

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.11192 of 2013

P.Dinakar Anandaraj

... Petitioner

vs.

1. The Secretary to Government,
Labour and Employment and Training,
Fort St. George,
Chennai 600 009.
 2. The Director of Employment and Training,
Chepauk, Chennai.
 3. The Tamil Nadu Public Service Commission,
rep. by its Secretary,
Chennai 600 002.
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records pertaining to the impugned order of punishment passed by the 1st Respondent in G.O.Ms.No.226 (Labour and Employment (No.1) Department, dated 02.11.2010 and in G.O.(D) No.2, dated 03.01.2013 and quash the same and consequently direct the Respondents 1 and 2 to restore the service rights of the Petitioner on par with his juniors with all attendant and monetary and retirement benefits.

For Petitioner : Ms.S.T.P.Kuilmozhi
For Respondents 1 & 2: Mr.S.Thangavel,
Special Government Pleader
For 3rd Respondent : Mr.M.Loganathan

O R D E R

Challenging the impugned orders passed by the 1st Respondent in G.O.Ms.No.226 (Labour and Employment (No.1) Department, dated 02.11.2010 and G.O.(D) No.2, dated 03.01.2013, Petitioner has come up with this Writ Petition.

2. According to the Petitioner, he was recruited through the Tamil Nadu Public Service Commission and on 26.06.1979, he was appointed as Junior Employment Officer. On 21.07.1986, he

was promoted as District Employment Officer and he attained the age of superannuation on 31.05.2005.

3. It is stated by the Petitioner that, the 2nd Respondent initiated disciplinary proceedings under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules and issued Charge Memo dated 10.11.1998 imputing misconduct. Totally, five counts of charges were framed against the Petitioner alleging that, while he was working as the District Employment Officer - Employment Wing in Uthagamandalam, he had demanded and accepted illegal gratification of Rs.3,000/- from two persons, viz. one Joseph Sundarraaj and R.Bhaskaran.

4. The contention of the Petitioner is that, the 2nd Respondent, without calling for explanation from him, straightaway issued the Charge Memo. The Petitioner challenged the said Charge Memo before the Tamil Nadu Administrative Tribunal in O.A.No.9477 of 1998 and the Tribunal, by its order dated 23.11.1998, directed the 2nd Respondent to furnish copies of documents requested by him. In spite of the said direction, the 2nd Respondent furnished only the alleged Statement recorded by the Vigilance and Anti Corruption Department.

5. It is further stated by the Petitioner that, after detailed enquiry, the Enquiry Officer held that, Charge Nos.I, II, III and IV were doubtful and that, Charge No.IV was not proved. The 3rd Respondent/TNPSC also pointed out that, there was a flaw in deciding the Charges I, II, III & V and that, there was no personal hearing. Thereafter, personal hearing was held in the presence of Secretary, Labour and Employment Training Department, and without reference to any document, the Petitioner's oral statement was recorded. But, the decision taken was not communicated to the Petitioner.

6. Thereafter, the 1st Respondent issued another Charge Memo in TPI/57742/2000-1, dated 28.01.2002 and that, both the disciplinary proceedings were pending for a long time. Hence, the Petitioner filed two Writ Petitions in W.P.No.14566 and 14567 of 2005 and by an order dated 28.04.2005, this Court directed the Respondents to pass final orders within a period of twelve weeks from the date of receipt of a copy of the order. Pursuant thereto, the 1st Respondent appointed a second Enquiry Officer, who concluded the enquiry only in the year 2010. In the meanwhile, the Petitioner attained superannuation on 31.05.2005. However, the 1st Respondent issued Suspension Order in G.O.Ms.No.18 L&E Department, dated 30.05.2005 and by G.O.No.19 L&E Department, dated 30.05.2005, the Petitioner was not allowed to retire from service.

7. Thereafter, second enquiry was also conducted against the Petitioner and the Enquiry Officer held that, the charges were not proved. But, the 1st Respondent, vide G.O.No.226 L&E Department, dated 02.11.2010, imposed a major punishment of compulsory retirement, against which, the Petitioner preferred

an Appeal before the 1st Respondent under Rule 19 of TNCS (D & A) Rules. Pending the said Appeal, the 1st Respondent, in consultation with the 3rd Respondent, issued G.O.(D) No.2 L&E Department, dated 03.01.2013, imposing a penalty of one third cut in pension and DCRG as per Rule 39 of Tamil Nadu Pension Rules. Aggrieved by the said orders, the present Writ Petition has been filed.

8. Learned counsel for the Petitioner contended that, the Charge Memo was issued after four years from the date of the alleged occurrence and that, the disciplinary proceedings were concluded with an inordinate delay of 12 years and hence, on this ground, the impugned order pertaining to suspension is liable to be set aside. It is his further contention that, the 1st Respondent, without issuing any Show Cause Notice to the Petitioner, passed the subsequent impugned order, imposing the penalty of cut of one-third pension and DCRG.

9. In reply, learned Special Government Pleader appearing for the Respondents, with reference to the counter Affidavit filed on behalf of Respondents 1 and 2, submitted that, in respect of the charges framed against the Petitioner, the Inquiry Officer completed the Inquiry and held that, the charges were not proved. The Inquiry Report was submitted to the 2nd Respondent by the Inquiry Officer vide his letter dated 24.01.2006. Further, the said Inquiry Report along with original files were sent to the 1st Respondent by the 2nd Respondent vide Letter No.ONA2/57331/2000, dated 20.02.2006 and the 1st Respondent, after examining the same, proposed to deviate from the findings of the Inquiry Officer and held that, Charges 1, 2, 3 and 5 were proved. The reason for deviation from Inquiry Report was sent to the Petitioner by the 1st Respondent vide Lr.No.47219/T1/2005-14, Labour and Employment (T-1) Department, dated 23.01.2007 and further representation was called for from him. The Petitioner submitted his further representation to the 1st Respondent in his Letter dated 03.05.2007.

10. It is further submitted by the learned Special Government Pleader that, only after obtaining several clarifications from the Directorate of Employment and Training, Directorate of Vigilance and Anti-Corruption and advisory Departments including the 3rd Respondent/Tamil Nadu Public Service Commission, the 1st Respondent imposed a major punishment of Compulsory Retirement on the Petitioner vide G.O.No.226, Labour and Employment (N-1) Department, dated 02.11.2010 and one-third cut in Pension and DCRG as per Rule 39 of the Tamil Nadu Pension Rules, 1978. Hence, the contention of the Petitioner that, the Disciplinary proceedings initiated were not in accordance with law, is totally unsustainable.

11. Heard the learned counsel on either side and perused the material documents available on record.

12. The main bone of contention of the learned counsel for

the Petitioner is that, in spite of the fact that, the charges have been held not proved, the Disciplinary Authority has deviated from the said findings and had gone on to impose the punishment on the Petitioner after calling for explanation. It is the stand of the Petitioner that, the Disciplinary Authority has not adverted to the materials in a proper perspective and, therefore, the punishment imposed on him on the basis of the flawed application of mind of the Disciplinary Authority is wholly unsustainable and deserves to be set aside.

13. It is trite that the Disciplinary Authority can very well deviate from the findings recorded by the Enquiry Officer, be it on the positive side or on the negative side. However, what is important is that, whether on such deviation, the procedure contemplated has been followed or not. In the case on hand, a careful perusal of the records reveals that, enquiry was held thrice due to certain discrepancies in the earlier two rounds of enquiry, in which two different Reports were tabled. In the third enquiry, though the Enquiry Officer held that, the charges are not proved, the Disciplinary Authority, on a careful consideration of the Enquiry Report, has thought it fit to deviate from the said findings for reasons that have been recorded in the notice issued calling upon the petitioner to furnish his explanation. Therefore, the Disciplinary Authority has followed the procedure contemplated and has proceeded in accordance with law as per Rules, before imposing the punishment on the Petitioner.

14. The Hon'ble Supreme Court, in the case of B.C. Chaturvedi v. Union of India, (1995 (6) SCC 749), while dealing with the issue relating to the power of the Court relating to judicial review of the order passed by the Disciplinary Authority, has held as under :

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of

Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappraise the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India v. H.C. Goel* [(1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1 LLJ 38] this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued." (Emphasis Supplied)

15. The above view has been reiterated by the Hon'ble Supreme Court in the case of *Principal Secretary to Government of Andhra Pradesh v. M. Adinarayana*, (2004 (12) SCC 579), wherein, it has been held as under :

"23. We have read this charge in the light of allegations in support thereof. In the instant case, it is not disputed that the

respondent has neither supplied any prior information on the Government nor did he send any prior intimation to the Government. By not doing this, he has contravened the provisions of Rule 9. The Tribunal has also categorically held that the respondent has not applied for prior information before he purchased the items from the competent authority nor he intimated to the competent authority forthwith soon after the purchase of the several items. Therefore, in our view, the charged officer has violated Rule 9 of the Conduct Rules and thus is guilty of misconduct within Rule 2-H (sic) of the Andhra Pradesh Disciplinary Amendment Act, 1993. In view of the abovesaid finding we hold that respondent is guilty of both the charges framed against him within Rule 2 (b) of the Conduct Rules of 1961 framed under the Amendment Act, 1993.

* * * * *

26. In our opinion, judicial review cannot extend to the examination of the correctness of the charges as it is not an appeal but only a review of the manner in which the decision was made. We have, therefore, no hesitation in setting aside the order of the Andhra Pradesh Administrative Tribunal and the judgment of the Division Bench of the High Court for reasons stated (supra). The order passed by the Government removing the respondent from service is in order and, therefore, the appeal filed by the appellant State stands allowed. Further, there will be no order as to costs."

16. From the above, it is implicitly clear that this Court, in exercise of its power of judicial review, cannot extend the examination of the correctness of the act of the Disciplinary Authority, but only limit itself to the manner in which the decision has been arrived at by the Authorities and whether the same is in accordance with law. This Court is to test only the correctness of the decision arrived at by the Authorities on the basis of the evidence before it and not proceed with the case, as if it is an Appeal against the impugned order.

17. On consideration of the totality of the materials available on record, it is clear that the Disciplinary Authority, after going through all the materials, on an independent application of mind, has thought it fit to deviate from the findings rendered by the Enquiry Officer and there being no procedural violation, sitting in judicial review, this Court is not inclined to hold that, the procedure adopted by the

Disciplinary Authority in arriving at a conclusion, could be said to be unsustainable. Therefore, the contention put forth on behalf of the Petitioner deserves to be rejected.

18. Insofar as the punishment imposed on the Petitioner is concerned as to its just and reasonableness, this Court would like to advert to the ratio laid down by the Courts under Article 226 of the Constitution with regard to the punishment imposed.

19. 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 delinquency. Only when the punishment is disproportionate and shocking the conscience, should the Courts interfere with the same in exercise of powers under Article 226 of the Constitution. In the case of 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)

20. In the case on hand, a careful perusal of the entire records right from the conduct of the enquiry, the deviation of the Disciplinary Authority from the findings of the Enquiry Officer to the passing of the order of punishment of compulsory retirement from service, reveal that, there has been proper and independent application of mind on the part of the concerned Authority, who dealt with the files. Also, it is seen that, the gravity of the offence committed by the Petitioner is too serious, that the Disciplinary Authority has thought it fit to impose the punishment of compulsory retirement from service. The review filed by the Petitioner has also ended in rejection of the same. The delinquency of the Petitioner in the present case is receiving of illegal gratification for performing his official duties. The gravity of the said offence, in the present day scenario, does not call for any iota of sympathy at the hands of the Courts.

21. As already stated, this Court, sitting in judicial review, is not required to go through the entire materials as if the matter is in Appeal before this Court, but only to arrive at a subjective finding as to whether the enquiry has been conducted in a fair and proper manner and whereupon, the Disciplinary Authority has independently applied his mind while imposing the punishment. This Court is in consensus with the order passed by the Disciplinary Authority and is of the view that the same does not require any interference at the hands of this Court. The punishment imposed on the Petitioner is just and reasonable considering the nature of delinquency and no sympathy can flow from this Court for such an act. Therefore, the punishment imposed on the Petitioner is in no way shocking or disproportionate to the delinquency and, therefore, this Court is not inclined to interfere with the same.

For the reasons aforesaid, this Writ Petition stands dismissed as devoid of merits. Consequently, connected M.P.Nos.2 and 3 of 2013 are closed. There shall be no order as to costs.

WEB COPY

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

(aeb)

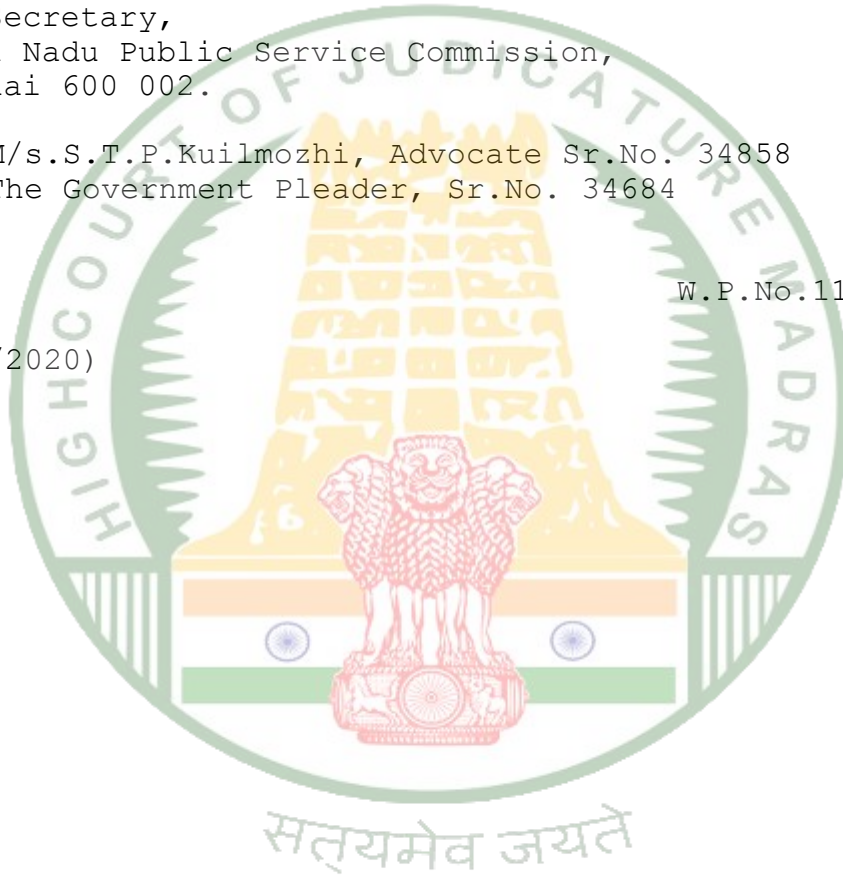
To:

1. The Secretary to Government,
Labour and Employment and Training,
Fort St. George,
Chennai 600 009.
2. The Director of Employment and Training,
Chepauk, Chennai.
3. The Secretary,
Tamil Nadu Public Service Commission,
Chennai 600 002.

+1 cc to M/s.S.T.P.Kuilmozhi, Advocate Sr.No. 34858
+1 cc to The Government Pleader, Sr.No. 34684

W.P.No.11192 of 2013

GP(CO)
RMP(15/12/2020)



WEB COPY