



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.P.SAHI, CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.[MD]Nos.1218 and 1219 of 2015

and

M.P. Nos.2, 2 and 3 of 2015

1.The Secretary to Government
Public Works (E1) Department
Government of Tamil Nadu
Fort St. George,
Chennai.

2.The Engineer-in-charge, (Buildings)
Ezhilagam, Chepauk,
Chennai.

3.The Chief Engineer (Buildings)
Ezhilagam, Chepauk,
Chennai - 600 005.

4. The Chief Engineer (General)
Ezhilagam, Chepauk,
Chennai - 600 005.

: Appellants/Respondents
in both appeals

Vs.

S.Bright Solomon

: Respondent/ Petitioner in
W.A.No.1218/2015

N.Rajarathinam

: Respondent/ Petitioner in
W.A.No.1219/2015

COMMON PRAYER: Writ Appeals filed under Clause 15 of Letters Patent, against the order dated 09.02.2015 passed in W.P(MD)Nos.10811 and 10904 of 2014 respectively.

Prayer in WP(MD)Nos. 10811 and 10904 of 2014 :

To issue a Writ of Mandamus, to call for the records relating to the Impugned order of the 1st respondent in G.O. (3D) Nos. 233 and 222 Public Works (E1) Department dated 07.10.1996 and G.O. (3D) Nos. 17 and 33 dated 28.02.2000 and 28.06.2004 respectively quash the same and consequently direct the respondents herein to allow the petitioner's herein to retire with all monetary and attendant benefits.



In both cases:

WEB COPY

For Appellants

: Mr.VR.Shanmuganathan,
Special Government Pleader

For Respondents

: Mr.Veera Kathiravan,
Senior Counsel for
For M/s.Veera Associates

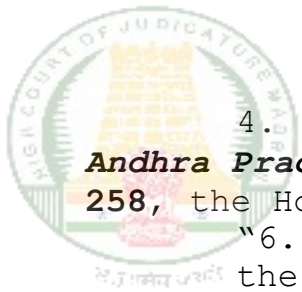
C O M M O N J U D G M E N T

[Judgment of the Court was delivered by **SUBRAMONIUM PRASAD, J.**]

The State of Tamil Nadu is the appellant herein, seeks to challenge the order dated 09.02.2015 passed in W.P.(MD) Nos.10811 and 10904 of 2014.

2. The respondents, who were facing criminal cases, were not permitted to retire by the Appellant Department, when they attained the age of superannuation on 29.02.2000 and 31.05.2004 respectively. Along with the respondents, few other serving employees were also facing departmental proceedings. When they reached superannuation, they were also not permitted to retire. They approached this Court and obtained orders permitting them to retire, which orders were taken upto the Hon'ble Supreme Court. The respondents petitioners claiming parity approached this Court by filing the instant writ petitions by challenging the orders of not permitting them to retire from service and also for other retiral benefits. The learned Single Judge, after finding that the case of the respondents petitioners are identical to that of the other co-delinquents, has allowed the writ petitions. It is those orders, which have been assailed in the present Writ Appeals.

3. The learned counsel for the State places reliance on Rule 56(1)(c) of the Fundamental Rules to contend that the Government has no other option except to place the employees under suspension and not permit them to retire in view of the fact that the employees were facing criminal cases. This Rule was applicable to all the other co-delinquents. Despite Rule 56(1)(c), the learned Single Judge, Division Bench and the Hon'ble Supreme Court have permitted the co-delinquents to retire, the Rule, therefore, cannot be made applicable to the respondents petitioners alone selectively. On the facts of this case, when there cannot be any distinction between the respondents petitioners and the other co-delinquents, it is well settled that different punishments cannot be given to persons, who are facing the same charges and this would amount to violative of Article 14 of the Constitution of India.



4. In **T.V.Choudhary vs. Chief Secretary, Government of Andhra Pradesh and another** reported in (1987) 3 Supreme court Cases 258, the Hon'ble Supreme Court has held as under:

"6. In the special leave petition, the only contention of the petitioner E.S. Reddi was that the action of the State Government in making selective suspension suffered from the vice of arbitrariness and offended against Art. 14 of the Constitution inasmuch as persons like the applicant T.V. Choudhary who were equally culpable have merely been trans-ferred while he has been singled out and placed under sus-pension under sub-r. (1) of r. 13 of the Rules without any rational basis and that such arbitrary action of the State Government was tantamount to denial of equal treatment to persons similarly placed. In view of the subsequent order passed by the State Government on September 6, 1986 placing other officers including the applicant .T.V. Choudhary under suspension under r. 13(1) of the Rules pending their prose-cution, the special leave petition has become infructuous. It is accordingly dismissed."

5. In **Man Singh vs. State of Haryana and others** reported in (2008) 8 MLJ 518 (SC), the Hon'ble Supreme Court has held as under:

"19. We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair minded authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of 'fair play' and reasonableness. We have, therefore, examined the case of the appellant in the light of the established doctrine of equality and fair play. The principle is the same, namely, that there should be no discrimination between the appellant and HC Vijay Pal as regards the criteria of punishment of similar nature in departmental proceedings. The appellant and HC Vijay Pal were both similarly situated, in fact, HC Vijay Pal was the real culprit who, besides departmental proceedings, was an accused in the



excise case filed against him by the Excise Staff of Andhra Pradesh for violating the Excise Prohibition Orders operating in the State. The appellate authority exonerated HC Vijay Pal mainly on the ground of his acquittal by the criminal court in the Excise case and after exoneration, he has been promoted to the higher post, whereas the appeal and the revision filed by the appellant against the order of punishment have been rejected on technical ground that he has not exercised proper and effective control over HC Vijay Pal at the time of commission of the Excise offence by him in the State of Andhra Pradesh. The order of the disciplinary authority would reveal that for the last about three decades the appellant has served the Police Department of Haryana in different capacity with unblemished record of service

20. In the backdrop of the above-mentioned facts and circumstances of the case, we are of the view that the order of the disciplinary authority imposing punishment upon the appellant for exhibiting slackness in the discharge of duties during his visit to Hyderabad when HC Vijay Pal was found involved in Excise offence, as also the orders of the appellate and revisional authorities confirming the said order are unfair, arbitrary, unreasonable, unjustified and also against the doctrine of equality. The High Court has failed to appreciate and consider the precise legal questions raised by the appellant before it and dismissed the Second Appeal by unreasoned judgment. The judgment of the High Court, therefore, confirming the judgments and decrees of the first appellate court and that of the trial court is not sustainable. The appellant deserves to be treated equally in the matter of departmental punishment initiated against him for the acts of omissions and commissions vis-à-vis HC Vijay Pal, the driver of the vehicle.

6. In ***Rajendra Yadav vs. State of Madhya Pradesh*** reported in (2013) 3 Supreme Court Cases 73, the Hon'ble Supreme Court has held as follows:

"8. We have gone through the inquiry report placed before us in respect of the appellant as well as Constable Arjun Pathak. The inquiry clearly reveals the role of Arjun Pathak. It was Arjun Pathak who had demanded and received the money, though the tacit approval of the appellant was proved in the inquiry. The charge levelled against Arjun Pathak was more serious than the one charged against the appellant. Both appellants and other two persons as well as Arjun Pathak were involved in the same



"17. If there is a complete parity in the two sets of cases imposing different penalties would not be appropriate as inflicting of any/higher penalty in one case would be discriminatory and would amount to infraction of the doctrine of Equality enshrined in Article 14 of the Constitution of India. That is the ratio of Rajendra Yadav's case, already taken note above. On the other hand, if there is some difference, different penalty can be meted out and what should be the quantum is to be left to the appellate authority. However, such a penalty should commensurate with the gravity of misconduct and cannot be shockingly disproportionate. As per the ratio of Obettee (P) Ltd. Case even if the nature of misconduct committed by the two sets of employees is same, the conduct of one set of employee accepting the guilt and pleading for lenient view would justify lesser punishment to them than the other employees who remained adopted the mode of denial, with the result that charges stood proved ultimately in a full-fledged enquiry conducted against them. In that event, higher penalty can be imposed upon such delinquent employees. It would follow that choosing to take a chance to contest the charges such employees thereafter cannot fall back and say that the penalty in their cases cannot be more than the penalty which is imposed upon those employees who accepted the charges at the outset by tendering unconditional apology.

18. This, according to us, would be the harmonious reading of Obettee (P) Ltd. and Rajendra Yadav cases.

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 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 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."

8. In view of the above, the Writ Appeals fails. However there is no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

RR/sts

To

- 1.The Secretary to Government
Public Works (E1) Department
Government of Tamil Nadu
Fort St. George,
Chennai.
- 2.The Engineer-in-charge, (Buildings)
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- 3.The Chief Engineer (Buildings)
Ezhilagam, Chepauk,
Chennai



4. The Chief Engineer (General)
Ezhilagam, Chepauk,
Chennai - 600 005.

+1 CC to SPL.GP (SR-105593[F] dated 18/12/2019)

+2CC to M/s.VEERA ASSOCIATES, Advocate (SR-105622[F] dated
18/12/2019)

COMMON JUDGMENT MADE IN
W.A. [MD]Nos.1218 and 1219 of 2015
17.12.2019

VB(03.01.2020) 8P 8C