

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 29.11.2017

Delivered on : 25.01.2018

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.27790 of 2012 and
MP.NO.2 of 2012

P.Chandran

Petitioner

versus

1. The Deputy Inspector General of Police,
Vellore Range,
Vellore District.

2. The Superintendent of Police,
Vellore District,
Vellore.

Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the 2nd respondent made in C.No.HI(a)/P.R.16/99 dated 15.11.1999 and that of the 1st respondent's proceedings made in C.No.B2/AP.40/2012 dated 17.5.2012, quash the same and consequently, direct the respondents to extend all benefits both service and monetary, including back wages, pension and other pensionary benefits forthwith.

For Petitioner : Mr.L.Chandrakumar

For Respondents: Mr.S.Gunasekaran, AGP

ORDER

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

"To issue Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the 2nd respondent made in C.No.HI(a)/P.R.16/99 dated 15.11.1999 and that of the 1st respondent's proceedings made in C.No.B2/AP.40/2012 dated 17.5.2012, quash the same and consequently, direct the respondents to extend all benefits both service

and monetary, including back wages, pension and other pensionary benefits forthwith."

2. The petitioner, while working as Head Constable in Vellore Traffic Police Station, was issued with a charge memorandum dated 16.1.1999. The charges as framed against the petitioner, are as follows.

"i) Unbecoming conduct of Policeman in having behaved in an indecent manner in a public place at Chitra Wines on 24.11.1998 at 22.15 hours, at Cheyyar and thereby bringing discredit to the Department.

ii) Indiscipline conduct in having left the Headquarters without getting leave or prior permission from any of his superior officers."

3. A criminal case was also registered against the petitioner in respect of the above charges. A departmental enquiry was ordered, wherein, the petitioner had requested for time in view of the pendency of the criminal case against him in respect of same charges. However, according to the petitioner, his request was not acceded to and the enquiry had proceeded and held that the charges were proved against the petitioner. On the basis of the enquiry report, the petitioner was imposed penalty of removal from service on 15.11.1999.

4. While so, the criminal case proceeded against the petitioner, had ended in acquittal finally vide Criminal Court's order dated 8.4.2000. After being acquitted by the Criminal Court, an appeal was preferred by the petitioner to the appellate authority against the order of removal from service. However, the appeal was rejected on the ground of delay and thereafter a review application was filed, which also came to be rejected without considering the same on merits.

5. The petitioner having aggrieved by the orders of the authorities concerned, preferred Original Application No.5155 of 2001 before the then Tamil Nadu Administrative Tribunal and the said application was transferred to this Court and renumbered as W.P.No.4944 of 2006. The said Writ Petition was disposed of by this Court, directing the appellate authority to consider the appeal on merits without reference to the delay. In pursuance of the direction of this Court, the appeal came to be rejected on merits on 17.05.2012, thereby confirmed the original order of removal from service. According to the petitioner, none of the authorities who rejected the appeal and review petition filed by the petitioner, had taken into consideration the fact that the petitioner was acquitted fully in criminal case, since there was no acceptable evidence to convict him.

6. Mr.L.Chandrakumar, learned counsel appearing for the petitioner would vehemently contend that when the criminal Court

had acquitted the petitioner fully, exonerating him from the charges, the appellate authority, who originally considered the appeal in 2000, ought to have interfered with the punishment of removal from service imposed against the petitioner on 15.11.1999 instead of rejecting it on the ground of delay. Even the review authority had passed a very cryptic order which order is a non-speaking one passed without considering the entire case on merits and also without considering the subsequent acquittal of the petitioner in the criminal Court. Even after this Court remanded the matter to the appellate authority, there was no proper consideration of the appeal and the same was mechanically rejected.

7. Upon notice, Mr.S.Gunasekaran, learned Addl.Government Pleader entered appearance for the respondents and filed a detailed counter affidavit.

8. Learned Addl.Government Pleader appearing for the respondents would submit that the petitioner being from a disciplined force, has acted indecently before the public at large and lowered the reputation of the police force in the State. Therefore, he was proceeded with rightly through departmental action and was punished properly. There was no need to postpone the departmental action in view of the pendency of the criminal case since it was always open to the department to maintain departmental action simultaneously along with the criminal case. According to the learned Addl.Government Pleader, the petitioner was given full opportunity in the enquiry which he did not utilize properly and therefore, he cannot be allowed to complain against the enquiry. The charge against the petitioner was quite a serious one, which warrants the punishment of removal from service and therefore, the same cannot be faulted with.

9. This Court has considered the rival submissions of the learned counsel for the parties and perused the materials and pleadings placed on record.

10. It appears that the petitioner had nearly served 28 years of service from the date of his initial appointment and as a consequence of his removal from service, he was completely denied of retirement vis-a-vis pensionary benefits which were otherwise due to him if he normally retired from service. Although the conduct of the petitioner cannot be condoned that being a member of the Police force, acting indecently in public place and creating ruckus, at the same time, the authorities ought to have taken into consideration the clear acquittal of the petitioner in the criminal proceedings.

11. Although the Criminal Court has to follow the principles of Evidence Act strictly for holding any one guilty, which is

not the case of the departmental action and at the same time, the authorities cannot brush aside the findings of the Criminal Court while dealing with the request of the petitioner.

12. During the time the appeals were heard and disposed of, the petitioner was exonerated of the criminal charge and the authorities ought to have taken into consideration of the same atleast in regard to the imposing quantum of penalty to be imposed on the petitioner. In the absence of such consideration, it has to be viewed that the authorities have not taken relevant factors into consideration, but have mechanically passed the orders as if there was no point in favour of the petitioner for consideration.

13. The learned counsel for the petitioner has cited the following decisions in support of his claim for interfering with the quantum of penalty.

i) 1995 (6) SCC 749 "(B.C.Chaturvedi versus Union of India and others)". The learned counsel would draw the attention of this Court to paragraphs 18, 23 and 25 of the judgment, which are extracted as under:

"18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

"19. to 22.

"23. It deserves to be pointed out that the mere fact that there is no provision parallel to Article 142 relating to the High Courts, can be no ground to think that they have not to do complete justice between the

parties, the same cannot be ordered. Absence of provision like Article 142 is not material, according to me. This may be illustrated by pointing out that despite there being no provision in the Constitution parallel to Article 137 conferring power of review on the High Court, this Court held as early as 1961 in Shivdeo Singh's case, AIR 1963 SC 1909, that the High Courts too can exercise power of review, which inheres in every court of plenary jurisdiction. I would say that power to do complete justice also inheres in every court, not to speak of a court of plenary jurisdiction like a High Court. of course, this power is not as wide which this Court has under Article 142. That, however, is a different matter."

"24.

"25. No doubt, while exercising power under Article 226 of the Constitution, the High Courts have to bear in mind the restraints inherent in exercising power of judicial review. It is because of this that substitution of High Court's view regarding appropriate punishment is not permissible. But for this constraint, I would have thought that the law makers do desire application of judicial mind to the question of even proportionality of punishment/penalty. I have said so because the Industrial Disputes Act, 1947 was amended to insert section 11A in it to confer this power even on a Labour Court/Industrial Tribunal. It may be that this power was conferred on these adjudicating authorities because of the prevalence of unfair labour practice or victimization by the management. Even so, the power under section 11A is available to be exercised, even if there be no victimization or taking recourse to unfair labour practice. In this background, I do not think if we would be justified in giving much weight to the decision of the employer on the question of appropriate punishment in service matters relating to Government employees or employees of the public corporations. I have said so because if need for maintenance of office discipline be the reason of our adopting a strict attitude qua the public servants, discipline has to be

maintained in the industrial sector also. The availability of appeal etc. to public servants does not make a real difference, as the appellate/revisional authority is known to have taken a different view on the question of sentence only rarely. I would, therefore, think that but for the self-imposed limitation while exercising power under Article 226 of the Constitution, there is no inherent reason to disallow application of judicial mind to the question of proportionately of punishment/penalty. But then, while seized with this question as a writ court interference is permissible only when the punishment/penalty is shockingly disproportionate."

In the above famous judgment, the Hon'ble Supreme Court has held that the Court/Tribunal has power of judicial review in interfering with the quantum of penalty, but that exercise has to be exercised judiciously and in exceptional cases.

ii) (2001) 10 SCC 761 "(Swatnatar Dixit versus Govind Ram), wherein, the Hon'ble Supreme Court has held that the punishment need not necessarily be punitive in nature and it can be correctional as well. Paragraph 5 is relevant and it is extracted below:

"5. Punishment to be imposed for professional misconduct need not necessarily be punitive in nature. It can be correctional as well. The appellant through his learned counsel has offered unconditional regret for the objectionable behaviour of the appellant and has submitted that ever since the order of stay of punishment was granted by this Court on 2-12-1998, the appellant has been practising as an advocate in a fair and proper manner and has not given rise to any complaint. While upholding the order of professional misconduct against the appellant, in our opinion, it would meet the ends of justice if we reduce the punishment. The punishment imposed by the Bar Council of India appears to us to be disproportionate to the misbehaviour of the appellant. Maybe, if the appellant had appeared before the Bar Council and the Bar Council had not made the order ex parte, the Bar Council may have itself imposed lesser punishment taking into account the mitigating and extenuating circumstances. Be that as it may, after the

order of punishment imposed by the Bar Council of India, the appellant's licence remained suspended till 2-12-1998 i.e. for a period of about two months and 15 days. Suspension of the licence for that period would, in our opinion, meets the ends of justice. Since the appellant resumed his practice of law on 2-12-1998 pursuant to the interim order made by this court, to once again suspend his licence for whatever period after a lapse of about twenty months, may not be fair. We direct the appellant to remain careful in future and to pay Rs.5000 (five thousand) only by way of costs to the first respondent. The costs shall be paid within four weeks from today.

iii) AIR 2003 SC 1377 "Kailash Nath Gupta versus Enquiry Officer (R.K.Rai) Allahabad Bank and others" wherein, the Hon'ble Supreme Court has held as under in paragraphs 8, 7, 9 and 10, which are extracted below:

"7.This Court in Union of India & Anr. vs. G.Ganayutham [(1997) 7 SCC 463] considered the question whether judicial review powers in administrative law permit the High Courts or the administrative tribunals to apply the principle of "proportionality". In the said judgment, reference is made to leading cases in England and also to the rulings of this Court touching the question of "proportionality". In para 15, reference is made to the case of Ranjit Thakur vs. Union of India & Ors. [(1987) 4 SCC 611). In that case, after finding the appellant guilty in court martial, he was dismissed from service and a sentence of imprisonment was also imposed as permitted by Army Act. While quashing the said punishment on the ground that it was "strikingly disproportionate", this Court, in para 25 observed thus:-

"25..... The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to

shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concert of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review."

"8. In the said case, the "doctrine of proportionality" was treated as part of judicial review in administrative law.

"9. A Bench of three learned Judges of this Court in *B.C. Chaturvedi vs. Union of India & Ors.* [(1995) 6 SCC 749], while dealing with the power to interfere with the punishment imposed by the disciplinary authority, in para 17, stated thus:-

"The next question is whether the Tribunal was justified in interfering with the punishment imposed by the disciplinary authority. A Constitution Bench of this Court in *State of Orissa vs. Bidyabhusan Mohapatra* (AIR 1963 SC 779) held that having regard to the gravity of the established misconduct, the punishing authority had the power and jurisdiction to impose punishment. The penalty was not open to review by the High Court under Article 226. If the High Court reached a finding that there was some evidence to reach the conclusion, it became unassessable. The order of the Governor who had jurisdiction and unrestricted power to determine the appropriate punishment was final. The High Court had no jurisdiction to direct the Governor to review the penalty. It was further held that if the order was supported on any finding as to substantial misconduct for which punishment "can lawfully be imposed", it was not for the Court to consider

whether that ground alone would have weighed with the authority in dismissing the public servant. The Court had no jurisdiction, if the findings prima facie made out a case of misconduct, to direct the Governor to reconsider the order of penalty. This view was reiterated in *Union of India vs. Sardar Bahadur* [(1972) 4 SCC 618]. It is true that in *Bhagat Ram vs. State of H.P.* [(1983) 2 SCC 442] a Bench of two Judges of this Court, while holding that the High Court did not function as a court of appeal, concluded that when the finding was utterly perverse, the High court could always interfere with the same. In that case, the finding was that the appellant was to supervise felling of the trees which were not hammer marked. The Government had recovered from the contractor the loss caused to it by illicit felling of trees. Under those circumstances, this Court held that the finding of guilt was perverse and unsupported by evidence. The ratio, therefore, is not an authority to conclude that in every case the Court/Tribunal is empowered to interfere with the punishment imposed by the disciplinary authority. In *Rangaswami vs. State of T.N.* [(1989) supp. 1 SCC 686], a Bench of three Judges of this Court, while considering the power to interfere with the order of punishment, held that this Court, while exercising the jurisdiction under Article 136 of the Constitution, is empowered to alter or interfere with the penalty; and the Tribunal had no power to substitute its own discretion for that of the authority. It would be seen that this Court did not appear to have intended to lay down that in no case, the High Court/Tribunal has the power to alter the penalty imposed by the disciplinary or the appellate authority. The controversy was again canvassed in *State Bank of*

India case where the Court elaborately reviewed the case law on the scope of judicial review and powers of the Tribunal in disciplinary matters and nature of punishment. On the facts in that case, since the appellate authority had not adverted to the relevant facts, it was remitted to the appellate authority to impose appropriate punishment."

"10. It is also further stated in the same judgment that "the High Court/Tribunal while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks 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 impose appropriate punishment with cogent reasons in support thereof."

iv) (2006)1 MLJ 48 (RM.Palaniappan Vs. The Transport Commissioner, Chepauk, Chennai and others). The learned counsel would draw the attention of this Court to paragraph 26 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 strangle. Otherwise, the very purpose of awarding punishment would not be served."

v) Unreported decision of this Court in W.P.(MD) No.4042 of 2005 dated 01.10.2007, wherein, this Court has interfered with the quantum of penalty of removal from service and replaced the same with compulsory retirement on the ground of proportionality having considered the fact that the employee therein had put in 29 years of service and had no previous adverse remarks and that imposition punishment of removal from service will result in

serious consequences of not only depriving the petitioner his employment but also the very survival of the family will be in question.

vi) 2017 (4) SCC P 507 "(Central Industrial Security Force and others versus Abrar Ali)", wherein, the Hon'ble Supreme Court has held in para 19 as under:

"19. Though we are of the view that the High Court ought not to have interfered with the order passed by the Disciplinary Authority, the penalty of dismissal from service is not commensurate with delinquency. The Respondent was found guilty of desertion of the Force for a period of five days and not improving his conduct in spite of imposition of penalties on three occasions earlier. For the above delinquencies, the penalty of dismissal from service is excessive and harsh. In our view, the penalty of compulsory retirement would meet the ends of justice. We are informed by the counsel for the Appellants that the Respondent is entitled for pension as he has completed 10 years of service. In order to avoid any controversy, we direct that the Respondent shall be entitled for notional continuity of service till the date of completion of minimum service required to make him eligible for pension. He will not be entitled for payment of salary and allowances for that period."

In this case also, although the punishment was held to be proper, yet, the Hon'ble Supreme Court thought fit to interfere with the quantum of penalty and ultimately imposed the penalty of compulsory retirement which would make the delinquent eligible to get pensionary benefits.

14. This Court is entirely in agreement with the above principles laid down by the Hon'ble Supreme Court of India and this Court and also the arguments advanced by the learned counsel appearing for the petitioner. No doubt the petitioner's act of misconduct of unbecoming of a policeman of the disciplined force, has to be dealt with sternly. However, the removal from service that too after he had put in 28 years of service, appears to be little harsh while taking into consideration the entire facts of the case. Therefore, in such view of the matter, this Court is of the opinion that the impugned order of compulsory retirement would suffice and that would take care of interest both the department as well as the petitioner before this Court.

15. In the light of the above, the impugned orders, viz., dated 15.11.1999 in C.No.HI(1) P.R.16/99 of the 2nd respondent and 17.5.2012 in C.No.B2/AP.40/2012 of the 1st respondent, are hereby set aside. The order of compulsory retirement shall be imposed from the date when the petitioner was removed from service. The respondent shall pass consequential orders on the above terms. In view of the modification of the punishment now ordered, the petitioner is entitled to get all other attendant and consequential benefits on such compulsory retirement. The said order shall be passed by the respondents within a period of two months from the date of receipt of a copy of this order.

The Writ Petition stands ordered on the above terms. No costs. Consequently Connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

1. The Deputy Inspector General of Police,
Vellore Range,
Vellore District.

2. The Superintendent of Police,
Vellore District,
Vellore.

+1cc to Mr.L.Chandrakumar, Advocate sr.no.6423

W.P.No.27790 of 2012

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