlier proceedings in favour of the employee.

11. Though normally this Court cannot substitute its view in regard to the punishment imposed on the employee, however, in the exceptional circumstances, this Court can substitute its view on the punishment while exercising its extraordinary jurisdiction enshrined under Article 226 of the Constitution of India, which cannot be curtailed particularly, where extraordinary remedies are required to be addressed.

12. More so, in this case during the pendency of the writ petition, the original petitioner died and his legal representatives were brought on record. From the materials and pleadings placed on record, it appears that there is some force in the contentions put forth on behalf of the petitioner and therefore, this Court is of the considered view that the intention of this Court as conveyed in the earlier order passed on 28.04.2011 in W.P.No.30917 of 2004, which has not been fulfilled by the authority in its letter and spirit, however, substituted another major penalty by imposing compulsory retirement in the place of removal from service.

13. Therefore, in the exceptional circumstances of the case as narrated above, this Court finds that the penalty now imposed, i.e. compulsory retirement, is once again excessive and harsh and the impugned order is hereby set aside and the respondent is directed to substitute the punishment of withholding of increment on the deceased petitioner for a period of two years without cumulative effect. The punishment shall be imposed with effect from the original date when the order of compulsory retirement took effect i.e. 22.09.2000. The respondent is directed to pass order as indicated above within a period of eight weeks from the date of receipt of a copy of this order. On such modification being made, the petitioners, who are the legal heirs of the original petitioner (deceased) are entitled to all consequential and monetary benefits and the same shall be paid to the petitioners within a period of twelve weeks thereafter.

14.With the above direction, this Writ Petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS IX)

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Sub Assistant Registrar

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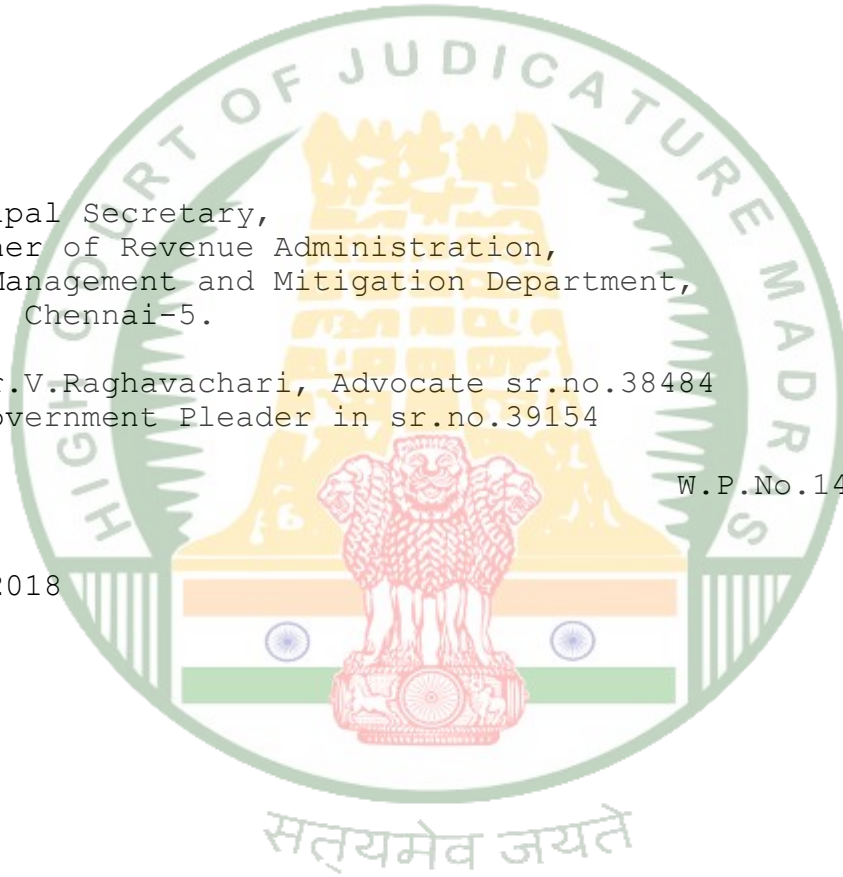
To

The Principal Secretary,
Commissioner of Revenue Administration,
Disaster Management and Mitigation Department,
Ezhigilam, Chennai-5.

+1cc to Mr.V.Raghavachari, Advocate sr.no.38484
+1cc to Government Pleader in sr.no.39154

W.P.No.1425 of 2012

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