

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :25.09.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.11292 OF 2013

and

M.P.No.1 of 2013

V.Chinnasubramanian

.. Petitioner

- Vs -

1. .State of Tamil Nadu, rep by
its Secretary to Government,
Tamil development Religious
Endowment and information Department,
Secretariat, Chennai 9

Now Secretary to Government,
Tourism, Culture & Religious
Endowment Department,
Secretariat, Chennai -9.

2. The Commissioner,
Hindu Religious & Charitable
Endowments,
Administration Department,
Chennai 34.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified Mandamus, calling for the records pertaining to the order passed by the 1st Respondent in G.O.(D) No.36 Tamil Development Religious Endowments and Information Department dated 15.02.2013 and quash the same and direct the Respondents to settle all the terminal benefits and confer all the consequential benefits to the petitioner.

For Petitioner : Mr.P.Ganesan for
M/S.C.S. Associates

For Respondents: Mr. R.Venkatesh for HR&CE

ORDER

The petition has been field by the petitioner to call for the records pertaining to the order passed by the 1st Respondent

in G.O.(D) No.36 Tamil Development Religious Endowments and Information Department dated 15.02.2013 and quash the same and direct the Respondents to settle all the terminal benefits and confer all the consequential benefits to the petitioner.

2.The case of the petitioner is that the petitioner started his career as Grade III Executive Officer through Tamil Nadu Public Service Commission in 1973 and thereafter he was promoted as Grade II Executive Officer in the year 1988. While he was working as Grade II executive officer, he was posted at Uthamar Koil, Pitchandar Koil Village, Trichy District which was under the control of second respondent. He was placed under suspension on 30.12.1994, alleging that he misappropriated the temple funds to the tune of Rs.1,75,000/-, which culminated in the issuance of a charge memo dated 06.01.1995. A case in Crime No.26/95 was registered against the petitioner for the alleged offences under Section 406 and 420 of IPC.

2.1.Aggrieved against the charge memo, petitioner filed an original application in O.A.NO.2031/97, on the ground that for the very same allegation a criminal case has also been registered. The Tribunal did not grant any stay, and, therefore, the petitioner submitted his explanation on 14.03.2000 leading to conduct of domestic enquiry and submission of report by the enquiry officer holding the charges partly proved. Pursuant to the same, 2nd show cause notice was issued enclosing the report of the enquiry officer on 18.07.2001. Again the petitioner submitted an explanation. However, before order could be passed in the departmental proceeding, the Tribunal, vide order dated, 28.09.2001, disposed of the application directing deferment of order in the disciplinary proceedings till the disposal of the criminal case and further also directed to revoke the order of suspension order and post the petitioner in a non sensitive post. Pursuant to the said order, the petitioner was reinstated in service in September 2004.

2.2.It is the further case of the petitioner that the petitioner filed a criminal original petition in CrI.O.P.NO.7724 of 2007 before the Madurai Bench of this Court for quashing the FIR in Crime No.26/1995 and the Madurai Bench of this Court allowed the criminal original petition and quashed the FIR by its order dated 20.2.2008 mainly on the ground that there was total inaction on the part of the investigating agency since 1995 in filing the charge sheet. Immediately, thereafter the petitioner made a representation dated 19.03.2008 enclosing the order dated 20.02.2008 and requested to pass final order in the disciplinary proceedings.

2.3.The grievance of the petitioner is that the petitioner was allowed to retire after attaining the age of superannuation

on 31.05.2008, without prejudice to the disciplinary proceedings. Though the enquiry was completed, without passing final orders the enquiry report was pending before the 2nd respondent herein and, therefore, the petitioner made another representation on 19.03.2008 bringing to the notice that the FIR has been quashed and requested to pass final order. Since no order was passed, the petitioner approached this Court by filing W.P.No.18892 of 2008, challenging the charge memo dated 6.1.1995, which was disposed of by this Court order dated 02.03.2011. In-spite of the said order, as no action was taken, the petitioner filed contempt petition No.356/2013, pursuant to which the 1st respondent passed final order in G.O. (D) NO.36, Tamil Development, Religious Endowments and information Department, dated 15.02.2013, imposing punishment of reduction in pension @ Rs.450/- per month for two years and also ordered recovery to the tune of Rs.1,58,281.50 from the Death cum Retirement Gratuity and the same was served on the petitioner on 20.02.2013. Challenging the impugned order of the 1st respondent, the petitioner is before this Court with the above petition.

3. Learned counsel appearing for the petitioner submitted that orders were deferred in the departmental proceedings awaiting the verdict in the criminal case. Once the FIR itself has been quashed by this Court, the authority ought not have imposed the punishment, as the petitioner has not suffered any punishment in the criminal case. Though the petitioner was allowed to retire from service, however, based on the directions of this Court to dispose of the petitioner's representation, punishment, as above, has been inflicted on the petitioner, which is impermissible and unsustainable, as the criminal case has not been taken to its logical conclusion by the investigating agency, which absolves the petitioner. The impugned order passed after a lapse of 18 years without taking into consideration the closure of the criminal case reveals the non-application of mind on the part of the respondents. Further, the petitioner has been imposed with dual punishment which is nothing but double jeopardy and, therefore, the same requires to be interfered with.

4. Per contra, learned Special Government Pleader appearing for the respondents submitted that the criminal case was closed on technicality, which only means that the petitioner has not been absolved of the act. Further, the disciplinary proceedings had been concluded long back and only on the orders of the Tribunal, the proceedings were kept in deferment to be revived after the criminal case and punishment was inflicted. Further, it is submitted that the punishment imposed cannot be termed to be a double jeopardy, as the punishment imposed on the petitioner is only stoppage of pension @ Rs.450/- for two years

and the amount of Rs.1.58 Lakhs, sought to be recovered from the petitioner is towards the misappropriation committed by the petitioner. The 1st respondent has appreciated the whole issue in proper perspective and has inflicted the punishment, which does not warrant any interference at the hands of this Court.

5. This Court heard the rival submissions made by either side learned counsel and also perused the materials available on records.

6. The facts in issue are not in dispute. Criminal case and disciplinary proceedings were initiated against the petitioner. Though the FIR had been quashed by this Court, however, it is to be pointed out that only on the ground that charge sheet has not been laid even after a long length of time, the FIR was quashed. Therefore, it is not an order passed on merits of the issue. Therefore, the said order cannot be taken aid of by the petitioner to canvass his claim that the departmental proceedings cannot be proceeded with.

7. Further, it is to be pointed out that criminal case has been taken up with regard to the misappropriation committed by the individual. The ground on which the disciplinary proceedings has been initiated is on account of the act of misappropriation committed by the petitioner and it is the delinquency of the petitioner in his work that has led to the initiation of the disciplinary proceedings. Misappropriation is a major delinquency and proof thereof definitely calls for a severe punishment. The enquiry report having indicted the petitioner and the charges leveled were said to have been partly proved, the disciplinary authority has inflicted the punishment of stoppage of pension @ Rs.450/- for a period of two years, as the petitioner had superannuated from service by then.

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. In the case on hand, the punishment inflicted on the petitioner is stoppage of pension @ Rs.450/- for a period of two years. The delinquency committed by the petitioner, as alleged, is misappropriation. The materials available on record reveal that charges have been partly proved. In such view of the matter, it cannot be said that the delinquency has not been proved and that the criminal case has been closed on technicality and not on merits. Further the disciplinary proceedings and criminal case go in tandem, without one impinging on the other. The enquiry report has held the charges against the petitioner proved in part and the disciplinary authority, on appreciation of the materials, has imposed the punishment.

10. Though it is the contention of the learned counsel for the petitioner that infliction of punishment of stoppage of pension @ Rs.450/= per month and recovery of a sum of Rs.1.58 Lakhs is nothing but double jeopardy, however the said contention cannot be accepted for the simple reason that while recovery is ordered for the purpose of recovering the wrongful loss caused by the employee, the stoppage of pension @ Rs.450/- is for the purpose of delinquency in service by the employee, thereby, causing wrongful loss. Both the proceedings stand on different footing.

11. It is to be pointed out that it has been the consistent view of the Courts that disciplinary proceedings and criminal case can proceed simultaneously and even an acquittal in the criminal case would not absolve the petitioner of his delinquency in the departmental proceedings as both stand on different set of substantive material and one cannot be superimposed on the other. Therefore, the orders passed against the employee relating to recovery of the alleged misappropriated amount and stoppage of pension @ Rs.450/- per month for a period of two years are separate actions and, therefore, the concept of double jeopardy, in no way, stands attracted to the case in issue.

12. The delinquency of the petitioner, having analyzed by the disciplinary authority while imposing the punishment of stoppage of pension, this Court is of the considered view that the delinquency of the petitioner is of such a gravity that the punishment imposed on him, in no way, could be termed to be disproportionate or shocking the conscience of this Court. In such circumstances, this Court is of the considered view that no interference is warranted with the orders impugned herein.

13. For the reasons aforesaid, this petition deserves to be dismissed and, accordingly, the same is dismissed. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. .The Secretary to Government,
Tamil Nadu Development Religious
Endowment and information Department,
Secretariat, Chennai 9

Now Secretary to Government,
Tourism, Culture & Religious
Endowment Department,
Secretariat, Chennai -9.

2.The Commissioner,
Hindu Religious & Charitable
Endowments,
Administration Department,
Chennai 34.

+lcc to Mr.C.S.Associates, Advocate, S.R.No.31888

W.P. NO.11292 OF 2013

SAI (CO)
RV(03/12/2020)