

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2020

CORAM:

The Hon'ble MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P. No.11832 of 2010

R.Murali Narasimhan

...Petitioner

.Vs.

1. The Government of Tamil Nadu,
Rep. by the Secretary to the Government,
Home (Transport) Department,
Fort St. George, Chennai-600 009.

2. The Special Commissioner and
Transport Commissioner,
Chennai - 600 005.

...Respondents

PRAYER: Writ Petition is 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 of the first Respondent in G.O.(D) No.1021, Home (Tr.II-A) Department, dated 14-10-2009 confirming the order passed by the second Respondent in Proc R.No.26821/V2/93 dated 13-8-2007 and quash the same and direct the respondent to reinstate the Petitioner in service with all attendant benefits.

For Petitioner : Mr.P.Rajendran
For Respondents : Mr.G.K.Muthukumar
Spl.G.P.

O R D E R

The Petitioner was initially appointed as a Junior Assistant on 24.08.1987. He was promoted as an Assistant in the year 1998. He was dismissed from service on 21.08.2007 pursuant to disciplinary proceedings. At the time of dismissal, he worked at the Office of the Regional Transport Officer, Tirunelveli. While working as a Junior Assistant in the Zuzuvadi check post, disciplinary proceedings were initiated against him as regards an incident on 19.03.1988. The Tribunal for disciplinary proceedings framed the following charge against him:

"That actuated by corrupt motive and in abuse of your (charged officers No.1&2) official position and authority and with intent to secure wrongful gain while you (charged officer No.2) were working as

Junior Assistant at Zuzuvadi check post at Hosur in Dharmapuri District with another one (charged officer No.1) working as Motor Vehicle Inspector (N.T.) on 19.03.1988 at or about 10:30 P.M. at Zuzuvadi check post in collusion with each other, the Motor Vehicle Inspector (N.T.) demanded an illegal gratification of Rs.10/- from Thiru.Absal Basha, S/o.Mannan, D.No. 38, Sandaipet Street, Dharmapuri. The driver of Tempo Lorry TDD 0325 and accepted the same through you (Charged Officer) for allowing Tempo Lorry TDD 0325 to pass through the check post.

Thereby you (charged officer) have failed to maintain absolute integrity in Government service and acted in a manner unbecoming of a Government servant."

Pursuant to the charge memo, disciplinary proceedings were initiated against the Motor Vehicle Inspector (Charged Officer No.1) and the Petitioner (Charged Officer No.2). As is evident from the above extract, the charge was that the Motor Vehicle Inspector demanded illegal gratification and accepted the same through the Petitioner. The said Motor Vehicle Inspector died on 06.03.1991 while the disciplinary proceedings were pending. As a result thereof, the disciplinary proceedings against the expired person abated. Nonetheless, the proceedings against the Petitioner were not dropped. Instead, the disciplinary proceedings continued as against the Petitioner and the Tribunal concluded that the charge was proved. A copy of the enquiry report was communicated to the Petitioner by the Special Commissioner and Transport Commissioner on 02.11.2006 and 27.12.2006. The Petitioner submitted an additional explanation with regard to the findings on 24.01.2007. Upon consideration thereof, the Special Commissioner and Transport Commissioner issued an order dated 13.08.2007 imposing the punishment of dismissal from service with immediate effect. The aforesaid order dated 13.08.2007 was carried in appeal by the Petitioner to the Secretary to Government, Home Department on 13.09.2007. By order dated 14.10.2009, the Petitioner's appeal was rejected. The present writ petition was filed in the aforesaid facts and circumstances.

2. I heard the learned counsel for the Petitioner and the learned counsel for the Respondents.

3. The learned counsel for the Petitioner submitted that the allegation against the Petitioner was that he aided the Motor Vehicle Inspector to receive a bribe of Rs.10/-. The said Motor Vehicle Inspector died on 06.03.1991 while the disciplinary proceedings were pending. On account of the death of the Motor

Vehicle Inspector, the proceedings against him abated. Consequently, his family received the terminal benefits. In spite of this significant intervening event, he submitted that the proceedings against the Petitioner were proceeded with on the basis of the same charge memo. The learned counsel next referred to the order of dismissal and contended that the contention of the Petitioner that there was no evidence as regards the demand of a bribe by the Petitioner was not taken into consideration by the disciplinary authority who proceeded entirely on the basis of the phenolphthalein test. Thus, the Petitioner was unfairly held to be guilty of the charge. More importantly, the Petitioner was dismissed from service and, therefore, he is unable to receive any benefits, including terminal benefits.

4. The learned counsel focused largely on the nature of punishment. He pointed out that there are many mitigating circumstances, namely, the fact that the principal perpetrator of the alleged offence died and the proceedings against him abated as a result. The fact that the amount involved is a paltry sum. The fact that the guilt of the Petitioner was determined largely on the basis of a phenolphthalein test and not on the basis of hard evidence. Moreover, he contended that the dismissal of the Petitioner was affirmed by the appellate authority largely on the basis of the report of the Tamil Nadu Public Service Commission (the TNPSC). The said report was made available to the Petitioner only along with the order of dismissal and not earlier. In addition, he pointed out that the Petitioner is not seeking reinstatement at this juncture; instead, if the punishment is substituted by a less harsh punishment, the Petitioner would be in a position to avail terminal benefits.

5. On the contrary, the learned Special Government Pleader contended that this is an offence involving moral turpitude and evidences lack of integrity in the discharge of public duties. By referring to a recent amendment to Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules by G.O.(Ms.)No.105, Personnel and Administrative Reforms (N) Department, dated 01.08.2019, he contended that the Government amended the rules so as to ensure that the departments concerned impose the punishment of dismissal from service in cases of receipt of illegal gratification. Although the said amendment is not applicable to this incident, he contended that it indicates the zero tolerance policy of the Government as regards the acceptance of bribes by persons working in sensitive posts.

6. I considered the submissions of the learner counsel for the respective parties and examined the materials on record.

7. The first question that arises for consideration is whether the disciplinary proceedings were conducted in compliance with the principles of natural justice. Upon perusal of the record of the disciplinary proceedings, it is clear that the Petitioner was provided an opportunity to respond to the charge memo and to the report of the enquiry officer. However, as regards the appellate proceedings, as contended by the learned counsel for the Petitioner, it is evident that the report of the TNPSC was not provided in advance to the Petitioner. Given the fact that the appellate authority relied on the said report, not providing a copy thereof to the Petitioner clearly caused limited prejudice. Nonetheless, when viewed cumulatively, neither the original order nor the appellate order suffer from perversity and, in my view, the Petitioner has not made out a case to set aside the appellate order on that basis. The question of the proportionality of punishment is a distinct matter to which I turn next.

8. As regards the nature of punishment and judicial review thereof, I am conscious of the applicable legal principles and the limited scope for interference. A brief survey of precedent is sufficient for purposes of this case. In the context of interference with the punishment imposed on a police official, the Hon'ble Supreme Court in *State of Meghalaya v. Mecken Singh N. Marak* (2008) 7 SCC 580, held as under:

"14..In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. The jurisdiction of the High Court, to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefor. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice.

15. While considering the question of

proportionality of sentence imposed on a delinquent at the conclusion of departmental enquiry, the court should also take into consideration, the mental set-up of the delinquent, the type of duty to be performed by him and similar relevant circumstances which go into the decision-making process. If the charged employee holds the position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct, in such cases has to be dealt with with iron hands."

9. Similarly, in B.C.Chaturvedi v. Union of India (1995) 6 SCC 749, it was held as under:

"18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

10. Thus, upon application of the above principles, it remains to be considered whether a case is made out for interference with the punishment. I find that the Petitioner was charged with the offence of acting in collusion with the Motor Vehicle Inspector, who was charged with demanding the bribe. Admittedly, the Motor Vehicle Inspector died while the proceedings were pending, and, consequently, the proceedings against him abated. Pursuant thereto, his family received terminal benefits. In spite of the proceedings abating against the principal perpetrator of the offence, the proceedings were continued against the person accused of aiding and abetting the principal perpetrator. The admitted position is that the amount of illegal gratification is a small sum of money, i.e. Rs.10. The incident took place on 19.03.1988 when the Petitioner had barely completed 7 months in service, and was in a junior and

support role. He continued in service for about 20 years, thereafter, until the issuance of the dismissal order dated 13.08.2007. The records disclose that the guilt of the Petitioner was established largely on the basis of a phenolphthalein test on the currency note. Keeping in mind all the aforesaid factors, I am of the view that the punishment meted out to the Petitioner is grossly disproportionate, and shocks the conscience of the Court. I am also conscious that ordinarily the punishment of dismissal is not considered disproportionate in cases concerning the acceptance of bribery. Nonetheless, in the unique facts and circumstances of this case, I am of the view that the punishment is grossly disproportionate and warrants interference by this court, albeit by substitution with a commensurate punishment that strikes a just balance between zero-tolerance of offences that involve moral turpitude and fairness in the overall facts and circumstances.

11. Accordingly, I set aside the impugned order only as regards the punishment of dismissal from service. Ordinarily, I would have remitted the matter to the authorities concerned to decide on an appropriate alternative punishment. However, I find that the incident that triggered disciplinary proceedings took place in 1988, and more than a decade has lapsed while the case remained pending adjudication before this Court. The learned counsel for the Petitioner also conceded that his client is not seeking reinstatement and would be satisfied if the punishment is modified such that the Petitioner receives terminal benefits. Keeping in mind all these factors, I modify the punishment from dismissal from service to compulsory retirement with terminal benefits.

12. In the result, the impugned order is quashed only insofar as the imposition of the punishment of dismissal from service is concerned. Instead, the Petitioner shall be punished by compulsory retirement with terminal benefits. The Petitioner is granted leave to submit a claim for terminal benefits on the basis of this order within one month from the receipt of a copy thereof. Upon receipt of such claim, the Respondents shall consider the request for terminal benefits in accordance with the applicable rules and pass orders thereon within a period of eight weeks from the date of receipt thereof. This writ petition is disposed of on the above terms. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

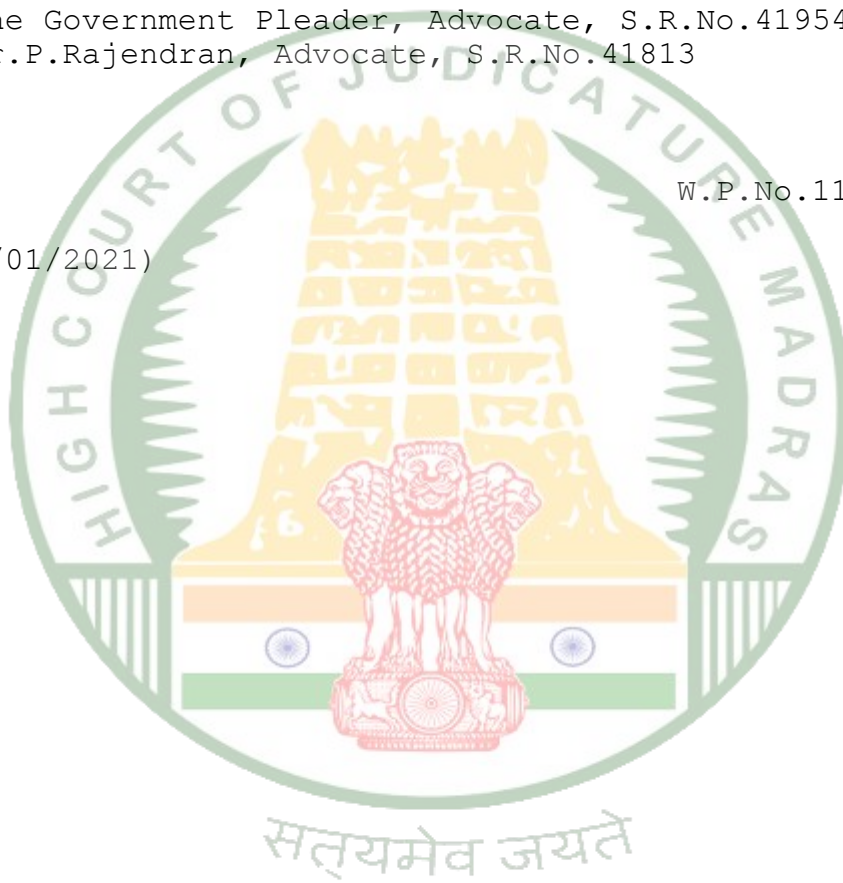
1. The Secretary to the Government,
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2. The Special Commissioner and
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+1cc to the Government Pleader, Advocate, S.R.No.41954

+1cc to Mr.P.Rajendran, Advocate, S.R.No.41813

Order in
W.P.No.11832 of 2010

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