

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.Nos.11593 of 2013 and 19850 of 2013
and
MP Nos.2 and 3 of 2013

R.Mathanagopal Petitioner in both W.P.s

Vs.

1.The Secretary to Government,
Municipal Administration and Water
Supply Department,
Secretariat,
Chennai - 600 009.

2. The Commissioner of
Municipal Administration,
Chepauk,
Chennai - 600 005.

3. The Commissioner,
Dharmapuri Municipality,
Dharmapuri.

.....

Respondents
in

W.P. No.11593 of 2013

1. The Commissioner,
Dharmapuri Municipality,
Dharmapuri - 636 701.

2. A.Gurusamy

3. The Commissioner of Municipal Administration,
Chepuk,
Chennai - 600 005.

..... Respondents in

W.P. No.19850 of 2013

*W.P. No.11593 of 2013 :Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the Impugned order passed by the 2nd respondent in Roc. No.42821/2007/Op3, dated 24.04.2010 and the impugned order passed by the 1st respondent in

G.O. (D) No.69 MAWS Department dated 14.2.2003 confirming the punishment order passed by the 2nd respondent and quash the same and consequently direct the 2nd respondent to sanction of Pension, DCRG and Encashment of Earned Leave at the credit of the petitioner as on 31.12.2010 within a reasonable period.

* Prayer amended vide order of this Court in
WMP No.3713 of 2019, dated 15.12.2020.

W.P. No.19850 of 2013 :Writ Petition filed under Article 226 of the Constitution of India to Writ of Certiorari, to call for the records relating to the impugned order of the 2nd respondent issued in Na.Ka.No.3651/2013/C1, dated 18.06.2013 and quash the same.

For Petitioner : Mr.T.Ranganathan

For Respondents : Mr.S.Thangavel
Special Government Pleader

ORDER

These writ petitions have been filed challenging the punishment of stoppage of increment as also the consequent recovery proceedings taken against the petitioner and also for a consequential direction to the 2nd respondent to sanction Pension, DCRG and Encashment of Earned Leave at the credit of the petitioner as on 31.12.2010.

2. It is the case of the petitioner that he was appointed as Sanitary Inspector at Sivakasi Municipality on 22.08.1973 and later transferred to Dharmapuri Municipality. While serving as such, due to certain alleged irregularities, three charges were levelled against the petitioner. Out of three charges levelled, two charges were for collection of a sum of Rs.600/- each from two persons and issued flag day receipts pertaining to the year 1995 thereby misusing the flag day receipts. The third charge related to dereliction of duty as a responsible officer and violation of rules under the Tamil Nadu Municipal Servants Conduct Rule, 1979.

3. The petitioner denied all the charges and further stated that due to his attempt to challenge the transfer order, the 2nd respondent deliberately initiated disciplinary proceedings against him. Not satisfied with the reply, enquiry was conducted and the Enquiry Officer, submitted his Report based on the materials available on record. On the basis of findings of the Enquiry Officer, the 2nd Respondent / disciplinary authority imposed the punishment of stoppage of five increments with cumulative effect, vide order dated 24.04.2010. Aggrieved over

the said punishment, the petitioner preferred appeal before the 1st respondent and the 1st respondent without independent application of mind, confirmed the order of the 2nd respondent and rejected the appeal on 14.02.2013. Against the said dismissal order, W.P. No.11593 of 2013 has been filed. However, during pendency of this writ petition, 2nd respondent issued order of recovery vide Proceedings issued in Na.Ka.No.3651/2013/C1, dated 18.06.2013. Challenging the same, the petitioner filed another writ petition in W.P. No.19850 of 2013.

4. Learned counsel appearing for the petitioner submits that the enquiry was not conducted in a fair and proper manner, as the enquiry officer failed to provide him with certain documents, which were sought for by the petitioner, which finds mention in the Annexure IV to the charge memo. Further, the disciplinary authority failed to consider his deposition that the amount collected from the respective parties were remitted to the municipal account, and, therefore, there is no misappropriation of funds. The enquiry officer has not appreciated the materials and evidence in proper perspective and, therefore, the finding recorded in the enquiry stands vitiated. Further, the punishment imposed on the petitioner is disproportionate to the charges levelled against him and the said punishment is shocking the conscience as the same has the effect of affecting the pensionary benefits and, therefore, the same requires to be interfered with by this Court.

5. Per contra, Mr.S.Thangavel, learned Special Government Pleader appearing for the respondents reiterating the counter submits that there was a clear and categorical admission of the guilt committed by the petitioner. He also submits though the charges levelled against the petitioner were proven as well as admitted by the petitioner and accordingly, the punishment of stoppage of increments for five years with cumulative effect is not disproportionate in nature. Furthermore, the petitioner committed illegality i.e., issuance of flag day receipt pertaining to the year 1995 in the year 2006 as the unused receipts have to be surrendered before the officials and, therefore, the petitioner cannot escape from the clutches of law. For the said act, the 2nd respondent/ disciplinary authority on independent application of mind to the materials available on record, has imposed the punishment, which cannot be said to be disproportionate. Further, the 1st respondent / appellate authority also, on independent application of mind, has concurred with the punishment imposed by the disciplinary authority and, this Court, sitting under Article 226, shall not interfere with the punishment unless there is violation of

principles of natural justice or that the punishment is shockingly disproportionate. Therefore, no interference is warranted with the well considered order passed by the respondents.

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

7. The Hon'ble Supreme Court, in B.C. Chaturvedi v. Union of India, (1995 (6) SCC 749), while dealing with issue relating to the power of the Court relating to judicial review of the order passed by the disciplinary authority, 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 reappreciate 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)

8. The above view has been reiterated by the Hon'ble Supreme Court in *Principal Secy. Govt. of A.P. 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."

9. In a recent decision in Director General of Police, RPF & Ors. - Vs - Rajendra Kumar Dubey (C.A. No.3820/2020 dated 25.11.20), the Hon'ble Supreme Court, advertng to the various decisions of the Apex Court relating to the interference by the High Court in exercise of its writ jurisdiction with respect to disciplinary proceedings, including the decision in Chaturvedi's case (supra), held as under :-

"12.1 It is well settled that the High Court must not act as an appellate authority, and re-appreciate the evidence led before the enquiry officer.

We will advert to some of the decisions of this Court with respect to interference by the High Courts with findings in a departmental enquiry against a public servant.

In State of Andhra Pradesh v S.Sree Rama Rao, a three judge bench of this Court held that the High Court under Article 226 of the Constitution is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is not the function of the High Court under its writ jurisdiction to review the evidence, and arrive at an independent finding on the evidence. The High Court may, however interfere where the departmental authority which has held the proceedings against the delinquent officer are inconsistent with the principles of natural justice, where the findings are based on no evidence, which may reasonably support the conclusion that the delinquent officer is guilty of the charge, or in violation of the statutory rules prescribing the mode of enquiry, or the authorities were actuated by some extraneous considerations and failed to reach a fair

decision, or allowed themselves to be influenced by irrelevant considerations, or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. If however the enquiry is properly held, the departmental authority is the sole judge of facts, and if there is some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a writ petition.

These principles were further reiterated in the State of Andhra Pradesh v Chitra Venkata Rao. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The court exercises the power not as an appellate court. The findings of fact reached by an inferior court or tribunal on the appreciation of evidence, are not re-opened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ court, but not an error of fact, however grave it may be. A writ can be issued if it is shown that in recording the finding of fact, the tribunal has erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence. A finding of fact recorded by the tribunal cannot be challenged on the ground that the material evidence adduced before the tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point, and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal.

In subsequent decisions of this Court, including Union of India v. G. Ganayutham, Director General RPF v. Ch. Sai Babu, Chennai Metropolitan Water Supply and Sewerage Board v T.T. Murali, Union of India v. Manab Kumar Guha, these principles have been consistently followed.

In a recent judgment delivered by this Court in the State of Rajasthan & Ors. v. Heem Singh this Court has summed up the law in following words :

"33. In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of

restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy – deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognized it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. To determine whether the

finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to re-appreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain."

In *Union of India v. P. Gunasekaran*, this Court held that the High Court in exercise of its power under Articles 226 and 227 of the Constitution of India shall not venture into re-appreciation of the evidence. The High Court would determine whether : (a) the enquiry is held by the competent authority; (b) the enquiry is held according to the procedure prescribed in that behalf; (c) there is violation of the principles of natural justice in conducting the proceedings; (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations which are extraneous to the evidence and merits of the case; (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations; (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion; (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence; (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding; (i) the finding of fact is based on no evidence.

In paragraph 13 of the judgment, the Court held that :

"13. Under Articles 226 / 227 of the Constitution of India, the High Court shall not :

- (i) re-appreciate the evidence;
- (ii) interfere with the conclusions in the enquiry, in the case the same has been conducted in accordance with law;

- (iii) go into the adequacy of the evidence;
 - (iv) go into the reliability of the evidence;
 - (v) interfere, if there be some legal evidence on which findings can be based;
 - (vi) correct the error of fact however grave it may appear to be;
 - (vii) go into the proportionality of punishment unless it shocks its conscience."
- (Emphasis Supplied)

10. From the ratio laid down above, it is implicitly clear that the Courts, in exercise of its power of judicial review, cannot extend the examination to 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.

11. It is the contention of the learned counsel for the petitioner that certain documents, which were sought for by the petitioner have not been provided to him, which, in turn vitiates the enquiry. Though such a submission is advanced, it is to be pointed out that in the appeal filed by the petitioner, the petitioner has not pleaded anything to the said effect. Further, it is to be pointed out that merely calling for some documents, without stating the nexus that the said document has to the case of the petitioner, cannot be a ground for the Management to provide the said document to the delinquent. The delinquent has to state the reason for requiring the said document and the crucial aspect which lies beneath the said document, which in turn will favour his case. Merely asking for a document, which has no nexus to the case of the petitioner and the same not being provided, coming before the Court and claiming that the petitioner has not been provided with sufficient opportunity by providing the requisite documents, which is violation of principles of natural justice, cannot be accepted, as such a course, if adopted by the Courts, would entail interference in all orders related to disciplinary proceedings as the delinquent will ask for documents, which will not have bearing on the case and then come before the Court and plead that non-furnishing of the documents sought for by him has vitiated the enquiry. The Courts cannot permit such an act to be perpetrated by the delinquents.

12. It is to be reiterated at the risk of repetition that the Court in exercise of its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate 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. It has been the consistent view of the Courts that the nature of evidence required in a disciplinary proceedings is not in the same level as required in a criminal trial, as in the disciplinary proceedings, the finding is arrived at on the basis of preponderance of probabilities. In such a scenario, it is not the function of the High Court under its writ jurisdiction to review the evidence, and arrive at an independent finding on the evidence. If the enquiry is properly held within the four boundaries of legal necessities, then the departmental authority is the sole judge of facts, and if there is some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a writ petition. An error of law which is apparent on the face of the record can be corrected by a writ court, but not an error of fact, however grave it may be. High Court in exercise of its power under Articles 226 and 227 of the Constitution of India shall not venture into re-appreciation of the evidence and further the Supreme Court has also codified the circumstances under which re-appreciation of evidence is permissible.

13. In the case on hand, the enquiry officer, having analyzed the evidence placed before him, has given a finding as to the guilt of the petitioner, which has been accepted by the disciplinary authority on independent application of mind and confirmed by the appellate authority on the basis of the materials available before them. Once the said authorities have concurred with the view on the basis of the materials, this Court, sitting under Article 226 of the Constitution of India, shall desist from interfering with such a decision, unless it is shown to be so very perverse and is not on the basis of materials available on record. In the case on hand, as aforesaid, independent application of mind is exhibited in all the orders passed by the concerned authorities and all the orders are speaking orders, which dovetail all the details based on which the said conclusion have been arrived at. Therefore, the technical pleas raised by the petitioner cannot be gone into by this Court under Article 226 of the Constitution.

14. The next question that falls before this Court relates to the punishment imposed on the petitioner and the circumstances under which interference of the same can be made by this Court. 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.

15. 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)

16. In the case on hand, a careful perusal of the entire records right from the conduct of the enquiry to the imposition of punishment and the rejection of the appeal by the appellate authority reveal that there has been proper and independent application of mind on the part of the concerned authorities, who dealt with the case of the petitioner. It is further to be pointed out that the offence committed by the petitioner is of such a nature, that it is plaguing the entire country and the same requires to be curtailed with iron hands, lest the country will fall into the anarchic trap and, therefore, the persons, who indulge in such disgraceful acts should be shown no mercy. In the case on hand, the gravity of the offence committed by the petitioner though is very grave, however, the disciplinary authority has only imposed a punishment of stoppage of increment for a period of five years with cumulative effect. The gravity of the offence, in the present day scenario, does not call for any iota of sympathy at the hands of the courts. 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 as confirmed by the appellate authority and is of the view that the same does not warrant any interference at the hands of this Court. The punishment imposed on the petitioner is also just and reasonable considering the nature of delinquency, no sympathy can flow from this Court for such an act. Therefore, the punishment imposed on the petitioner is in no way shocking the conscience of this Court or disproportionate to the delinquency and, therefore, this Court is not inclined to interfere with the same.

17. For the reasons aforesaid, the writ petition questioning the punishment as also the consequent recovery are dismissed as being devoid of merits. However, it is made clear that consequent upon the superannuation of the petitioner, if the petitioner is entitled to the benefits of appropriate DCRG, Pension and other retiral benefits, the same shall be paid to

the petitioner, as per his eligibility within a period of twelve weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

vsi2
To

- 1.The Director of Local Fund Audit,
Directorate of the Local Fund Audit,
Kuralagam, 4th floor,
Chennai - 600 108.
- 2.The Assistant Director of Local Fund Audit,
O/o The Assistant Director of Local Fund Audit,
Villupuram.
- 3.The Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat,
Chennai - 600 009.
- 4.The Commissioner of Municipal Administration,
Chepauk,
Chennai - 600 005.
- 5.The Commissioner,
Dharmapuri Municipality,
Dharmapuri.

+2cc to M/s.A.Sri Jayanthi, Advocate Sr.41764

W.P.Nos.11593 of 2013 and 19850 of 2013

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srg 09/03/2021