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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/11/2019

C O R A M

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

a n d

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Appeal No. 4039 of 2019
against
Writ Petition No.14234 of 2011

1. The Government of Tamil Nadu,
Representation by
Secretary to Government,
Home (Prisons) Department,
Chennai - 600 009.
2. The Additional Director General of Police,
Inspector General of Police,
Chennai - 600 008.
3. The Deputy Inspector General of Prisons,
Tiruchirapalli.
4. The Superintendent,
Central Prison, Cuddalore. ... Appellant

Vs

R. Muthamizhan ... Respondent

WA Prayer : Appeal filed under Clause 15 of the Letter Patent against the order, dated 06/02/2018, passed in W.P.No.14234 of 2011.

Prayer in W.P.No.14234 of 2011:

Writ Petition filed under Article 226 of the Constitution of India Praying for issuance of a Writ of Ceritorarified Mandamus Calling for the records relating to the orders [1] Pro.No.13485/Po.1/2007 dt.20.03.2009 of the 4th Respondent(2) Pro.No.2293/Mu.Vu /2009 dated 16.09.2009 of the 3rd Respondent and (3) Pro.No.47342/EW2/2009 dated 01.04.2010 of the 2nd Respondent and (4) G.O.(D)No.465 Home (Prison.2)Dept.dated 12.05.2011 of the 1st Respondent to quash the same and to issue consequential directions to the Respondents to reinstate the Petitioner in service with consequential service and monetary benefits.



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For appellant

... Mr.V.Jayaprakash Narayanan
Government Pleader

For respondent

... Mr.M.Ravi
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J U D G M E N T

(Judgment of the Court was delivered by
Subramonium Prasad,J)

Challenge in the writ petition is to the order dated 06.02.2018, passed in WP.No.14234 of 2011, by which the learned Single Judge set aside the punishment of dismissal from service imposed on the petitioner and modified it to one of compulsory retirement with effect from the date of dismissal of service by the 4th respondent.

2. The respondent was employed as Warder Grade II in the Prison Department. He was promoted as Warder Grade I in the Central Prison, Cuddalore. The petitioner took medical leave from 01.09.2007, for a few days, but remained absent for a period of 120 days. The petitioner did not file proper leave application. He also refused to appear before the Medical Board when he was summoned by the Board.

3. A charge sheet was issued to the writ petitioner under Rule 17(b) of Tamil Nadu Civil Services (D & A) Rules on 08.01.2008. An enquiry was conducted and the enquiry officer found the charges to be proved by minutes dated 20.08.2008. A second show-cause notice was served to the writ petitioner to show-cause as to why the punishment of termination should not be imposed against him. The writ petitioner gave his explanation. By an order dated 20.03.2009, the Superintendent, Central Prison, Cuddalore, found that the writ petitioner had violated Rule No.126,127,128(1) of Tamil Nadu Prison Rules, 1983 and Rule 20(1) of the Tamil Nadu Government Servant Conduct Rules. Disciplinary Authority agreed with the findings of the enquiry officer and imposed the punishment of termination of service.

4. The writ petitioner thereafter filed an appeal before the Deputy Inspector General of Police, Prisons, Trichy Range, the 2nd respondent herein. The 2nd respondent by an order dated 01.04.2010, accepted the findings of the Disciplinary Authority and found that the punishment of termination of service is not required to be modified. The respondent thereafter gave a petition before the Government and the Government issued G.O.(D).No.465, Home (Pri-2) Department, dated 12.05.2011, rejected the petition for cancelling the punishment and upheld the punishment.



5. The writ petitioner has filed the instant W.P.No.14234 of 2011, challenging the order of dismissal of service. In the writ petition, apart from challenging the legality of the order terminating the writ petitioner from service, the writ petitioner has stated that he has crossed the age of 50 and had put in 20 years of service and therefore his case should be considered sympathetically. He has also urged that the punishment is shockingly disproportionate to the misconduct.

6. The respondents have filed a counter contending that the decision making process cannot be found fault with. It is the contention of the respondent/appellant, that the writ petitioner/respondent had deserted the service. Instances of previous unauthorized absence have also been mentioned in the counter.

7. The learned Single Judge after hearing both the sides, came to a conclusion that the charge has been proved. The learned Single Judge took note of the contention of the Government Pleader that the retention of service of the writ petitioner was not in public interest and therefore he should be rightly dismissed from service. The learned Single Judge however held that the punishment of dismissal from service would not only affect the employee himself but also his family members, as the livelihood of the petitioner's family is irreversibly affected. The learned Single Judge held that, while imposing a penalty or dismissal from service, it is incumbent upon the authorities to take into consideration the fact that the livelihood of the employee is at stake.

8. The learned Single Judge on the basis of the judgment cited by the Bar, took a view that, this Court has consistently taken a view that for the charge of unauthorized absence, a penalty of dismissal from service is rather excessive and not warranted the punishment of termination of voluntary retirement from service. It is this order which is challenged in the instant writ appeal.

9. Heard the counsel for the parties.

10. It has been stated by the learned counsel for the appellant that the writ petitioner was serving as Warder Grade 1 in the Prison Department and he cannot be absent without permission taking into consideration the nature of work he has been assigned. The learned Government Pleader also stated that the punishment is not disproportionate to the misconduct alleged against the respondent. On the other hand, the learned counsel for the respondent would contend that the punishment is shockingly disproportionate to the misconduct as alleged.

11. The findings of the enquiry officer that the charge has been proved has been accepted by the Disciplinary Authority and has been confirmed by the Appellate Authority, by the Government. Once the charge has been proved, the



question that arises is as to whether a High Court while exercising discretion under Article 226 of the Constitution of India, should interfere with the punishment imposed. Apart from stating that, generally this Court has not awarded punishment of dismissal from service in case of unauthorized absence, there is no explanation as to why in this case the punishment is shockingly disproportionate to the alleged misconduct.

12. The Hon'ble Supreme Court in B.C.Chaturvedi Vs. Union of India, (1995) 6 SCC 749, has observed as under:-

"17. 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 v. Bidyabhushan Mohapatra [AIR 1963 SC 779 : (1963) 1 LLJ 239] 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 v. Sardar Bahadur [(1972) 4 SCC 618 : (1972) 2 SCR 218] . It is true that in Bhagat Ram v. State of H.P. [(1983) 2 SCC 442 : 1983 SCC (L&S) 342 : AIR 1983 SC 454] 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



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empowered to interfere with the punishment imposed by the disciplinary authority. In Rangaswami v. State of T.N. [1989 Supp (1) SCC 686 : 1989 SCC (Cri) 617 : AIR 1989 SC 1137] 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 [(1994) 2 SCC 537 : 1994 SCC (L&S) 687 : (1994) 27 ATC 149 : JT (1994) 1 SC 217] 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.

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. "

13. Similarly, the Hon'ble Supreme Court in Union of India Vs. P.Gunasekaran, (2015) 2 SCC 610, has observed hereunder:-

"20. Equally, it was not open to the High Court, in exercise of its jurisdiction under Articles 226/227 of the Constitution of India, to go into the proportionality of punishment so long as



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the punishment does not shock the conscience of the court. In the instant case, the disciplinary authority has come to the conclusion that the respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity according to Oxford Dictionary is "moral uprightness; honesty". It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence, etc. In short, it depicts sterling character with firm adherence to a code of moral values. "

14. In view of the law laid down by the Hon'ble Supreme Court, we are of the view that the learned Single Judge ought not to have interfered with the quantum of punishment, once the misconduct has been proved. If the learned Single Judge found that the quantum of punishment is disproportionate to the alleged misconduct, it ought to have remanded the matter back to the Disciplinary Authority to reconsider the punishment imposed by it and award punishment taking into account of the attendant circumstances. It is not necessary that in every case of unauthorized leave, punishment of dismissal is shockingly disproportionate. It depends upon the nature of service and the work entrusted to the employee.

15. In view of the above, this Court allows the appeal and remands the matter back to the Disciplinary Authority being the 4th respondent herein, to consider the quantum of punishment keeping in mind the nature of misconduct and pass appropriate orders within a period of 8 weeks from the date of receipt of a copy of this order. No Costs.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

pkn.

To,

1. The Government of Tamil Nadu,
Representation by
Secretary to Government,
Home (Prisons) Department,
Chennai - 600 009.



2. The Additional Director General of Police,
Inspector General of Police,
Chennai - 600 008.

3. The Deputy Inspector General of Prisons,
Tiruchirapalli.

4. The Superintendent,
Central Prison, Cuddalore.

Bp

W.A.No.4039 of 2019

A.SK(17/12/2019)