

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2019

CORAM:

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

W.A. No. 2819 of 2018
and
C.M.P. No. 23446 of 2018

1. The Director of Public Health and Preventive Medicine,
Chennai - 600 006.
 2. The Secretary to Government,
Health and Family Welfare (D2) Department,
Secretariat,
Fort St. George,
Chennai - 600 009.
 3. The Deputy Director of Health Services,
Villupuram.
 4. The District Entomologist,
Office of the Deputy Director
of Health Services,
Villupuram.
- ...Appellants/Respondents

-Vs-

T. Amudha

सत्यमेव जयते...Respondent/Petitioner

PRAYER:- Writ Appeal filed under Clause 15 of Letter Patent, praying to set aside the order dated 27.03.2018 made in W.P. No. 7533 of 2011.

Prayer in W.P. No. 7533 of 2011 :- Writ Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the respondents in connection with the impugned orders passed by the respondents 1 & 2 in R.No.13481/DA/2002/S3/25 dated 26.03.2004 and GO(D) No.265 Health & Family Welfare (D2) Department dated 23.02.2007 (received on 08.07.08) respectively.

For Appellants : Mrs. A. Sri Jayanthi,
Special Government Pleader

For Respondent : Mr. K. Venkatramani, Senior Counsel
for Mr. M. Muthappan

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 27.03.2018 in W.P. No. 7533 of 2011 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 facts leading to the filing of the Writ Petition have been extensively captured in the order dated 27.03.2018 passed in W.P. No. 7533 of 2011 and hence, the same are not repeated in this order except with regard to the material facts relevant for the purpose of disposal of this Appeal.

3. The Petitioner while working as Assistant was issued with a charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules by the Third Respondent for the following two articles of charge against her:-

Charge-I: That the said Tmt. T. Amudha, while functioning as Assistant in Primary Health Centre, Mailam had misappropriated the General Provident Fund amount and leave salary of the staff attached to Mailam Main and additional Primary Health Centres. She had misappropriated Rs.44,845/- (Rupees forty four thousand eight hundred and forty five only) approximately from the General Provident Fund amount and Rs.19,374/- (Rupees nineteen thousand three hundred and seventy four only) from the salary of Tmt. N. Vasantha, Sanitary Worker, Primary Health Centre, Mannampoondi, who was on unauthorized absence.

Charge-II: She had tampered the office copy of the pay bills, Primary Health Centre, Mailam. She had shown in the office copy of the pay bill for the months from August 2001 to December 2001 that the first instalment of aggregate amount of General Provident Fund temporary advance was recovered from the pay and allowances of the individuals, who had been granted in the fair copy of the pay bill it was shown that the temporary advance instalment was not recovered from the individuals as they had applied for

temporary advance during that month. The difference of amount from the office copy and the fair copy of the pay bill was misappropriated by her, after encashment. The office copy of the pay bill was tampered as if the temporary advance was not recovered from the individuals after the stamped acquittance.

The Disciplinary Authority by order R. No. 13481/DA/2002/S3/25 dated 26.03.2004 imposed a punishment of dismissal from service on the Petitioner and the appeal preferred against the same to the Appellate Authority was rejected by G.O. (D) No. 265, Health and Family Welfare (D2) Department dated 23.02.2007 after obtaining opinion from Tamil Nadu Public Service Commission. The Petitioner challenged the aforesaid orders in W.P. No. 7533 of 2011 before this Court.

4. The Learned Judge, who heard the Writ Petition, in the order dated 27.03.2018 after referring to the rival contentions and materials placed on record, held in para nos. 12 to 15 as follows:-

"12. This Court has considered the rival submissions of the learned senior counsel for the petitioner as well as the learned Special Government Pleader appearing for the respondents. As rightly contended by the learned senior counsel, the enquiry has not been conducted in terms of the procedure contemplated under the disciplinary rules in respect of the major penalty proceedings and from the records, it could be seen that the witnesses were examined not in the presence of the petitioner and the petitioner was not allowed to cross examine the witnesses. Moreover, the petitioner was not allowed to examine herself and merely a statement has been obtained by the Enquiry Officer. Further, the Enquiry Officer appears to have not considered the explanation offered by the petitioner to the charges framed against her. On the whole, this Court is of the considered view that the findings of the Enquiry Officer cannot held to be valid and the same is nothing, but, a perverse finding.

13. While holding as such, the order of the disciplinary authority imposing a severe penalty of dismissal from service on the basis of such flawed findings, cannot be countenanced in law. From the order passed by the disciplinary authority, this Court is unable to see whether the disciplinary authority has appreciated the infirmities pointed out by the petitioner in the conduct of the enquiry. That being the case, this Court is unable to sustain the order of dismissal from service by the disciplinary authority,

the first respondent herein. It appears that the disciplinary authority have overlooked all the vital issues raised against the enquiry findings by the petitioner. Therefore, the disciplinary authority has not discharged his quasi-judicial power properly in a manner known to law. Moreover, as rightly contended by the learned senior counsel, the appellate authority has merely followed the opinion expressed by the Tamil Nadu Public Service Commission without taking any independent view in the matter. Such action on the part of the appellate authority, the second respondent herein, is contrary to the disciplinary and appeal rules where the appellate authority is empowered to deal with the important and vital issues raised by the delinquent employee.

14. In this case, the appellate authority has abdicated his statutory responsibility and passed a non speaking order. Therefore, on this ground alone the order passed by the appellate authority could be interfered with. However, in view of the fact that the petitioner has attained the age of superannuation during the pendency of the writ petition, no useful purpose would be served by remitting the matter back to the Enquiry Officer or to the disciplinary authority to proceed with the enquiry afresh at this distant of time.

15. While so, this Court after going through the materials and pleadings placed on record, is of the view that dehors the defects in the enquiry, the order passed by the appellate authority, particularly, there is some evidence against the petitioner in respect of the charges framed against her. Therefore, the petitioner cannot be completely absolved from the charges, notwithstanding the various infractions pointed out by the petitioner in the conduct of the enquiry and the orders passed by the disciplinary and the appellate authority."

In those circumstances, though normally when the enquiry has been found to be faulty, the orders of punishment have to be set aside and the matter remitted to the disciplinary authority for reopening the enquiry and conduct the same from the stage at which the defects have been pointed out. However, the Learned Senior Counsel appearing for the Petitioner at the time of hearing before the Writ Court had submitted that the order of dismissal from service passed against the Petitioner could be substituted by one of compulsory retirement as provided under the Rules, at that distance of time in view of the fact that

during the pendency of the Writ Petition, the Petitioner had attained the age of superannuation. Such being the case, the Writ Court took the view that the ends of justice could be met by substituting the punishment of compulsory retirement on the Petitioner instead of dismissal from service relying on the decision of this Court in the order dated 05.12.2017 in W.P. No. 9294 of 2008. Accordingly, the punishment of removal from service was modified into one of compulsory retirement in terms of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, from the date on which the Petitioner was dismissed from service on 26.04.2008 and granted her all attendant benefits on such modified penalty imposed on her. Aggrieved thereby, the Respondents have preferred this appeal.

5. We have heard Mrs. A. Sri Jayanthi, Learned Special Government Pleader appearing on behalf of the Respondents, Mr. K. Venkatramani, Learned Senior Counsel appearing for Mr. M. Muthappan, Learned Counsel for the Petitioner and perused the materials placed on record, apart from the pleadings of the parties.

6. The Learned Special Government Pleader appearing for the Respondents strenuously urged that there was inconsistency in the evidence of the Petitioner before the Enquiry Officer for which the Petitioner has to blame himself and as such, that cannot be said to be in violation of the Rules or the principles of natural justice. In respect of the substitution of the punishment, it is contended that there has not been any shocking of the judicial conscience for awarding the penalty of dismissal from service commensurate with the misconduct complained against the Petitioner. The Learned Senior Counsel while supporting the order under appeal, has reiterated the contentions made by him before the Writ Court.

7. The two questions that arises for consideration in this appeal are the following:-

(i) Whether the Writ Court was justified in arriving at the conclusion that the findings of the Enquiry Officer was perverse and not valid and the consequential orders of the Disciplinary Authority and the Appellate Authority were vitiated on that ground?

(ii) Whether the Writ Court ought not to have substituted the punishment of dismissal from service that had been imposed on the Petitioner into that of compulsory retirement with all attendant benefits?

8. On the first question regarding the complaints of the defective nature of the enquiry, we do not find any reason to

differ from the views of the Writ Court. As pointed out by the Learned Judge, the objections that had been raised by the Petitioner had not been addressed by the Enquiry Officer and the Disciplinary Authority. The Appellate Authority had merely approved the same without considering any of the submissions made by the Petitioner in that regard, which would suffice to hold that the proceedings have been vitiated and that the matter has to be remitted to the Disciplinary Authority for conducting the enquiry from the stage at which the defects have been pointed out.

9. Coming to the second question, it is true that it is only in rare circumstances that a Writ Court would modify an order of punishment on satisfaction that the penalty awarded is dis-proportionate to the gravity of charge that shocks the judicial conscience. However, as noticed earlier, the order of punishment of dismissal from service passed against the Petitioner was issued on 26.03.2004 and the Petitioner had attended the age of superannuation during the pendency of the Writ Petition. If the Writ Court had proceeded to remit the matter to Disciplinary Authority for conducting the enquiry from the stage at which the defects has been pointed out, the State Government as employer would be saddled with liability to pay subsistence allowance to the Petitioner for the period from 26.03.2004 till the date of her superannuation and also to pay provisional pension till the disciplinary proceedings attain finality under Rule 9(4) read with Rule 60 of the Tamil Nadu Pension Rules, 1978, as a consequence thereof. On the other hand, if the Petitioner is treated as having been compulsorily retired from service, the liability of the Government would be only to pay her pension from 26.03.2004 and further, power has been conferred in Rule 39 of the Tamil Nadu Pension Rules, 1978, to reduce the pension at the rate not less than two-thirds and not more than full compensation pension or gratuity or both admissible, to an employee on his compulsory retirement from service. Apart from that, the ordeal of re-opening the disciplinary proceedings after a gap of 15 years, could be averted.

10. Having due regard to these peculiar features involved in this case, we are of the view that interests of justice would be better served by modifying the punishment of dismissal from service imposed on the Petitioner into that of compulsory retirement, as ordered by the Learned Judge in the Writ Petition.

11. Accordingly, we confirm the order passed by the Writ Court and dispose the appeal with an observation that it is open to the concerned authority to invoke Rule 39 of the Tamil Nadu Pension Rules, 1978, for reducing the amount of pension

that would be payable to the Petitioner from the date of her compulsory retirement on 26.03.2004 in the manner prescribed by law. Consequently, the connected Miscellaneous Petition is closed. No costs.

vjt

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Director of Public Health and Preventive Medicine,
Chennai - 600 006.
2. The Secretary to the Government of Tamil Nadu,
Health and Family Welfare (D2) Department,
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Chennai - 600 009.
3. The Deputy Director of Health Services,
Villupuram.
4. The District Entomologist,
Office of the Deputy Director of Health Services,
Villupuram.

+1cc to Mr.M.Muthappan, Advocate, S.R.No.20412
+1cc to the Government Pleader, S.R.No.20558

सत्यमेव जयते

W.A. No. 2819 of 2018

Kak (21/03/2019)

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