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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2019

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THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.30399 of 2005

and

W.M.P.No.33275 of 2005 and W.V.M.P.No.2 of 2014

1 R.RAMU
S/O. LATE K.RAJU
OFFICE ASSISTANT,
ACHARAPAKKAM PANCHAYAT UNION,
ACHARAPAKKAM 603301
KANCHEEPURAM DIST. ... PETITIONER

Vs.

1 THE DIRECTOR OF RURAL DEVELOPMENT,
PANAGAL MALIGAI, CHENNAI-5
2 THE DISTRICT COLLECTOR
PANCHAYAT DEVELOPMENT BRANCH,
COLLECTORATE, KANCHEEPURAM 631 501 ... RESPONDENTS

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, to call for the entire records pertaining to the issuance of impugned order by the second respondent in RC.No. 43530/2002/PA4 dated 03.4.2004 and quash the same.

For Petitioner : Mr.Abdul Razack for
Mr.Razhaq Associates

For Respondents : Mr.A.Ansar, G.A.

O R D E R

Writ petitioner was appointed as Office Assistant in Acharapakkam Panchayat Union on compassionate ground due to demise of his father Thiru K.Raju, Office Assistant in Acharapakkam Panchayat Union while in service and joined duty on 21.06.1989. The petitioner appeared for S.S.L.C. examination held in October 1991 as a private candidate and passed in the year 1994. The certificates issued by the Secretary, Board of Secondary Education, Tamilnadu, Chennai 600 006. The second



respondent called for the certificates in the year 1992 for consideration of promotion to the post of Junior Assistant, in the Panchayat Development Department. At this stage, the second respondent issued a charge memo in RC. No.43530/2002/PA4, dated 30.12.2002 by framing three charges, alleging that the petitioner submitted bogus certificates, dated 15.6.1994. According to the petitioner, he has given reply to the charge memo on 13.01.2003 by stating that the writ petitioner cannot be faulted and tendered apology. Thereafter, an enquiry conducted by the enquiry officer. Based on the enquiry report, the impugned order has been passed by the respondent by awarding punishment of stoppage of increment for a period of three years with cumulative effect. Challenging the said order, the writ petitioner has filed an appeal before the first respondent. However, no order has been passed by the first respondent. Therefore, the petitioner has filed the present writ petition before this Court challenging the impugned order.

2. Counter affidvit has been filed by the second respondent wherein it is stated that after verification of S.S.L.C. certificates, the Secretary, Board of Examination has sent report in his letter No.326284/ V.2-2/02, dated 27.9.2002 that the certificates produced by one Tmt.M.S.Jayameri and the petitioner herein are fraudulent. Further, the Secretary, Board of examination has requested to initiate criminal action against the individuals who produced false certificates and also requested to enquire their father or guardian and get written statement from them and sent the same to the Secretary, Board of Examination. The individuals have been called for an oral enquiry on 23.12.2002 with their parents. The individuals attended the oral enquiry on 23.12.2002 and submitted their written statement. During the enquiry, it is proved that the writ petitioner obtained certificate from one Natesan who is no more at the time of enquiry. Hence, charges under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules framed against the petitioner. An oral enquiry was conducted by the enquiry officer and submitted report that the charges proved against the petitioner. Based on the enquiry report, final order has been passed by the competent authority viz., the second respondent by imposing punishment of stoppage of increment for a period of three years with cumulative effect. Therefore, the impugned order passed by the second respondent is perfectly valid in law.

3. Heard the learned counsel appearing for the petitioner, the learned Government Advocate appearing for the respondents and perused the materials available on record.

4. The petitioner has not disputed the allegation made against him that the petitioner produced bogus certificate and



joined duty as Office Assistant in Acharapakkam Panchayat Union. The petitioner was issued charge memo under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules and oral enquiry was conducted by the enquiry officer. The writ petitioner appeared before the enquiry officer and he has not placed any evidence to disprove the allegations of the charges framed against the petitioner that the S.S.L.C. Certificate produced by the writ petitioner is fake and fraudulent certificate. The writ petitioner has requested the authority to excuse for the said mistake committed by him. During the enquiry proceedings, the Certificate produced by the writ petitioner was forwarded to the Secretary, Board of examination and the same was examined by the competent authority as to the genuineness of the certificate. Based on the communication from the Board of Examinations, departmental proceedings has been initiated against the writ petitioner and an enquiry was conducted by the enquiry officer, by following the procedure contemplated under the Tamil Nadu Civil Services (Discipline & Appeal) Rules. Even during the enquiry, the writ petitioner has not taken efforts to enquire any of the witnesses. In Regional Manager, U.P.S.R.T.C, Etawah & others Vs. Hoti Lal & another [2003 (3) SCC 605], the Hon'ble Supreme Court held that the scope and judicial review is very limited and restricted to exceptional cases, unless the punishment imposed by the authority is wholly disproportionate. In paragraphs 7 to 10, the Hon'ble Supreme Court held as follows:

'7. 32. Finally, we come to the present case. It is not contended before us that any fundamental freedom is affected. We need not therefore go into the question of 'proportionality'. There is no contention that the punishment imposed is illegal or vitiated by procedural impropriety. As to 'irrationality', there is no finding by the Tribunal that the decision is one which no sensible person who weighed the pros and cons could have arrived at nor is there a finding, based on material, that the punishment is in 'outrageous' defiance of logic. Neither *Wednesbury* [Associated Provincial Picture Houses Ltd. v. *Wednesbury Corpn.*, (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] nor *CCSU* [Council of Civil Service Unions v. *Minister for Civil Service*, 1985 AC 374 : (1984) 3 All ER 935 : (1984) 3 WLR 1174 (HL)] tests are satisfied. We have still to explain '*Ranjit Thakur* [*Ranjit Thakur v. Union of India*, (1987) 4 SCC 611 : 1988 SCC (L&S) 1 : (1987) 5 ATC 113]. 33. In *Ranjit Thakur* [*Ranjit Thakur v. Union*



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of India, (1987) 4 SCC 611 : 1988 SCC (L&S) 1 : (1987) 5 ATC 113] this Court interfered with the punishment only after coming to the conclusion that the punishment was in outrageous defiance of logic and was shocking. It was also described as perverse and irrational. In other words, this Court felt that, on facts, *Wednesbury* [Associated Provincial Picture Houses Ltd.v. *Wednesbury* Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] and *CCSU* [Council of Civil Service Unions v. Minister for Civil Service, 1985 AC 374 : (1984) 3 All ER 935 : (1984) 3 WLR 1174 (HL)] tests were satisfied. In another case, in *B. Chaturvedi v. Union of India* [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] a three-Judge Bench said the same thing as follows: (SCC p. 762, para 18).

'18. ... 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.'

Similar view was taken in *Indian Oil Corpn. Ltd. v. Ashok Kumar Arora* [(1997) 3 SCC 72 : 1997 SCC (L&S) 636] that the Court will not intervene unless the punishment is wholly disproportionate.

34. In such a situation, unless the court/tribunal opines in its secondary role, that the administrator was, on the material before him, irrational according to *Wednesbury* [Associated Provincial Picture Houses Ltd. v. *Wednesbury* Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] or *CCSU* [Council of Civil Service Unions v. Minister for Civil Service, 1985 AC 374 : (1984) 3 All ER 935 : (1984) 3 WLR 1174 (HL)] norms, the punishment cannot be



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quashed. Even then, the matter has to be remitted back to the appropriate authority for reconsideration. It is only in very rare cases as pointed out in B.C. Chaturvedi case [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] that the Court might – to shorten litigation – think of substituting its own view as to the quantum of punishment in the place of the punishment awarded by the competent authority. (In B.C. Chaturvedi [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] and other cases referred to therein it has however been made clear that the power of this Court under Article 136 is different.) For the reasons given above, the case cited for the respondent, namely, State of Maharashtra v. M.H. Mazumdar [(1988) 2 SCC 52 : 1988 SCC (L&S) 436 : (1988) 6 ATC 876] cannot be of any help.”

8. In Om Kumar v. Union of India [(2001) 2 SCC 386 : 2001 SCC (L&S) 1039] it was observed as follows: (SCC p. 412, para 71)

“71. Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as ‘arbitrary’ under Article 14, the court is confined to Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and such extreme or rare cases can the court substitute its own view as to the quantum of



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punishment."

9. The decision in U.P. SRTC case [(2000) 3 SCC 450 : 2000 SCC (L&S) 356] was really in a different factual background making it distinguishable from the facts of the present case, and has no application. In Karnataka SRTC v. B.S. Hullikatti [(2001) 2 SCC 574 : 2001 SCC (L&S) 469] it was held that it is misplaced sympathy by courts in awarding lesser punishments where on checking it is found that the bus conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the bus conductors to collect the correct fare from the passengers and deposit the same with the Corporation. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare. It was finally held that the order of dismissal should not have been set aside. The view was reiterated by a three-Judge Bench in Regional Manager, RSRTC v. Ghanshyam Sharma [(2002) 10 SCC 330 : (2002) 1 LLJ 234] where it was additionally observed that the proved acts amount either to a case of dishonesty or of gross negligence, and bus conductors who by their actions or inactions cause financial loss to the corporations are not fit to be retained in service.

10. It needs to be emphasized that the court or tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. As has been highlighted in several cases to which reference has been made above, the scope for interference is very limited and restricted to exceptional cases in the indicated circumstances. Unfortunately, in the present case as the quoted extracts of the High Court's order would go to show, no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Reasons are live links between the mind of the decision taken to



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the controversy in question and the decision or conclusion arrived at. Failure to give reasons amounts to denial of justice. [See Alexander Machinery (Dudley) Ltd. v. Crabtree [1974 ICR 120 (NIRC)] .] A mere statement that it is disproportionate would not suffice. A party appearing before a court, as to what it is that the court is addressing its mind. It is not only the amount involved but the mental set-up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of the learned Single Judge upholding the order of dismissal.'

Therefore, the impugned order passed by the second respondent is perfectly valid and there is no error illegality in the said order.

5. In fine, the writ petition stands dismissed. No Costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar



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To

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- 1 THE DIRECTOR OF RURAL DEVELOPMENT, PANAGAL MALIGAI,
CHENNAI-5.
- 2 THE DISTRICT COLLECTOR
PANCHAYAT DEVELOPMENT BRANCH, COLLECTORATE,
KANCHEEPURAM.

+1cc to M/s.Razhaq Associates, Advocate Sr.88804
+1cc to the Government Pleader Sr.89211

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and W.V.M.P.No.2 of 2014

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