

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 30.09.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 34107 OF 2013

P.Valli

.. Petitioner

- Vs -

1. The Commissioner of Transport
Chepauk, Chennai - 5.

2. The Secretary to Government
Home (Tr.II-A) Department
Fort St. George
Chennai - 600 009.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records of the respondents in connection with the impugned order passed by the 1st respondent in R.No.45152/VB2/2005 dated 5.6.2008 and by the 2nd respondent in G.O. (D) No.265, Home (Tr.II-A) Department, dated 21.3.2011 and quash the same.

For Petitioner : Mr. K.Venkataramani, SC,
for Mr. M.Muthappan

For Respondents: Mr. S.Thangavel, Spl. GP

ORDER

It is the case of the petitioner that she was appointed as Junior Assistant through TNPSC in the 1st respondent Department on 21.11.1981 and by hard work and seniority, she received various promotions and on 31.10.03 was promoted as Motor Vehicle Inspector (NT). It is the averment of the petitioner that while she was functioning as Motor Vehicle Inspector (NT) in Vellore District, on 13.1.04, a surprise check was conducted by the Vigilance & Anti Corruption Department at Serkudu, Vellore District. The petitioner took over charge at the check post at 8.00 p.m. on 12.1.04 and was relieved of her duty at 8.00 a.m. On 13.1.04 and charge was handed over to her successor one Thandapani. The surprise check was conducted between 6.00 a.m. and 10.00 a.m. It is the averment of the petitioner that

though no amount was recovered either from the petitioner or any other person manning the check post, however, the vigilance officials stopped the passing vehicles and collected various sums ranging from Rs.10 to Rs.50 from those vehicles to create a case as if amounts were recovered from the persons manning the check post. Based on the report submitted by the Vigilance Officials, the petitioner was visited with a charge memo dated 14.11.05 u/s 17 (b) of the Tamil Nadu Civil Services (D & A) Rules containing the following two charges :-

a) collection of bribe from the drivers and cleaners of the lorries which passes through the Serkudu check post in difference range;

b) engaged a private person to attend to the check post duties and to cater to the needs of the check post staff on duty.

2. The petitioner submitted her explanation to the denying the charges. However, not satisfied with the explanation submitted by the petitioner, enquiry was ordered by appointment of enquiry officer and after enquiry in which 14 witnesses were examined, and after affording opportunity to the petitioner, the enquiry officer submitted his report holding that while charge No.1 was not proved, however, charge No.2 was partially proved. Thereafter, show cause notice was issued to the petitioner by furnishing copy of the enquiry report and after receipt of explanation from the petitioner, the disciplinary authority did not accept the findings of the enquiry officer and held the charges proved and upon receipt of further explanation from the petitioner, the disciplinary authority imposed the punishment of stoppage of increment for a period of three years with cumulative effect vide order dated 5.6.08.

3. Aggrieved by the said order, the petitioner preferred appeal before the 2nd respondent on 30.7.08 and the 2nd respondent, after obtaining the opinion of TNPSC, while rejected the appeal filed by the petitioner, however, modified the punishment to one of stoppage of increment for a period of one year without cumulative effect. Aggrieved by the said order, the present writ petition has been filed.

4. Learned senior counsel appearing for the petitioner submitted that the enquiry officer having held that the main charge of bribe having not been proved and that the second charge having been partially proved, the act of the disciplinary authority to deviate from the said findings and impose the punishment is wholly unjustified and cannot be countenanced in law. It is the further submission of the learned senior counsel for the petitioner that the appellate authority has not considered the statutory appeal in proper perspective while modifying the award and has not appreciated the materials based

on which the disciplinary authority has imposed the punishment and, therefore, the modification of the punishment is not justifiable and the punishment imposed on the petitioner ought to have been set aside by the appellate authority. Therefore, learned senior counsel prays this Court for interfering with the orders passed by the authorities below.

5. Per contra, learned Special Government Pleader appearing for the respondents submit that the modification of punishment imposed by the appellate authority clearly reveals that the appellate authority has applied its mind to the materials independently and arrived at a subjective decision. It is the further submission of the learned Special Government Pleader that even the enquiry report has held the second charge partially proved against the petitioner. Such being the case, imposition of punishment for the delinquency cannot be said to be unsustainable and in such a scenario it is stressed that unless this Court comes to the conclusion that the punishment imposed on the petitioner is shocking the conscience and disproportionate to the charges levelled against the petitioner, this Court shall not interfere with the same in exercise of its jurisdiction. Therefore, he prays for dismissing the present petition.

6. This Court paid its undivided attention to the submissions advanced by the learned counsel on either side and also perused the materials available on record.

7. 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.

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. The materials available on record reveal that the enquiry has been conducted in accordance with law as per the procedure contemplated under the relevant rules. There is no quarrel with regard to the same by the petitioner. Though it is the contention of the petitioner that the report submitted by the enquiry officer only held one of the charges to be partially proved, however, the disciplinary authority has taken a divergent view and held the charges proved and imposed the punishment, which is wholly unsustainable. However, it is to be pointed out that it is within the powers of the disciplinary authority to act on the report by applying his mind independently to the materials and accept the report or to take a view opposite to the one given in the report. In the case on hand, the disciplinary authority has thought it fit to take a view opposite to the one taken by the enquiry officer and held the charges proved. This Court, sitting under Article 226 of the constitution shall not interfere with the same unless it is shown that it is arbitrary, mala fide and not based on the materials available on record. In the above background, this Court is of the considered view that the disciplinary authority has acted within its jurisdiction and, therefore, the decision taken by the authority insofar as the delinquency of the petitioner is concerned and imposing the punishment on the petitioner, cannot be found fault with.

10. In the appeal filed by the petitioner, the appellate authority, on an independent application of mind to the materials placed before it, considering the gravity of the delinquency, had thought it fit to modify the punishment from one of stoppage of increment for a period of three years with cumulative effect to one of stoppage of increment for a period of one year without cumulative effect. The said act of the appellate authority in modifying the punishment clearly reveals application of mind.

11. The only point that is left for this Court to decide is whether the punishment imposed on the petitioner is disproportionate to the charges framed and shocks the conscience of the Court.

12. To the above, it can be held without a second thought that the answer of this Court is in the negative. The punishment imposed on the petitioner, in no way could be termed to be disproportionate to the delinquency and further it cannot also not be said that it shocks the conscience of this Court. The task entrusted on this Court is only to find out whether the authorities have applied their mind to the materials before passing the order of punishment. This Court, on a perusal of the materials placed is of the firm opinion that the punishment imposed on the petitioner could in no way be said to be disproportionate and shocking to the conscience of this Court. The punishment, in the considered view of this Court is just and reasonable and, this Court is of the opinion that no interference is warranted with the impugned order of punishment passed by the respondents.

13. For the reasons aforesaid, this writ petition is devoid of merits and, accordingly, the same is dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner of Transport
Chepauk, Chennai - 5.

2. The Secretary to Government
Home (Tr.II-A) Department
Fort St. George, Chennai - 600 009.
+1 CC to Government pleader, sr.32439.

Rr(co)

krd 5/11

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