

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.3.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.D.AUDIKESSAVALU

W.A.No.659 of 2019

1. The Secretary to Government,
Public Works Department,
Fort St.George,
Chennai 9.
 2. The Engineer-in-chief,
Buildings and Chief Engineer,
(Buildings), Chennai region
and chief Engineer (general)
Public Works Department,
Chepauk, Chennai 5
- Appellants/Respondents

versus

K.Devasena ... Respondent/Petitioner

Appeal filed against the order passed by this Court dated 8.6.2018 passed in W.P.No.32575/2012.

W.P.No.32575 of 2012:-

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for all the records relating to the impugned order G.O.(D).No.433, Public Works(E2) Department, dated 04.10.2012 issued by the Secretary to the Government Public Works Department the 1st respondent herein and quash the same

For appellant : Mr.Vijay Narayan,
Advocate General,
Assisted by Mrs.A.Srijeyanthi,
Spl.G.P.

For Respondents : Mr.J.Thilagaraj

J U D G M E N T
(made by K.K.SASIDHARAN, J.)

Though the respondent took up several contentions to set aside the order passed by the Government imposing the punishment, the learned Single Judge allowed the Writ Petition solely on the ground that the Appellate Authority took over the function of the Disciplinary Authority and thereby denied the employee, an opportunity to file appeal.

2. The Engineer-in-Chief, (Buildings), Public Works Department, initiated disciplinary proceedings against the respondent invoking Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The Enquiry Officer conducted enquiry with due opportunity to the respondent. The Government, taking into account the report submitted by the Enquiry Officer, imposed the punishment of compulsory retirement on the respondent. The said order dated 4 October 2012 was challenged before the writ court on multiple grounds.

3. The learned Single Judge opined that once the delinquent has been given a valuable right of appeal or revision under the relevant rules, such right cannot be taken away by the Appellate Authority by taking up the function of the Disciplinary Authority. Feeling aggrieved by the order allowing the Writ Petition, the appellants have come up with this intra court appeal.

4. The learned Advocate General placing reliance on Rule 12 of the Tamil Nadu Civil Service (Discipline and Appeal) Rules and Rule 8(vi), contended that compulsory retirement being a major penalty, appropriate authority to impose the punishment is only the Government. The learned Advocate General submitted that Rule 12 is very clear that the Government is empowered to impose any of the penalty specified in Rule 8 on a member of the State service. Since the respondent is a member of the State service and the punishment of compulsory retirement is a major penalty and the statutory authority to impose the said punishment is the Government, the order in G.O.(D) No.433 Public Works (E2) Department dated 4 October 2012 was rightly passed by the Government.

5. The learned counsel for the respondent after confirming the legal position that the Government is the authority to impose punishment, contended that the respondent has taken up several other contentions and those meritorious contentions were not answered by the learned Single Judge. The learned counsel therefore contended that the issue requires further consideration on merits by the learned Single Judge.

6. The Government order in G.O.(D) No.433 Public Works (E2) Department dated 4 October 2012, imposing the punishment of compulsory retirement on the respondent was quashed only on the ground that the Appellate Authority invoked the disciplinary jurisdiction and imposed the punishment. It is a matter of record that neither the learned counsel for the respondent nor the Government Pleader took up a contention referring to Rule 12 (2) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules before the learned Single Judge. The learned Single Judge was of the view that the Appellate Authority has taken over the function of the Disciplinary Authority. It was only under such circumstances, the order was quashed.

7. Rule 12 is very clear that the Government is the Competent Authority to impose the major punishment. The punishment of compulsory retirement was imposed on the respondent. The said punishment is included in Rule 8 and more particularly, sub rule (vi) of the said rule. The Rule makes the position clear that the Government was empowered to impose the punishment of compulsory retirement on a member of the State service. Since this aspect was not considered by the learned single Judge, we are of the view that the impugned order deserves to be set aside.

8. We set aside the order dated 8 June 2018. The Writ Petition in W.P.No.32575 of 2012 is restored to file. We request the learned Single Judge to dispose of the Writ Petition on merits.

9. The intra court appeal is allowed as indicated above. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

1. The Secretary to Government,
Public Works Department,
Fort St.George,
Chennai 9.

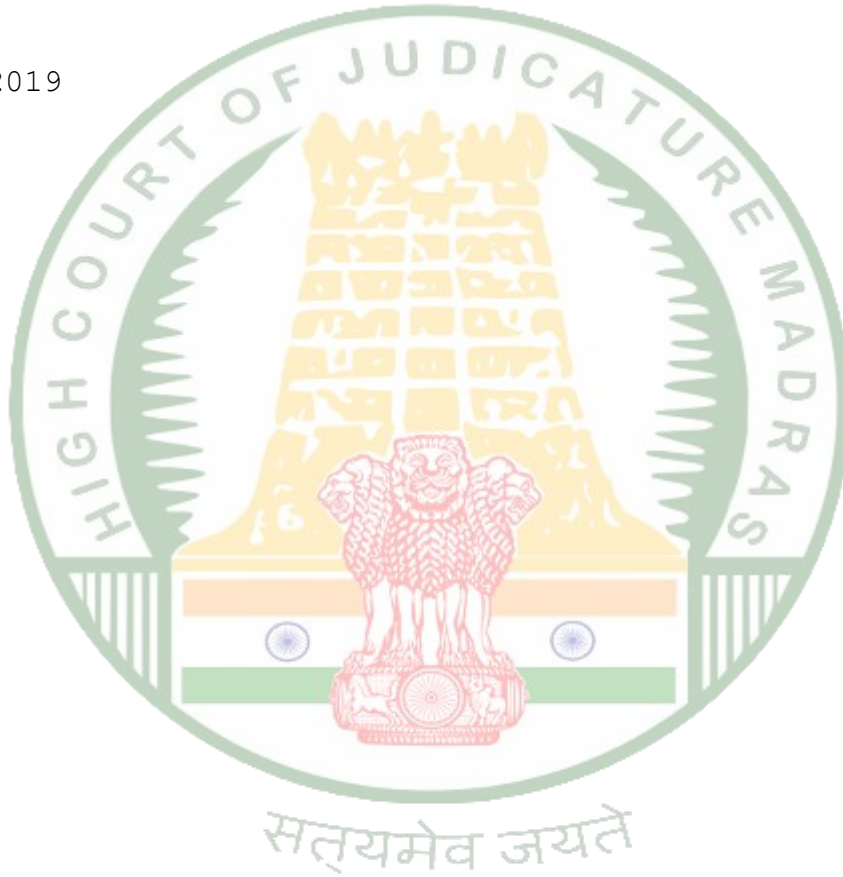
2. The Engineer-in-chief,
Buildings and Chief Engineer,
(Buildings), Chennai region
and chief Engineer (general)
Public Works Department,
Chepauk, Chennai 5

+2cc to Mr.J.Thilagaraj, Advocate, S.R.No.25349

+1cc to the Government Pleader, S.R.No.26278

W.A.No.659 of 2019

NA (Co)
CS/04/06/2019



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