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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :02.07.2019

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THE HONOURABLE Mr. JUSTICE V.PARTHIBAN

W.P.No.20953 of 2018
and
W.M.P.No.24597 of 2018

R.Haribabu

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. By its Chief Secretary,
Fort St. George, Chennai - 9.

2.The Secretary,
Appointment Committee - Chennai
Corporation of Chennai
Chennai - 3.

3.The Corporation of Chennai,
Rep. By its Commissioner,
Chennai - 3.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the 1st respondent pertaining to the order G.O.Ms.No.(P)No.160 dated 12.3.2015 and to quash the same.

For Petitioner : M/s.Dakshayani Reddy
for Mrs.S.Sithirai Anandam

For 1st Respondent: Mr.I.Sathish
Additional Government Pleader

For RR 2 and 3 : Mrs.Karthikaa Ashok

ORDER

The petitioner was appointed as Technical Assistant on 24.08.2009 in the office of the 1st respondent. Subsequently, he was promoted as Junior Civil Engineer. On 21.11.2012 the petitioner was issued with a charge memorandum, framing two articles of charges. The charges against the petitioner are as follows:



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- "1.That while he worked as Junior Engineer, old Dn.63, Old Zone IV, New Zone-VIII he had failed to stop the unauthorized construction at No.8/60, Station Road, Villivakkam, Chennai - 49 in Dn-63, Old Zone-IV and also failed to demolish the above said unauthorized construction and thereby failed to perform his statutory duties such as monitoring the unauthorized constructions/deviations.
- 2.That he has violated the rule 20 of the Madras Corporation Servants Conduct Rules, 1968."

2.In response to the charge memorandum, the petitioner denied the same and submitted his explanation to that effect. On the receipt of the explanation, the 3rd respondent passed an order on 22.11.2013 holding that the charges proved and imposed a penalty of stoppage of increment for a period of three years with cumulative effect. Against the order of penalty, an appeal was preferred to the 2nd respondent. The 2nd respondent, however, rejected the appeal filed by the petitioner and confirmed the order of the 3rd respondent vide order dated 17.07.2014. Thereafter, a revision was also filed before the 1st respondent and the same was rejected vide order dated 12.03.2015 which is the subject matter of the present writ petition.

3.When the matter is taken up for hearing, although several grounds have been raised assailing the order of punishment imposed on the petitioner viz., stoppage of increment for a period of three years with cumulative effect, the learned counsel for the petitioner would submit that the said penalty is per se discriminatory, arbitrary and unreasonable, since two other officers who were involved in the same set of charges and who had submitted the same explanation, one officer has been completely exonerated and other has been let off by merely imposing the punishment of Censure. In the said circumstances, the learned counsel would submit that the punishment imposed on the petitioner is liable to be interfered with.

4.The learned counsel would draw the attention of this court to the charges framed against the petitioner as well as two other officers, one Mr.R.Palani, Assistant Executive Engineer and other officer Mr.R.Subash, Assistant Executive Engineer wherein identical charges have been framed against these officers and their explanation is almost identical to the one submitted by the petitioner.

5.In regard to the Assistant Executive Engineer, namely, R.Palani, he was exonerated from the charges and in regard to other officer, R.Subash, Assistant Executive Engineer, he was imposed with minor penalty of Censure. Therefore, she would submit that the punishment imposed on the petitioner appears to



be blatantly discriminatory and cannot stand to test of scrutiny. In support of her contention, the learned counsel would submit that there must be equality in imposition of penalty on the delinquent officers and in case, such punishment is discriminatory, the Courts have intervened in such punishment. The recent decision rendered by the Hon'ble Supreme Court of India in Naresh Chandra Bhardwaj V. Bank of India and others reported in (2019) 4 MLJ 637 (SC) has been referred to by the learned counsel. In the aforesaid decision, the Hon'ble Supreme Court of India, in paragraph No.7, has culled out the principles in regard to the proposition on hand and the same is reproduced hereunder:

"7. There is really no difference in the proposition, which is sought to be propounded except that in the latter judgment the principles have been succinctly summarised in the last paragraph of the judgment, which read as under:

"19. The principles discussed above can be summed up and summarized as follows:

19.1. When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.

19.2. The Courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority.

19.3. Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of 1 (2013) 3 SCC 73 2 (2013) 12 SCC 372 the Court.

19.4. Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The Court by itself cannot mandate as to what should be the penalty in such a case.

19.5. The only exception to the principle stated in para (d) above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct was identical or the co-delinquent was foisted with more serious charges. This would be on the Doctrine of Equality when it is found that the



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concerned employee and the co- delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge sheet in the two cases. If co-delinquent accepts the charges, indicating remorse with unqualified apology lesser punishment to him would be justifiable." (emphasis supplied)"

6. In the above decision, the Hon'ble Supreme Court has stated that the above ruling is self explanatory that the doctrine of equality has to be applied uniformly to all similarly placed employees. The learned counsel would further draw the attention of this Court to a detailed order passed by this Court in W.P.No.9004 of 2018 dated 02.08.2018. In the said writ petition, a similar issue came up for consideration along with other issues and after adverting to various decisions, this Court agreed with the submission made on behalf of the petitioner therein that there has to be equality in imposition of penalty on the delinquent officers.

7. The learned counsel would also draw the attention of this Court to the extensive reference to various other case laws on the issue and the order passed by this Court in W.P.No.9004 of 2016 wherein at paragraphs 13 & 14, it is held as under:

"13. Besides, the learned counsel for the petitioner would also rely on the decision in the case of R.Pitchandi Vs. The Principal Chief Conservator of Forest and others, reported in 2011 SCC Online Mad 1586 and she would draw the attention of this Court to paragraph Nos.6 to 7, which are reproduced below:-

"6. The fact remains that the Disciplinary Authority has held that the charges were not proved against the petitioner and other delinquents. However, the Disciplinary Authority awarded the punishment to the petitioner and the second co-delinquent as stated above and insofar as the first co-delinquent is concerned, he has been totally exonerated from the charges. Therefore, it is crystal clear that different yardstick was adopted in respect of the petitioner and the second co-delinquent than that of the first co-delinquent and it would certainly amount to discrimination in awarding punishment to the petitioner and other co-delinquents. The learned counsel for the petitioner has rightly placed reliance on the decision of the Hon'ble Apex Court in M.Raghavelu v. Govt. of A.P. and Another reported in (1997) 10 SCC 779. The Hon'ble Apex Court in the said decision has held as hereunder:



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"5.The argument of the learned counsel for the appellant is that if the persons directly in charge of the construction work were found not guilty of the charge framed, the appellant, who was indirectly in charge of the work, cannot be punished for similar charge levelled against him. We find force in the argument of the learned counsel for the appellant and we do not think that the argument of the learned counsel for the respondent that the enquiry officer in this particular case has gone into the merits and has given different finding should be accepted. As pointed out earlier, on the basis of the same set of evidence the officers who were directly in charge of the construction work were exonerated of the charge and we see no reason to pick out the appellant along for finding him guilty of the charge."

The learned counsel for the petitioner has also rightly placed reliance on the decision of this Court in N.Nandagopalan v. The Secretary to Government reported in 2007 Writ L.R.52, wherein a learned Single Judge of this Court has held as hereunder:

"9. It is well settled in law that if employees are involved in the same incident, the Department should proceed against all or should not proceed against none. There is no discretion to proceed against some of employees and no action against the other employees, since they are identically placed and their involvement being identical. In the instruction submitted by the Government Advocate, it is not stated as to how the petitioner's involvement is not similar to other 28 persons. In the absence of such distinct feature, the proceedings conducted by the respondent against the petitioner and imposing punishment on the basis of the charge is illegal and hence the impugned order is set aside."

The principles laid down by the Hon'ble Apex Court and this Court in the decisions cited supra are squarely applicable to the facts of the instant case as in this case also, as already pointed out earlier, there is a discrimination in respect of awarding punishment between the petitioner and other co-delinquents.

7. In view of the aforesaid reasons, this Court is of the considered view that as the first co-delinquent has been totally exonerated from the charges, the same benefit should be given to the petitioner also. Accordingly, this Court is constrained to set aside the impugned order passed by the first respondent dated 27.06.2010 in proceedings Se.Mu.Aanai.No.A.A2/29499/2009. Consequently, the first respondent herein is hereby directed to give promotion to the petitioner as



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Forester, if the petitioner is otherwise eligible and entitled for such promotion."

14. The learned counsel would further rely on the decision rendered by the learned single Judge of this Court in W.P.(MD).No.8192 of 2014 dated 01.10.2015, with reference to paragraph Nos.5 to 7 of the said order passed by the learned Single Judge which are reproduced below:-

"5. The aforesaid portion of the counter affidavit infers that the co-delinquents of the petitioner, against whom similar charges were framed, have been imposed with a lighter of punishment of Censure. However, in the case of the petitioner, the respondent imposed a harsher punishment as stated above, without taking note of the fact that they are all involved in the same incident. Such approach adopted by the respondent is against the doctrine of equality.

6. In such circumstances, the Hon'ble Apex Court in the case of Rajendra Yadav v. State of Madhya Pradesh and others ((2013) 3 SCC 73), while dealing with the doctrine of equality, held thus:

12. The Doctrine of Equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate, i.e., lesser punishment for serious offences and stringent punishment for lesser offences.

13. The principle stated above is seen applied in few judgments of this Court. The earliest one is Director General of Police and Others v. G. Dasayan(1998) 2 SCC 407, wherein one Dasayan, a Police Constable, along with two other constables and one Head Constable were charged for the same acts of misconduct. The Disciplinary Authority exonerated two other constables, but imposed the punishment of dismissal from service on Dasayan and that of compulsory retirement on Head Constable. This Court, in order to meet the ends of justice, substituted the order of compulsory retirement in place of the order of dismissal from service on Dasayan, applying the principle of parity in punishment among co-delinquents. This Court held that it may,



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otherwise, violate Article 14 of the Constitution of India. In Shaileshkumar Harshadbhai Shah case (supra), the workman was dismissed from service for proved misconduct. However, few other workmen, against whom there were identical allegations, were allowed to avail of the benefit of voluntary retirement scheme. In such circumstances, this Court directed that the workman also be treated on the same footing and be given the benefit of voluntary retirement from service from the month on which the others were given the benefit.

7. In the light of the above said ratio of the Hon'ble Apex Court, the impugned punishment passed only against the petitioner cannot be sustained, especially when the co-delinquent of the incidents, namely, Mr.Veerarajan and Mr.Ponswamynathan, who have faced similar charges, were imposed with a lighter punishment of Censure as observed above. Besides, from the date of punishment imposed against the petitioner i.e. on 13.03.2014, now more than twenty months have gone by and on account of a passage of time, he has lost his promotional avenues, that itself, in my view, would be much more than the punishment. Hence, this Court is inclined to allow the writ petition by setting aside the impugned order. Accordingly, the impugned order passed by the respondent is set aside. Consequently, the writ petition stands allowed. No Costs. M.P.No.1 of 2014 is closed."

8.The learned counsel would therefore submit that the matter is squarely covered by the orders passed by the Hon'ble Supreme Court and this Court and therefore, the petitioner is either entitled to full exoneration or atleast is liable to be imposed only with penalty of Censure since two officers who faced identical set of charges and given identical explanation to the charges, with one left off completely, the other with Censure.

9.At this, the learned counsel appearing for the respondent Corporation would submit that as far as the petitioner is concerned, the job requirement of the Assistant Engineer is different as that of Assistant Executive Engineer and the Assistant Engineer is directly vested with the responsibility to detect unauthorised constructions and deviations etc. and they are supposed to watch consequent unauthorised construction. As far as the higher officials are concerned, they have to issue notices on the basis of the report submitted by the supporting officers like the petitioner. Therefore, the punishment would be depending upon the responsibility cast on the officers concerned. In such circumstances, the imposition of penalty of stoppage of increment for three years with cumulative effect is not discriminatory or arbitrary and neither the same is



unreasonable. Therefore, she would request that the writ petitioner is not entitled to any relief much less the relief of imposition of penalty of Censure or complete exoneration either.

10. This Court considered the submissions of both Mrs. Dakshayani Reddy, learned counsel for the petitioner and Mrs. Karthikaa Ashok, learned counsel for the respondent Corporation.

11. After perusing the materials placed on record, this Court is satisfied and convinced that the charges as framed against the petitioner as well as the two other officers referred to above are one and the same and the explanation given by all the three officers is also one and the same. In which event, this Court is unable to understand or appreciate as to how the Corporation could treat the petitioner differently in the matter of imposition of penalty. In fact, one of the three officers has been completely exonerated and the other officer was imposed with only of penalty of Censure. When such view has been taken by the Corporation by exonerating one officer and treating the other officer with the least of all minor penalties, the imposition of penalty of stoppage of increment for a period of three years with cumulative effect on the petitioner appears to be too excessive and being discriminatory, arbitrary, unreasonable and violative of Article 14 of the Constitution of India.

12. As rightly contended by the learned counsel for the petitioner that the Hon'ble Supreme Court of India as well as this Court have consistently held that even in the matter of imposition of penalty, equality must be maintained and in this case, there appears to be a blatant discrimination in the treatment of the petitioner at the hands of the Corporation and therefore, this Court is of the considered view that the impugned penalty is liable to be quashed. Although several other grounds have been raised, but the same were not pressed, as the learned counsel for the petitioner confined her argument only in regard to the discriminatory treatment meted out to the petitioner in regard to the imposition of penalty. Therefore, this Court is of the view that on the ground of partisan treatment meted out to the petitioner in the matter of imposing of penalty, the writ petition is liable to be disposed of as under:

(i) The impugned order of the 1st respondent in G.O.Ms.(P)-160 dated 12.03.2015 is hereby set aside and the disciplinary authority is directed to impose a penalty of Censure on the petitioner which shall take into effect from the date of stoppage of increment for a period of three years with cumulative effect.



(ii) The authority shall pass orders of penalty of Censure within a period of four weeks from the date of receipt of a copy of this order.

13. The Writ Petition is allowed to the extent indicated above. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CO)

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Sub-Assistant Registrar

Sgl
To

1. The Chief Secretary,
The State of Tamil Nadu,
Fort St. George, Chennai - 9.

2. The Secretary,
Appointment Committee - Chennai
Corporation of Chennai
Chennai - 3.

3. The Commissioner,
The Corporation of Chennai,
Chennai - 3.

+1 CC to Govt. Pleader sr 55416.
+1 CC to Mr.S.Sithirai Anandam, Advocate sr 55310.
+1 CC to M/s. Karthikaa Ashok, Advocate sr 55043.

W.P.No.20953 of 2018

RGN(CO)
SP(05/08/2019)