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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.09.2019

CORAM :

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.(MD)No.5093 of 2017

A.Gnanaselvadhas ... Petitioner

vs.

1.The Director General of Police,
Tamil Nadu, Chennai - 4.

2.The Deputy Inspector General of Police,
O/o.Deputy Inspector General of Police,
Tirunelveli Range,
Tirunelveli District.

3.The Superintendent of Police,
O/o. Superintendent of Police,
Nagercoil,
Kanyakumari District. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in L1/Pr No.63/2011, dated 24.04.2012, on the file of the third respondent, consequential order of the second respondent, dated 15.06.2012, in C.No.C4/AP.26/2012 and the consequential proceedings of the first respondent, made in Rc.No.102380/AP2(1)/2016, dated 06.02.2017, quash the same as illegal and consequently, direct the respondents to reinstate the petitioner with consequential benefits.

For Petitioner : Mr.D.Selvam
for Mr.R.Murali

For Respondents : Mr.VR.Shanmuganathan
Special Government Pleader

ORDER

This Writ Petition has been filed seeking to quash the impugned order of the third respondent, dated 24.04.2012, in L1/Pr No.63/2011, consequential order of the second respondent, dated 15.06.2012, in C.No.C4/AP.26/2012 and the consequential proceedings

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of the first respondent, dated 06.02.2017, in Rc.No.102380/AP2(1)/ 2016, and also a consequential direction to the respondents to reinstate the petitioner with consequential benefits.

2.According to the petitioner, while he was working as Head Constable, he was suspended from service with effect from 08.06.2010. A charge memo dated 13.05.2011 was issued to him by the third respondent under Rule 3(b) of the Tamil Nadu Subordinate Police Officers Conduct Rules, 1964, containing 13 charges that he borrowed money from various third parties without prior permission. One of the charges is that, he cheated one Russel, S/o.Thangam, on the pretext of getting employment in Police or Military to his grandson and criminal case is under investigation. According to the petitioner, he has not borrowed any money from Russel. On the other hand, he has borrowed money from one Isaac, co-employee and a false complaint was given against the petitioner as though he got money from the said Russel and cheated him. The other 12 charges are that, he borrowed money from 12 persons mentioned in the charge memo.

2(a).The petitioner submitted his explanation to the said charge memo, denying the charges leveled against him. The third respondent ordered domestic enquiry. In the enquiry, all the 12 persons deposed that the petitioner borrowed money from them, who are relatives and wives of the serving personnel. No document was filed to prove the said borrowing. The petitioner did not borrow money from the said Russel and did not cheat him. On the other hand, he borrowed money from Isaac, who is son-in-law of the said Russel. A false criminal case filed against the petitioner was quashed by this Court in Crl.O.P.(MD)No.15344 of 2010, vide order dated 28.04.2011. The Enquiry Officer failed to consider the said fact. The third respondent accepted the finding of the Enquiry Officer and without properly appreciating the enquiry officer's report and the evidence let in in the domestic enquiry, by order dated 24.04.2012, imposed a punishment of compulsory retirement. The said order is a non-speaking order. Similarly, the respondents 2 and 1 rejected the appeal and the review application.

3.The learned counsel appearing for the petitioner submitted that the enquiry officer's report as well as the order of the third respondent imposing punishment of compulsory retirement is invalid, as the third respondent held that the petitioner had not denied the borrowing. The respondent failed to consider that 12 charges are only for outside borrowing and the charge of cheating is not sustainable in view of the fact that the criminal case registered against the petitioner was quashed by this Court in Crl.O.P.(MD) No.15344 of 2010, vide order dated 28.04.2011. Russel, who was allegedly cheated by the petitioner, did not give any statement in the departmental proceedings. The loan transaction was settled and this Court quashed the FIR registered against the petitioner in the abovesaid Criminal Original Petition. The punishment of compulsory

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retirement is disproportionate to the charges and arbitrary in violation of the Rules. The respondents failed to see that lending money is also improper under Rule 8(1) of the Tamil Nadu Subordinate Police Officers Conduct Rules, 1964, which itself shows that the charges and the enquiry are biased.

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4.In support of his submissions, the learned counsel appearing for the petitioner relied on the following judgments:-

(i) **Coimbatore District Central Co-operative Bank Vs. Coimbatore District Central Co-operative Bank Employees Association and another** reported in **2007 (4) SCC 669**, wherein at paragraphs 17 and 24, it has been held as follows:-

> ''17.So far as the doctrine of proportionality is concerned, there is no gainsaying that the said doctrine has not only arrived in our legal system but has come to stay. With the rapid growth of Administrative Law and the need and necessity to control possible abuse of discretionary powers by various administrative authorities, certain principles have been evolved by Courts. If an action taken by any authority is contrary to law, improper, irrational or otherwise unreasonable, a Court of Law can interfere with such action by exercising power of judicial review. One of such modes of exercising power, known to law is the 'doctrine of proportionality'.
>
> 24.So far as our legal system is concerned, the doctrine is well-settled. Even prior to CCSU [1985 AC 374 : 1984 (3) WLR 1174], this Court has held that if punishment imposed on an employee by an employer is grossly excessive, disproportionately high or unduly harsh, it cannot claim immunity from judicial scrutiny, and it is always open to a Court to interfere with such penalty in appropriate cases.''

(ii) **Jagdish Singh Vs. Punjab Engineering College and others [Civil Appeal No.3565 of 2009, dated 14.05.2009]**, wherein at paragraphs 4, 8 and 11, it has been held as follows:-

> ''4. .... The disciplinary authority of the respondent-college, after receipt of the report of the inquiry officer has accepted the report and has passed an order dated 30.09.2004, imposing a major penalty of dismissal from service.
>
> 8.The Courts and the Tribunals can interfere with the decision of the disciplinary authority, only when they are satisfied that the punishment imposed by the disciplinary authority is shockingly disproportionate to the gravity of the charges alleged and proved against a delinquent employee and not otherwise. Reference can be made to the decision of this Court in the case of V. Ramana Vs. A.P.S.R.T.C. and Ors. (2005) 7 SCC 338, wherein it is stated:

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"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 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.

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."

11.In the result, we allow the appeal and set aside the order passed by the disciplinary authority dated 30.09.2004 and affirmed by the High Court vide its order dated 28.08.2007. Taking the totality of the facts and circumstances of the case and having due regard to unblemished record of the appellant, and the reasons for which he remained absent without obtaining permission, the ends of justice would be met, if punishment imposed by the disciplinary authority is modified to that of stoppage of two increments with cumulative effect and further declare that he would not entitled for any monetary benefits during the period he was out of service and that period would be counted only for the purpose of his service benefits. We direct the disciplinary authority to issue appropriate orders in this regard within one month from the date of production of certified copy of this Court's order by either of the parties.''

(iii) **Chairman-cum-Managing Director, Coal India Ltd. and another Vs. Mukul Kumar Choudhuri and others** reported in **AIR 2010 Supreme Court 75**, wherein at paragraphs 26 and 27, it has been held as follows:-

''26.The doctrine of proportionality is, thus, well recognized concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision maker to quantify punishment once the charge of misconduct stands proved, such discretionary power

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is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in access to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review. One of the tests to be applied while dealing with the question of quantum of punishment would be : would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment. In a case like the present one where the misconduct of the delinquent was unauthorized absence from duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reasons for his absence by stating that he did not have any intention nor desired to disobey the order of higher authority or violate any of the Company's Rules and Regulations but the reason was purely personal and beyond his control and, as a matter of fact, he sent his resignation which was not accepted, the order of removal cannot be held to be justified, since in our judgment, no reasonable employer would have imposed extreme punishment of removal in like circumstances. The punishment is not only unduly harsh but grossly in excess to the allegations. Ordinarily, we would have sent the matter back to the appropriate authority for reconsideration on the question of punishment but in the facts and circumstances of the present case, this exercise may not be proper. In our view, the demand of justice would be met if the Respondent No. 1 is denied back wages for the entire period by way of punishment for the proved misconduct of unauthorized absence for six months.

27.Consequently, both these appeals are allowed in part. The appellants shall reinstate Respondent No. 1 forthwith but he will not be entitled to any back wages from the date of his removal until reinstatement. Parties will bear their own costs.''

(iv) **Allahabad Bank and others Vs. Krishna Narayan Tewari** reported in **2017 (2) SCC 308**, wherein at paragraphs 4, 7 and 8, it has been held as follows:-

''4.The High Court came to the conclusion that neither the Disciplinary Authority nor the Appellate Authority had applied their mind or recorded reasons in support of their conclusions. Relying upon the decisions of this court in Roop Singh Negi v. Punjab National Bank & Ors. (2009) 2 SCC 570, Kuldeep Singh v. Commissioner of Police & Ors. (1999) 2 SCC 10, Nand Kishore Prasad v. State of Bihar (1978) 3 SCC 366, Kailash Nath Gupta v. Allahabad Bank & Ors. (2003) 9 SCC 480, State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya

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(2011) 4 SCC 584 and Mohd. Yunus Khan v. State of U.P. & Ors. (2010) 10 SCC 539, the High Court held that the order passed by the disciplinary authority and the appellate authority were unsustainable in law. The High Court found that the findings recorded by the Disciplinary Authority and affirmed by the Appellate Authority were perverse and were based on no evidence whatsoever. The High Court observed that the Appellate Authority had not applied its mind independently and simply cut and pasted the findings of the Disciplinary Authority while dismissing the appeal.

7.We have given our anxious consideration to the submissions at the bar. It is true that a writ court is very slow in interfering with the findings of facts recorded by a Departmental Authority on the basis of evidence available on record. But it is equally true that in a case where the Disciplinary Authority records a finding that is unsupported by any evidence whatsoever or a finding which no reasonable person could have arrived at, the writ court would be justified if not duty-bound to examine the matter and grant relief in appropriate cases. The writ court will certainly interfere with disciplinary enquiry or the resultant orders passed by the competent authority on that basis if the enquiry itself was vitiated on account of violation of principles of natural justice, as is alleged to be the position in the present case. Non-application of mind by the Enquiry Officer or the Disciplinary Authority, non-recording of reasons in support of the conclusion arrived at by them are also grounds on which the writ courts are justified in interfering with the orders of punishment. The High Court has, in the case at hand, found all these infirmities in the order passed by the Disciplinary Authority and the Appellate Authority. The respondent’s case that the enquiry was conducted without giving a fair and reasonable opportunity for leading evidence in defence has not been effectively rebutted by the appellant. More importantly the Disciplinary Authority does not appear to have properly appreciated the evidence nor recorded reasons in support of his conclusion. To add insult to injury the Appellate Authority instead of recording its own reasons and independently appreciating the material on record, simply reproduced the findings of the Disciplinary Authority. All told, the Enquiry Officer, the Disciplinary Authority and the Appellate Authority have faltered in the discharge of their duties resulting in miscarriage of justice. The High Court was in that view right in interfering with the orders passed by the Disciplinary Authority and the Appellate Authority.

8.There is no quarrel with the proposition that in cases where the High Court finds the enquiry to be deficient either procedurally or otherwise the proper course always is to

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remand the matter back to the concerned authority to redo the same afresh. That course could have been followed even in the present case. The matter could be remanded back to the Disciplinary Authority or to the Enquiry Officer for a proper enquiry and a fresh report and order. But that course may not have been the only course open in a given situation. There may be situations where because of a long time-lag or such other supervening circumstances the writ court considers it unfair, harsh or otherwise unnecessary to direct a fresh enquiry or fresh order by the competent authority. That is precisely what the High Court has done in the case at hand. ''

5.The third respondent filed counter affidavit. The learned Special Government Pleader appearing for the respondents submitted that the petitioner borrowed money from 12 different people and cheated one person under the guise of getting employment. All the 13 charges were proved against the petitioner that the petitioner had committed an offence by abusing his official position, lowered down the reputation of the police force. The misconduct committed by the petitioner is grave and serious in nature. The punishment of compulsory retirement was imposed for the proven charges. The criminal case filed by Russel, was quashed by this Court, as the said Russel and the petitioner have compromised the matter between themselves. The petitioner, who was working as Head Constable and holding a position of Trust, has committed the misconduct, which is serious in nature. The punishment of compulsory retirement imposed on the petitioner is proportionate to the charges leveled against him and relied on the judgment of the Hon'ble Apex Court in **Union of India and others Vs. P.Gunasekaran** reported in **2015 (2) SCC 610** and submitted that in the said decision, it has been explained under what circumstances, this Court can interfere in service matters under Article 226 of the Constitution of India and prayed for dismissal of the Writ Petition.

6.I have heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents and perused the materials available on record.

7.From the report of the Enquiry Officer, it is seen that before the Enquiry Officer, 12 persons who alleged to have lent money to the petitioner, were examined. All of them have stated that they did not take any documents from the petitioner for the alleged lending by them. The petitioner has denied that he borrowed money from them. The contention of the petitioner that all the 12 persons are either relatives or wives of the serving personnel, is not denied by the respondents. The Enquiry Officer as well as the third respondent as disciplinary authority failed to consider that no document was produced by 12 witnesses to prove the alleged borrowing by the petitioner. Further, Russel, who gave complaint to

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the Police for the alleged cheating by the petitioner, was not examined as a witness in the domestic enquiry. On the other hand, the matter was compromised between the said Russel and the petitioner and the criminal case filed against the petitioner by the said Russel, was quashed. The respondents failed to consider the contention of the petitioner that the real transaction was between him and one Isaac, co-employee and the said Isaac has lodged the false complaint against the petitioner through his father-in-law/Russel. The contention of the petitioner that once the petitioner repaid the amount, the said Russel did not insist the complaint given by him to be proceeded with further and the criminal case filed by him was quashed by this Court, vide order dated 28.04.2011, in Crl.O.P.(MD)No.15344 of 2010. Further, the first respondent in the review petition, has erroneously held that the petitioner has cheated the persons with false assurance of getting employment. This is not the charge leveled against the petitioner and no evidence was let in to show that the petitioner cheated many persons with false assurance of getting employment to them. Another complaint in Crime No.65 of 2011 given by one Bright Livingston was closed as mistake of fact.

8.Considering all the above materials on record, it is clear that the charges leveled against the petitioner were not proved in the domestic enquiry. The first respondent rejected the review application filed by the petitioner without properly appreciating the materials on record and also held that the petitioner cheated many persons with false assurance of getting employment, when there were no such charges leveled against the petitioner. This shows non-application of mind on the part of the respondents. In view of the same, the judgment relied on by the learned Special Government Pleader appearing for the respondents does not support the case of the respondents.

9.For the reasons stated above, the order of the third respondent dated 24.04.2012, imposing punishment of compulsory retirement and the consequential orders passed by the respondents 2 and 1, dated 15.06.2012 and 06.02.2017 are quashed. Accordingly, this Writ Petition is allowed as prayed for. No costs.

Sd/-

Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Director General of Police,
   Tamil Nadu,
   Chennai - 4.

2.The Deputy Inspector General of Police,
   O/o.Deputy Inspector General of Police,
   Tirunelveli Range,
   Tirunelveli District.

3.The Superintendent of Police,
   O/o. Superintendent of Police,
   Nagercoil,
   Kanyakumari District.

+1 CC to M/s.M.SURESH KUMAR, Advocate SR-89102.
+1 CC to GP SR-89368.
+1 CC to M/s.R.MURALI, Advocate SR-89491.

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