

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	PRONOUNCED ON
29.09.2020	23.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.NO.37803 OF 2005

AND

W.P.M.P.NO.40464 OF 2005 & W.V.M.P.NO.96 OF 2009

T.V.Pallanee

... Petitioner

-vs-

1.State of Tamil Nadu,
Rep. by Secretary to Government,
Municipal Administration & Water Supply Department,
Fort St.George, Chennai-600 009.

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

.... Respondents

PRAYER:

Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the 1st respondent in G.O.(D) No.256, Municipal Administration and Water Supply (ME II) Department dated 24.06.2005 and quash the same.

For Petitioner : Mr.Karthik Rajan

For Respondents: Mr.K.Magesh

Spl. Govt. Pleader

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O R D E R

The Writ Petition has been filed, challenging the order of the 1st respondent dated 24.06.2005 made in G.O.(D) No.256, Municipal Administration and Water Supply (ME II) Department, in and by which, a punishment of cut-in pension of Rs.200/- per month for a period of 12 months was imposed.

2. It was the case of the petitioner that he, while working as Municipal Commissioner, Tambaram Municipality, was served with a charge memo under Rule 17(b) of the Tamil Nadu Civil Services (D&A) Rules, levelling five charges, out of which, one charge was that he had executed various works to the tune of Rs.83,920/- without calling for any tenders. The petitioner submitted his explanation for the charges and the Enquiry Officer in his report dated 24.02.1998, held that the charges were not proved against the petitioner, but the 1st respondent chose to defer the findings of the Enquiry Officer on 09.09.1998 insofar Charges 1, 2 and 3 are concerned without assigning any reasons for such disagreement.

2.1. It was further case of the petitioner that pursuant to the instigation of the then Secretary to Government, Administration and Water Supply Department, namely, Mrs.S.Malathy, I.A.S., he was victimized by way of issuance of charges and the disagreement letter was signed by the Section Officer on behalf of the 1st respondent herein and he was permitted to retire on 30.06.2001 without prejudice to the outcome of the pending departmental proceedings. The subsequent Principal Secretary, viz., Mrs.Shanthasheela Nair conveyed reasons for disagreement with the Enquiry Officer's report, which was nothing, but the verbatim reproduction of the earlier letter dated 09.09.1998.

2.2. It was also the case of the petitioner that though he had given his further explanation dated 12.03.2002, without considering the same, the 1st respondent came to the conclusion that the charges 1, 2 and 3 were proved and imposed the punishment as stated supra. It was stated by the petitioner that a comparison of the disagreement notes dated 09.09.1998 and 21.02.2002 makes it clear that both are one the same and on account of the grudge had by the then Secretary, the impugned order of punishment of cut-in pension was issued against him, which, according to the petitioner, is liable to be set aside.

3. The respondents have filed a counter affidavit, inter alia stating as follows:

i) The petitioner charge sheeted under Rule 17(b) for certain irregularities committed by him in execution of works and though he was subsequently permitted to retire from service on 30.06.2001 without prejudice to the pending disciplinary cases, after a thorough enquiry, he was imposed a punishment of Rs.200/- per month for a period of 12 months on 24.06.2005;

ii) It was stated that five charges were framed against him, out of which, three charges were for execution of works to the tune of Rs.83,920/-, which were not warranted to be done by

invoking the emergency provision of the Tamil Nadu District Municipalities act and the balance two were for dereliction of his duties and those charges were issued purely based on records. The 1st respondent, being not satisfied with the findings of the Enquiry Officer, differed with the same and held that charge nos.1 to 3 were proved. The 1st respondent set out several reasons to disagree with the findings of the Enquiry Officer and the petitioner was given ample opportunity to defend his case;

iii) After receipt of explanation of the petitioner on the disagreement, the 1st respondent obtained the views of the Tamil Nadu Public Service Commission in the light of the proviso to Rule 9(1) (a) of the Tamil Nadu Pension Rules, 1978 and such advice was mandatory before making an order, imposing any such penalty and therefore, the 1st respondent/Disciplinary Authority have obtained opinion from TNPSC under Regulation 18(1)(c) of the Tamil Nadu Public Service Commission Regulations, 1954. Since all the procedures have been duly followed in the case of the petitioner and there was no flaw committed in arriving at the punishment, the Writ Petition has to be dismissed at the threshold.

4. Learned counsel for the petitioner submitted that when the Enquiry Officer rendered a well reasoned findings in respect of the charges framed against him, the 1st respondent had disagreed with the findings of the Enquiry Officer with regard to invocation of emergency provisions without any application of mind and the reason for such disagreement was the outcome of the of the vengeance outraged by the then 1st respondent, which had been followed by the Successor. Learned counsel for the petitioner further submitted that even though the Enquiry Officer dealt with the issue extensively and considered the evidence and materials on record, the 1st respondent passed a non-speaking order for his disagreement and proceeded to impose a penalty on the petitioner, which is unsustainable.

5. Learned counsel for the petitioner, in support of his submission relied upon the following judgments:

i) M.Sekaran vs. Secretary to Government and another, reported in 2017 SCC Online Mad 23545;

"16. As regards the other contentions putforth by the learned senior counsel that there has been non-application of mind both on the part of the disciplinary authority and the appellate authority, this Court finds there is considerable force in the contention. From the records, it is seen that both the disciplinary authority and the appellate authority

have not followed the mandatory procedure contemplated in the Service Rules and the defence put forth by the petitioner had not been appreciated by proper examination of the explanation of the delinquent employee viz., the petitioner herein. Moreover, as rightly contended by the learned senior counsel for the petitioner, the appellate authority had passed a non-speaking order more than the disciplinary authority and he relied entirely on the advice given by the Tamil Nadu Public Service Commission without furnishing a copy of the same to the petitioner. This fact has not been disputed by the respondents. When the authority relies on the opinion/advice by the external agency, it is incumbent upon the administration to furnish a copy of the same before any adverse order is passed against the employee concerned. In the instant case, non-furnishing of the advice tendered by the Tamil Nadu Public Service Commission is unjust and that by itself vitiates the order passed by the appellate authority."

ii) Allahabad Bank and Others vs. Krishna Narayan Tewari, reported in (2017) 2 SCC 308;

"7. We have given our anxious consideration to the submissions at the bar. It is true that a writ court is very slow in interfering with the findings of facts recorded by a Departmental Authority on the basis of evidence available on record. But it is equally true that in a case where the Disciplinary Authority records a finding that is unsupported by any evidence whatsoever or a finding which no reasonable person could have arrived at, the writ court would be justified if not duty bound to examine the matter and grant relief in appropriate cases. The writ court will certainly interfere with disciplinary enquiry or the resultant orders passed by the competent authority on that basis if the enquiry itself was vitiated on account of violation of principles of natural justice, as is alleged to be the position in the present case. Non-application of mind by the Enquiry Officer or the Disciplinary Authority, non-recording of reasons in support of the conclusion arrived at by them are also grounds on which the writ courts are justified in interfering with the orders of punishment. The High Court has, in the case at hand, found all these infirmities in the order passed by the Disciplinary Authority and the Appellate Authority. The respondent's case that the enquiry was conducted without giving a fair and reasonable opportunity for

leading evidence in defense has not been effectively rebutted by the appellant. More importantly the Disciplinary Authority does not appear to have properly appreciated the evidence nor recorded reasons in support of his conclusion. To add insult to injury the Appellate Authority instead of recording its own reasons and independently appreciating the material on record, simply reproduced the findings of the Disciplinary Authority. All told the Enquiry Officer, the Disciplinary Authority and the Appellate Authority have faltered in the discharge of their duties resulting in miscarriage of justice. The High Court was in that view right in interfering with the orders passed by the Disciplinary Authority and the Appellate Authority.

8. There is no quarrel with the proposition that in cases where the High Court finds the enquiry to be deficient either procedurally or otherwise the proper course always is to remand the matter back to the concerned authority to redo the same afresh. That course could have been followed even in the present case. The matter could be remanded back to the Disciplinary Authority or to the Enquiry Officer for a proper enquiry and a fresh report and order. But that course may not have been the only course open in a given situation. There may be situations where because of a long time lag or such other supervening circumstances the writ court considers it unfair, harsh or otherwise unnecessary to direct a fresh enquiry or fresh order by the competent authority. That is precisely what the High Court has done in the case at hand. The High Court has taken note of the fact that the respondent had been placed under suspension in the year 2004 and dismissed in the year 2005. The dismissal order was challenged in the High Court in the year 2006 but the writ petition remained pending in the High Court for nearly seven years till 2013. During the intervening period the respondent superannuated on 30th November, 2011. Not only that he had suffered a heart attack and a stroke that has rendered him physically disabled and confined to bed. The respondent may by now have turned 65 years of age. Any remand either to the Enquiry Officer for a fresh enquiry or to the Disciplinary Authority for a fresh order or even to the Appellate Authority would thus be very harsh and would practically deny to the respondent any relief whatsoever. Superadded to all this is the fact that the High Court has found, that there was no allegation nor any evidence to show the

extent of loss, if any, suffered by the bank on account of the alleged misconduct of the respondent. The discretion vested in the High Court in not remanding the matter back was, therefore, properly exercised."

6. Per contra, learned Special Government Pleader contended that the petitioner, without following the usual procedures, had acted in an independent manner and invoked the emergency provisions by himself for execution of certain works, which was not actually warranted to be invoked. It was also contended that the 1st respondent duly adhered to the principles of natural justice and also obtained views from TNPSC as required under Regulation 18(1)(c) of the TNPSC Regulations, 1954 for his disagreement. Learned Special Government Pleader drew the attention of this Court to the following judgments in order to defend that the impugned order passed by the 1st respondent is in consonance with the relevant provisions of the Act:

i) Om Kumar and Others vs. Union of India, reported in (2001) 2 SCC 386;

"24. We agree that the question of the quantum of punishment in disciplinary matters is primarily for the disciplinary authority and the jurisdiction of the High Courts under Article 226 of the Constitution or of the Administrative Tribunals is limited and is confined to the applicability of one or other of the well known principles known as Wednesbury principles. (See Associated Provincial Picture Houses v. Wednesbury Corporation (1948) 1 KB 223. This Court had occasion to lay down the narrow scope of the jurisdiction in several cases. The applicability of the principle of 'proportionality' in Administrative law was considered exhaustively in Union of India v. Ganayutham, [1997] 7 SCC 463 where the primary role of the administrator and the secondary role of the Courts in matters not involving fundamental freedoms, was explained.

71. Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as 'arbitrary' under Article 14, the Court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing Court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a

context. The Court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the Courts, and such extreme or rare cases can the Court substitute its own view as to the quantum of punishment."

ii) Coimbatore District Central Cooperative Bank vs. Coimbatore District Central Cooperative Bank Employees Assn. and another, reported in (2007) 4 SCC 669;

"41. The net result of the above discussion would be that the decision rendered by the learned Single Judge and modified by the Division Bench of the High Court must be set aside. Certain developments, however, were brought to our notice by the learned counsel for the Union. It was stated that though in the departmental proceedings the workmen were held guilty, their services were not terminated. They were not paid wages for intervening period for which they had not worked, but were allowed to join duty and in fact they resumed work in the year 1973. This was done before more than three decades. The Labour Court did not grant any relief to them. Though the learned Single Judge allowed their petition and granted some relief, the order was modified by the Division Bench. 53 employees are now performing their functions and discharging their duties faithfully, diligently and to the satisfaction of the appellant-Bank. No proceedings have been initiated against them thereafter. 'Industrial peace' has been restored. If at this stage, some order will be passed by this Court after so long a period, it may adversely affect the functioning of the Bank. It was further submitted that the grievance of the Bank has been vindicated and correct legal position has been declared by this Court. The Court in the peculiar facts and circumstances of the case, therefore, may not interfere with a limited relief granted by the Division Bench of the High Court.

42. In our considered view, the submission is well founded and deserves acceptance. Hence, even though we are of the view that the learned Single Judge was not right in granting benefits and the order passed by the Division Bench also is not proper, it would not be appropriate to interfere with the final

order passed by the Division Bench. Hence, while declaring the law on the point, we temper justice with mercy. In the exercise of plenary power under Article 142 of the Constitution, we think that it would not be proper to deprive 53 workmen who have received limited benefits under the order passed by the Division Bench of the High Court.

43. For the foregoing reasons, we hold that neither the learned Single Judge nor the Division Bench of the High Court was justified in interfering with the action taken by the Management and the award passed by the Labour Court, Coimbatore which was strictly in consonance with law. In peculiar facts and circumstances of the case and in exercise of power under Article 142 of the Constitution, we do not disturb the final order passed by the Division Bench of the High Court on November 3, 2004 in Writ Appeal No. 45 of 2001."

iii) Life Insurance Corporation of India and Others vs. S.Vasanthi, reported in (2014) 9 SCC 315;

"11. We are of the opinion that the High Court transgressed its limits of judicial review by itself assuming the role of sitting as departmental appellate authority, which is not permissible in law. The principles discussed above have been summed up and summarised as follows in the case of Lucknow Kshetriya Gramin Bank (Now Allahabad, Uttar Pradesh Gramin Bank) & Anr. v. Rajendra Singh, (2013) 12 SCC 372:

a) When charge(s) of misconduct is proved in an enquiry, the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.

b) The courts cannot assume the function of disciplinary/ departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority.

c) Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the court.

d) Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of

charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The court by itself cannot mandate as to what should be the penalty in such a case.

e) The only exception to the principle stated in para (d) above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct were identical or the co-delinquent was foisted with more serious charges. This would be on the doctrine of equality when it is found that the employee concerned and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge-sheet in the two cases. If the co-delinquent accepts the charges, indicating remorse with unqualified apology, lesser punishment to him would be justifiable.

12. Learned counsel for the respondent had no answer to the aforesaid position in law and could not justify the stance of the High Court in modifying the punishment in the manner indicated above. Therefore, sidetracking the central issue, he made a vain attempt to argue that the charges against the respondent could not be held to be proved as per the records. Obviously, that is not even the issue before us. As mentioned above, there are consistent findings, not only of the departmental authorities, but even the Single Judge as also the Division Bench of the High Court to the effect that charges against the respondent stood established in the departmental enquiry. Thus, it is not permissible for the counsel for the respondent even to argue such a proposition, that too when the respondent did not challenge the judgment rendered by the High Court.

13. As a result, the instant appeal is allowed. That part of the directions contained in para 62 of the impugned judgment which modifies the penalty are hereby set aside and the penalty imposed by the disciplinary authority is hereby restored. There shall, however, be no order as to costs."

7. Heard the learned counsel on either side and perused the material documents available on record, including various judgments relied upon by the respective parties.

8. A circumspection of the fact reveals that the petitioner worked as Municipal Commissioner, Tambaram Municipality and was served with a charge memo under Rule 17(b) of the Tamil Nadu Civil Services (D&A) Rules for the charge of invoking emergency provisions and execution of works to extent of Rs.83,920/- without calling for any tenders. Though the petitioner submitted his explanation for the charges, the 1st respondent deferred with the findings of the Enquiry Officer on 09.09.1998 insofar Charges 1, 2 and 3 are concerned, inspite of the fact the Enquiry Officer held the charges to be unproved, after analyzing various evidence and records. It was stated that the 1st respondent had simply disagreed with the findings of the Enquiry Officer by passing a non-speaking order.

9. The main plea raised by the petitioner was that there was no discussion on the disagreement and there were also no incriminating materials relied upon by the 1st respondent to prove the charges against him. A conjoint reading of the findings of the Enquiry Officer and the impugned order of the 1st respondent unfolds the fact that the Enquiry Officer found justification in favour of the petitioner for invoking the emergency provisions, whereas the impugned order of the 1st respondent is silent in that regard, except stating that the petitioner had invoked the emergency provision of Section 15 of Tamil Nadu District Municipalities Act, 1920 unnecessarily.

10. This Court has to now see whether the invocation of emergency provisions by the petitioner is warranted or is unnecessary as stated by the 1st respondent. In the charge memo, it is stated that the following seven works have been executed on emergency basis:

- 1) Engagement of Lorry for removing rubbish
- 2) Purchase of fuse carrier and other items for maintenance of Street Lights
- 3) Repairing of 30 H.P. Electric Motor in W.S. Headworks
- 4) Fixing of cement stones in North Shanmugam Road
- 5) Repairing of Main W.S. Pipe at Erumpuliur
- 6) Construction of Small Culvert at Ramasamy Street and Ayyasamy Street
- 7) Construction of Value room at Kambar Street

11. A perusal of the aforesaid works cannot, at any stretch imagination, be said that there is no need to invoke the emergency provisions of the Act, as the petitioner, with an intention to curb the happening of any untoward incident, had

acted in a rapid manner, which cannot be faulted with, especially when Section 15 of Tamil Nadu District Municipalities Act, 1920 empowers him to do so, as rightly pointed out by the Enquiry Officer. Moreover, the amount involved for execution of such works is very meagre, amounting to less than Rs.1,00,000/-. The Officers, who are in-charge of fulfillment of public need, removal of encroachment, etc., should be appreciated and encouraged, instead of punishing them for their good act. The petitioner also raised averments with regard to the vengeance meted out at the hands of the 1st respondent at the instigation of one Mrs.S.Malathy, I.A.S., and though this Court smells rat in the act of the 1st respondent in imposition of cut-in pension, this Court do not want to ponder over those aspects at this stage.

12. The contention of the respondents, that the punishment imposed is only a cut in pension of Rs.200/- per month for a period of 12 months, which will not stand in way of his terminal benefits, cannot be accepted on the ground that though the quantum of punishment is small, it converts the entire service rendered by the petitioner meaningless and his honesty, integrity and reputation would be doubted and questionable. It is pertinent to mention here that there are several I.A.S. Officers, who deal with applications under Section 80-A of the Town and Country Planning Act, 1971, are not complying with the orders of this Court, inspite of specific orders issued every now and then, fixing the outer time limit for disposal of the matters. Such Officers, who are least bothered about the orders of this Court and are not doing their duty, must be sent out and their IAS posts must be stripped off, as ignoring the orders of this Court would definitely amount to dishonest in their duty, besides disobedience. Unlike them, the petitioner herein, who has duly executed his duty within his boundary without giving any room for extraneous consideration, should not be imposed any punishment, much less the one imposed on the petitioner by the 1st respondent.

13. Apart from the above, when the 1st respondents differs with the findings of the Enquiry Officer, it is the duty cast upon the 1st respondent to pass a detailed and well-reasoned order. The Apex Court in the case of Kranti Associates Private Limpid and Others vs. Masood Ahmed Khaan and Others, reported in (2010) 9 SCC 496 highlighted the necessity of giving reasons by a body or authority in support of its decision. The Supreme Court also held that an order passed by a quasi judicial body or even an administrative authority affecting the rights of the parties must be a speaking order.

14. Last but not the least, it was also brought to the attention of this Court that there is a procedural irregularity,

as the petitioner was not furnished with the report of the TNPSC before imposition of punishment and therefore, it can be easily inferred that there is a violation of principles of natural justice.

15. In view of what is stated hereinabove, this Court has no other option, but to interfere with the order of the 1st respondent passed in G.O.(D) No.256, Municipal Administration and Water Supply (ME II) Department dated 24.06.2005. Accordingly, this Writ Petition is allowed and impugned order dated 24.06.2005 is set aside. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To:

- 1.The Secretary to Government,
State of Tamil Nadu,
Municipal Administration & Water Supply Department,
Fort St.George, Chennai-600 009.
- 2.The Commissioner of Municipal Administration,
Ezhilagam Annexe, Chepauk,
Chennai - 600 005.

+1cc to the Government Pleader, S.R.No.43013

W.P.No.37803 of 2005

KJ(CO)
CS/21/01/2021

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