IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. No. 1961 of 2018
and
C.M.P. No. 15668 of 2018

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Finance (T & A) Department,
Secretariat,
Fort St. George,
Chennai - 600 009.

2. The Commissioner of Treasuries and Accounts,
(Now Director of Treasuries and Accounts),
Chennai - 600 015. Appellants/Respondents

-vs-

M.Saroja ... Respondent/Petitioner

PRAYER:- Writ Appeal filed under Clause 15 of Letter Patent, praying to set aside the order passed in W.P. No. 6828 of 2007 dated 24.06.2014.

Prayer in W.P. No. 6828 of 2007:
Writ Petition having transferred from the file of the Tamil Nadu Administrative Tribunal in OA.NO.4743 IF 2002, is filed to call for the records of (1) G.O.(2D).NO40 Finance (T & A) Dept dated 23.11.2001 of the 1st respondent and (2) Proc.RC.No.7804/97/Q3-3 dated 23.3.1999 of the 2nd respondent quash the same.

For Appellants : Mr. A. Sri Jayanthi
Special Government Pleader

For Respondent : No appearance

J U D G M E N T

(Judgment of the Court was delivered by P.D. AUDIKESAVALU, J.)

The intra-Court Appeal arises out of the order dated 24.06.2014 in W.P. No. 6828 of 2007 passed by the Learned Judge of this Court. The parties are hereinafter referred to as per their description in the Writ Petition for the sake of convenience.

2. The Petitioner, who was employed as Superintendent in District Treasury, Nagapattinam, was issued with a charge memo Rc. No. 7804/97/23/3 dated 16.05.1997 in respect of the following charges:-

"Charge No. 1:

that the said Tmt. M. Saroja working as Superintendent from 19.07.1996 onwards at the District Treasury, Nagapattinam had admited one fradulent GPF bill in T. No. 686/20-09-1996 Rs.60,000/- drawn by the District Siddha Medical Officer, Thanjavur at Nagapattinam while the rule No./provision in GPF rules has not been specifically mentioned in the G.P.F. Sanction proceedings enclosed to the bills relevant to the reasons shown therein without proper check on the day of presentation itself hurriedly with malafide intention for her personal gain.

Charge No.2:

that during the aforesaid period Tmt. M. Saroja, Superintendent before admitting the fraudulent GPF bill mentioned in charge No.1 she had failed to insist the bill passing accountant to get the Treasury copy sanction order/advice assigned with Distribution number for making proper entries in the 'B' register maintained for the purpose with malafide intention to quicken the admittance of the bogus bill so as to enable the culprit to encash the same on 20-09-1996 itself.

Charge No.3:

that during the aforesaid period, Tmt. M. Saroja, Superintendent had admitted the bogus GPF bill mentioned in Charge No.1 prior to that fraudulent GPF bill, the following four GPF bogus bills were presented, admitted and encashed by the culprit on the same day of presentation:-

| | | | | |
|---|---|---|---|---|
| 1) | T. No. | 122/18-07-96 | Rs.60,000/- | of TNTC 70 Regr. |
| 2) | " | 313/02-08-96 | Rs.72,000/- | -do- |
| 3) | " | 397/07-08-96 | Rs.72,000/- | -do- |
| 4) | " | 407/07-08-96 | Rs.43,000/- | -do- |

| | | | | |
|---|---|---|---|---|
| 1) | T. No. | 122/18-07-96 | Rs.60,000/- | of TNTC 70 Regr. |
| | | Total | Rs.2,47,200/- | |

On verification of the TNTC 70 Register of the District Siddha Medical Officer, Thanjavur at Nagapattinam the relevant entires of the above four bogus bills were found to be erased with some liquid/chemicals and in that space fresh bills were entered in order to hide the erasure of the bogus bill entries. However there are trace of such erasure found visibile in the TNTC 70 Register. While admitting the bogus bill mentioned in Charge No.1 the said Tmt. M. Saroja, Superintendent had ample opportunity to notice and to point out the fact of erasure made by the culprit, she had failed to report to the Assistant Treasure Officer. By her active connivance with the culprit to defraud the Govt. money admitted the bogus bill on 20-09-1996 in a hurried manner without proper check, even without getting assigned the D.R. No. to the Treasury advice and thereby brought discredit to the Treasuries and Accounts Department."

3. In the departmental proceedings, on finding that the charges have been proved, the Petitioner was imposed with the punishment of stoppage of next annual increment for a period of two years without cumulative effect excluding the period, if any spent on leave. The said order of punishment was confirmed in the appeal by the Government of Tamil Nadu in G.O. (2D) No. 40, Finance (Treasuries and Accounts-I) Department dated 23.11.2001. The Petitioner challenged the same in O.A. No. 4723 of 2002 under Section 19 of the Administrative Tribunals Act, 1985, before the Tamil Nadu Administrative Tribunal. On the abolition of the said Tribunal, the said application was transferred to this Court as W.P. No. 6828 of 2007. The Learned Judge, who heard the Writ Petition, by order dated 24.06.2014, held as follows:-

"6. The Learned Counsel for the Petitioners, in the course of his hearing, has restricted his argument to the reduction of punishment, by stating that since there is no malafide intention on the part of the Petitioners, the punishment may be reduced without cumulative effect.

7. This Court finds some bonafide contention raised on the side of the Petitioners. Considering the nature of the charges levelled against the Petitioners and nature of the charges proved against the Petitioners and in view of the absence of any malafide intention on the part of the Petitioners, this Court is inclined to modify the punishment into one that of stoppage of

increment for one year without cumulative effect with consequential monetary benefits if any.

8. In the result, the impugned punishment imposed on the Petitioners in both the Writ Petitions is modified into one that of stoppage of increment for one year without cumulative effect, with consequential monetary benefits if any. The whole exercise shall be completed within six months form the date of receipt of the copy of this order. Both the Writ Petitions are accordingly ordered. No costs."

Aggrieved thereby, the Respondents have preferred this appeal.

4. Despite service of notice on the Petitioner, she has not entered appearance either in person or through Counsel in this appeal. We have heard Mrs. A. Sri Jayanthi, Learned Special Government Pleader for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

5. The scope of judicial review in the matters relating to disciplinary action against employees has been settled by a catena of decisions of the Hon'ble Supreme Court of India and reference may be made to some of them.

(i) In B.C. Chaturvedi -vs- Union of India [(1995) 6 SCC 749], it was observed as follows:-

"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."

(ii) In Om Kumar -vs- Union of India [(2001) 2 SCC 386] after considering large number of cases, the principle was summarized as as follows:-

"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 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 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 in such extreme or rare cases can the court substitute its own view as to the quantum of punishment."

(iii) In V. Ramana -vs- A.P.S.R.T.C. [(2005) 7 SCC 338], it was observed as follows:-

"11. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case [Associated Provincial Picture Houses Ltd v.Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

12. To put it differently unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed."

(iv) In Union of India -vs- R.K. Sharma [(2001) 9 SCC 592], it was observed as follows:-

"13. ....It is only in extreme cases, which on their face show perversity or irrationality that there can be judicial review. Merely on compassionate grounds a court should not interfere."

(v) In State of Meghalaya -vs- Mecken Singh N. Marak [(2008) 7 SCC 580] it was observed as follows:-

> "13. … A court or a tribunal while dealing with the quantum of punishment has to record reasons as to why it felt that the punishment is not commensurate with the proved charges.
>
> 14. In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. … The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review."

(vi) In Government of India -vs- George Philip [(2006) 13 SCC 1], it was observed as follows:-

> "11. It is trite that the Tribunal or the High Court exercising jurisdiction under Article 226 of the Constitution are not hearing an appeal against the decision of the disciplinary authority imposing punishment upon the delinquent employee. The jurisdiction exercised by the Tribunal or the High Court is a limited one and while exercising the power of judicial review, they cannot set aside the punishment altogether or impose some other penalty unless they find that there has been a substantial non-compliance with the rules of procedure or a gross violation of rules of natural justice which has caused prejudice to the employee and has resulted in miscarriage of justice or the punishment is shockingly disproportionate to the gravamen of the charge...."

(vii) In S.R. Tewari -vs- Union of India [(2013) 6 SCC 602], it was observed as follows:-

> "28. The role of the court in the matter of departmental proceedings is very limited and the court cannot substitute its own views or findings by replacing the findings arrived at by the authority on detailed appreciation of the evidence on record. In the matter of imposition of sentence, the scope for interference by the court is very limited and restricted to exceptional cases. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. The court has to record reasons as to why the punishment is disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice."

On a conspectus of the aforesaid binding decisions restricting the scope of judicial review for interference on penalty in disciplinary proceedings, we are unable to subscribe to the reasoning of the Writ Court that in the absence of any malafide intention on the part of the Petitioner and the nature of charges proved against her, the punishment of stoppage of annual increment for a period of two years without cumulative effect excluding the period, if any spent on leave, could be reduced to that of stoppage of increment for one year without cumulative effect with consequential monetary benefits, as it does not fall within the contours prescribed for the same. Accordingly, the order dated 24.06.2014 in W.P. No. 6828 of 2007 is set aside and the order of the Second Respondent in Proc. Rc. No. 7804/97/Q3-3 dated 23.03.1999 confirmed by G.O. (2D) No. 40, Finance (Treasuries and Account-I) Department dated 23.11.2001 of the Second Respondent is restored.

6. In the result, the Writ Appeal is allowed and the Writ Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vjt

To

1. The Secretary to the Government of Tamil Nadu,
Finance (T & A) Department,
Secretariat,
Fort St. George,
Chennai - 600 009.

2. The Commissioner of Treasuries and Accounts,
(Now Director of Treasuries and Accounts),
Panagal Buildings,
No. 1, Jeenis Road,
Saidapet,
Chennai - 600 015.

+1 cc to Government Pleader SR.NO. 26862



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A.SK(10/04/2019)