



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 21.08.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.10069 OF 2013

AND

M.P. NO. 2 OF 2013

I.Imthias Mohammed

.. Petitioner

- Vs -

1. Government of Tamil Nadu
rep. By its Secretary to Govt.
Agriculture Department
Fort St. George, Chennai - 9.

2. The Chief Engineer
(Agricultural Engineering)
Nandanam, Chennai - 35.

.. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the entire records which culminated in passing the order in G.O. (3D) No.128, Agriculture Department dated 28.9.12 on the file of the 1st respondent, quash the same and consequently direct the respondents to disburse all the terminal benefits due and payable to him within a period to be specified by this Hon'ble Court.

For Petitioner : Mr. Chellapandian, for Mr.S.Mani
For Respondents : Mr. S.Thangavel, Spl. GP

ORDER

It is the case of the petitioner that he was appointed as Assistant Engineer (Agriculture Engineering) on 20.8.84 and continuing in the same post for the past 29 years and due to retire on 30.9.12. Whiles, while working as Assistant Executive Engineer, Perambalur, the Government issued orders for implementation of Waste Land Development Programme during 1999-2000. The programme was implemented in the Veppanthattai Panchayat Union, Perambalur Sub-Division for the Deep Disc Ploughing and Sunkenpond Work between Nov., 1999 and March, 2000. It is the averment of the petitioner that his work in the said project was to enter the timings of ploughing by machines in the 'M' Book, which work was diligently carried out by the



petitioner till the completion of the work. On the completion of the work, the 'M' Book along with other registers were placed before the Department Internal Audit Team, during the audit conducted from 9.4.01 to 27.4.01. It is the further averment of the petitioner submitted the 'M' Book No.1361 on 9.4.01 to the audit department, though he did not obtain any acknowledgment, as there was no procedure for the same. However, to his shock and surprise, the petitioner was informed on 27.4.01, the last day of the audit, that the 'M' Book was missing. In the above backdrop, the petitioner was mulcted with the blame, though he was not involved in any manner.

2. It is the further averment of the petitioner that the said 'M' Book was received at the office of the Executive Engineer (Agriculture Engineering), Ariyalur, through post, addressed to one Venkatesan, a draughtsman in the said office. In spite of the retrieval of the 'M' Book, show cause notice was issued on 23.4.04, to the petitioner as to why proceeding should not be initiated against him u/r 17 (b) of the Tamil Nadu Civil Services (D&A) Rules. The explanation submitted by the petitioner was not accepted by the disciplinary authority and enquiry officer was appointed to go into the single charge framed against the petitioner which in a crux and nutshell alleged that there was dereliction of duty and negligent act on the part of the petitioner in missing the 'M' Book. It is the further averment of the petitioner that the 'M' Book was traced as early as on 28.10.02, though action was initiated against the petitioner only after about two years on 23.4.02.

3. It is the further averment of the petitioner that though similar charge was initiated against one other Assistant Executive Engineer as also against the said Venkatesan, however, the enquiry against them was held to be not proved and, accordingly, they were allowed to retire from service. However, the petitioner alone was proceeded with and was made a scapegoat. The enquiry was conducted against the petitioner in which five documents were marked, though the copies of the said documents were not provided to the petitioner. No witnesses were examined. The report was submitted by the enquiry officer based on which the disciplinary authority called upon the petitioner to submit his further explanation by notice dated 31.3.08. Though the enquiry was concluded way back in the year 2004, however, only on 31.3.08, explanation was called for from the petitioner. In the interregnum, since there was delay in concluding the disciplinary proceedings, the petitioner filed W.P. No.904 of 2012, as he was due to superannuate shortly. During the pendency of W.P. No.904 of 2012, the respondents passed the impugned Government Order compulsorily retiring the petitioner, which order was passed two days prior to the retirement of the petitioner on 30.9.12 and the said copy was



served on the petitioner in open court when the Addl. Government Pleader placed the Government Order before the Court. In the above backdrop, the present writ petition has been filed by the petitioner assailing the impugned order.

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4. Learned counsel appearing for the petitioner submitted that even a bare perusal of the charge would reveal that the petitioner did not commit any irregularity or illegality. At best, the act of the petitioner could only be termed as negligence as the charge speaks that the petitioner has misplaced the 'M' Book, which is an act of negligence. It is the further submission of the petitioner that the 'M' Book was subsequently retrieved. Further, it is the submission of the learned counsel that though action was initiated against three persons, including the said Venkatesan, who is said to have received the 'M' Book, however, except for the petitioner, the charge against the other two persons were held to be not proved. It is the submission of the learned counsel for the petitioner that collusion having not been proved, the act of the petitioner could at best be termed to be a negligent act, warranting only a minor punishment, but, curiously, two days prior to his normal retirement, the petitioner has been compulsorily retired from service, which is wholly shocking and disproportionate to the charge levelled against him and, therefore, it is submitted that this Court, in exercise of its inherent power, should interfere and set aside the said impugned order. In the alternative, it is the submission of the learned counsel for the petitioner that if this Court intends to find the petitioner guilty, the act of the petitioner being only negligence, this Court may consider his case leniently and impose a lesser punishment.

5. On the above contentions, this Court heard the learned Special Government Pleader appearing for the respondents, who, while reiterating the submissions and sought to justify the punishment imposed on the punishment, further submitted that pursuant to the interim order of this Court, the 1st respondent after obtaining the opinion of the Tamil Nadu Public Service Commission, has imposed a cut of one-third amount from the monthly pension of the petitioner and all other terminal benefits have been ordered to be paid to the petitioner.

6. This Court bestowed its best attention to the contentions advanced by the learned counsel appearing on either side and also perused the materials available on record.

7. Before proceeding to analyse the facts of the present case to find out whether the punishment awarded to the petitioner is just and reasonable, the ratio laid down with regard to matters in which punishment has been imposed, which is impugned under Article 226 of the Constitution.



8. It has been the consistent view of the Courts that it is always within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the courts interfere in the same in exercise of powers under Art. 226 of the Constitution. In Prem Nath Bali - Vs - High Court of Delhi (2015 (16) SCC 415), the Hon'ble Supreme Court held as under :-

"20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority."

(Emphasis Supplied)

9. This Court, keeping in mind the ratio laid down by the Hon'ble Apex Court in relation to interfering with the punishment imposed by the disciplinary authority, would now proceed to dissect the materials available on record to find out whether the punishment imposed on the petitioner is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court requiring interference.

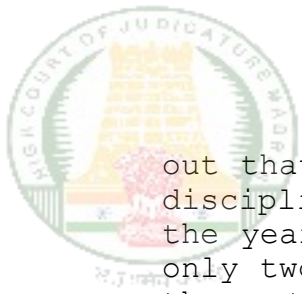


10. It is not in dispute that the 'M' Book, which was in the custody of the petitioner, was not available for perusal of the audit department, though it is the case of the petitioner that as early as on 9.4.01 he had handed over the said book to the audit department, though it is not substantiated on the basis of any material document. However, it is further evident that till 27.4.01, the last date of the auditing, there was no whisper about the 'M' Book, but its misplacement was noticed only on the said date. It further transpires from materials available on record that the 'M' Book had found its way to Ariyalur to one Venkatesan, a draughtsman in the office of the Executive Engineer (Agriculture Department). However, there is no material placed by the department to show that the said 'M' Book was sent by the petitioner to the said Venkatesan. Equally, there is no allegation of collusion between the petitioner and Venkatesan and equally there is no allegation against the petitioner that for enriching the contractor, the 'M' Book was misplaced. The charge against the petitioner is simpliciter negligence. It is further to be pointed out that the charge levelled against the said Venkatesan has been held not proved in the enquiry. Therefore, the collusive theory between petitioner and the said Venkatesan has been nipped in the bud by the respondents themselves.

11. However, it is admitted by the petitioner as also the respondents that the 'M' Book was in the custody of the petitioner and that he has made all the notings relating to the measurements done by the contractor in the execution of the job. It is to be remembered that the petitioner is in the rank of a superior officer and he is bound to be careful in the discharge of his duties. Though the petitioner has claimed that he had handed over the 'M' Book to the audit department on 9.4.01, however, the same has not been substantiated through any material document by the petitioner. Therefore, this Court is of the opinion that the misplacement of the 'M' Book is really a negligent act on the part of the petitioner warranting punishment.

12. In the above backdrop the question that falls before this Court is the punishment that would be just and reasonable to the delinquency of the petitioner.

13. Once this Court has come to the conclusion that the delinquency of the petitioner is only to the extent of negligence, definitely the punishment imposed by the respondents, to the conscience of this Court, is unreasonable, arbitrary, and shockingly disproportionate to the charge levelled against the petitioner. It is further to be pointed



out that the incident had taken place in the year 2001 for which disciplinary proceeding was initiated against the petitioner in the year 2004 and the petitioner was visited with the punishment only two days prior to the day he was to superannuate. Further, the petitioner has been visited with punishment of compulsory retirement vide the above impugned order. But what is more shocking to the Court is after the fact, as placed before the Court by the learned Special Government Pleader that vide G.O. (2D) No.31 dated 28.5.14, after obtaining the opinion of the Tamil Nadu Public Service Commission, the petitioner has been further inflicted with a punishment of cut of one-third pension. This, in the considered opinion of this Court, could only be termed to be double punishment. On the materials, which has been discussed above, this Court is of the considered opinion that the punishment of compulsory retirement itself is shocking the conscience and disproportionate to the charge levelled against the petitioner. To add to that, the punishment of cut of one-third in pension is nothing but adding salt to the injury sustained by the petitioner. This Court, on an overall consideration of the entire aspect of the issue, while is in agreement that punishment deserves to be inflicted on the petitioner for the negligent act, however, is of the considered opinion that the punishment of compulsory retirement coupled with cut of one-third pension deserves to be set aside. This Court, on the nature of charge, the materials on the basis of which the charge has been held to be proved and the further fact that the misplaced 'M' Book has also been retrieved even before the initiation of the disciplinary proceeding is of the considered view that the punishment of compulsory retirement is wholly disproportionate and, accordingly, the same deserves to be set aside. However, the materials on record reveal that the petitioner was due to retire in two days when the order of compulsory retirement was served on him, this Court in the fitness of things, deems it appropriate to modify the punishment imposed on the petitioner from one of compulsory retirement with cut of one-third pension to cut of one-third pension for a period of two years from the date on which the petitioner attained superannuation.

14. Accordingly, this writ petition is allowed by modifying the punishment imposed on the petitioner from one of compulsory retirement with cut of one-third pension to cut of one-third pension for a period of two years from the date on which the petitioner attained superannuation. Beyond the period of two years, the petitioner would be entitled to receive the regular pension due to him. The respondents are directed to calculate the excess amount that has been deducted from the petitioner beyond the period of two years and pay the same back to the petitioner in five equal monthly instalments, the first of which



shall start from 1.11.2020. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Secretary to Govt.
Agriculture Department
Government of Tamil Nadu
Fort St. George, Chennai - 9.
2. The Chief Engineer
(Agricultural Engineering)
Nandanam, Chennai - 35.

+1cc to Government Pleader, High Court, Madras in SR.27529
dt:24.8.2020

W.P. NO. 10069 OF 2013

MR (CO)
RV (21/08/2020)