

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.12.2020

PRONOUNCED ON : 15.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. No.23653 of 2014

S. Paramasivam ... Petitioner

Vs

1.The Director General of Police,
O/o. Director General of Police,
Kamarajar Salai,
Mylapore,
Chennai - 4.

2. The Deputy Inspector General of Police,
O/O. Deputy Inspector General of Police,
Dindigul,
Theni District.

3. The Superintendent of Police,
O/o. Superintendent of Police,
Theni District.

..... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the entire records pertaining to quash the order passed by the 3rd respondent in P.R. No.F1/28/2009 u/r.3 (b), dated 13.03.2010 imposing the punishment of Compulsory Retirement from service and the consequential order passed by the 2nd respondent in Appeal under Ref. No.AP09/A2/2010, dated 07.07.2010 and reconfirmed by the 1st respondent in Review Petition under Proceedings C No.179598/AP.2(3)/2010, dated 01.03.2011 to quash the same and consequently direct the Respondents to reinstate the Petitioner to duty for all purposes with all consequential and monetary benefits with due regards to his seniority and service benefits.

For petitioner
For respondents

: Mr.S.Xavier Felix
: Mr.S.Thangavel,
Spl. Govt. Pleader

ORDER

Petitioner has come up with this Writ Petition seeking to quash the impugned order passed by the disciplinary authority, as confirmed by the appellate and the revisional authorities and for a consequential direction to reinstate the petitioner in service with all consequential and monetary benefits, including restoration of his seniority and service benefits.

2. It is the case of the petitioner that he entered into service as Grade II P.C. in the year 1997. While so, charges were levelled against the petitioner for alleged his illicit intimacy with another married woman and for the further act of throttling his wife's neck, when she questioned about his nefarious acts. As the above allegations hits at the character and conduct of the petitioner, the respondents proceeded against the petitioner departmentally by initiating enquiry. The petitioner, even before framing of charges, divorce petition in HMOP No.56 of 2009 before the learned Principal Sub Judge, Theni.

3. Further to the initiation of departmental action, explanation was called for from the petitioner for which the petitioner submitted his explanation and being not satisfied with the explanation, enquiry was conducted in which the enquiry officer, after examining as many as 7 witnesses, who categorically pointed to the illicit acts of the petitioner, held the charges against the petitioner proved. After providing a copy of the report to the petitioner, further explanation was sought for and not being satisfied with the explanation offered, the disciplinary authority, vide order dated 30.03.2010, imposed the punishment of compulsory retirement. Aggrieved by the said order, the petitioner preferred appeal to the 2nd respondent, which was dismissed confirming the punishment imposed on the petitioner vide order dated 7.7.2010 and the further review before the 3rd respondent also ended in rejection, vide order dated 01.03.2011, which has led to the filing of the present petition.

4. Learned counsel appearing for the petitioner, while reiterated the grounds raised by the petitioner in the affidavit filed in support of the petition, vehemently contended that the enquiry conducted was in flagrant violation of rules, as the petitioner was not provided with the necessary particulars to defend his case. It is the further submission of the learned counsel for the petitioner that the punishment inflicted on the petitioner is disproportionate to the delinquency and, there being no negligence in the act of the petitioner in discharging his duties, his matrimonial discord cannot be a ground to initiate disciplinary proceedings and impose the major penalty.

5. Per contra, Mr.S.Thangavel, learned Special Government Pleader appearing for the respondents submits that the enquiry was conducted in a fair and proper manner and the disciplinary authority, on independent application of mind to the materials available on record, has imposed the punishment. Further, the appeal and the revision were also dismissed by the concerned authority, on proper appreciation of materials and by way of a reasoned order and, there being no grievance expressed by the petitioner with regard to application of mind by the authorities while passing the order, this Court, sitting under Article 226 may not interfere with the order passed by the authorities. It is the further submission of the learned counsel for the petitioner that this Court, sitting in judicial review shall not sieve through the evidence placed before the authorities, as the scope of judicial review before this Court is very limited and unless the punishment inflicted is disproportionate and shocking the conscience of the court, the court shall not interfere with the same.

6. This Court bestowed its best attention to the 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 reappreciate 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)

11. 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."

12. 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, adverting 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)

13. 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.

14. A perusal of records disclose that the defacto complainant/wife of the petitioner, has lodged a complaint about the threat to her life and a statement to the said effect has also been recorded by the law enforcing agency. Further, the petitioner himself, even prior to the charges being framed against him, has preferred a petition before the jurisdictional court for divorce. Though it is the contention of the petitioner that the complaint emerged on account of matrimonial discord, which in no way could be the basis for initiation of disciplinary proceedings, however, it is to be pointed out that the petitioner, being a member of the disciplined force, is required to conduct himself in a proper manner not only before the public but also in his private life. In the case on hand, the petitioner has inflicted injuries on his wife by throttling her, which is the allegation in the complaint by his wife.

15. Further, it is to be pointed out that the preliminary enquiry initiated against the petitioner also resulted in an affirmative report against the petitioner leading to the initiation of enquiry proceedings. It is further evident from the records that as many as seven witnesses have been examined during the enquiry and they have also been cross examined by the petitioner/delinquent. In fact, the person with whom the petitioner is alleged to have illicit intimacy has also been examined. The evidence of the witnesses, barring the witness, with whom the illicit intimacy is alleged, is unequivocal where they have clearly spoken to the illicit intimacy of the petitioner and his act of ill-treating his wife and inflicting physical and verbal abuses on her. The cross-examination by the petitioner has not yielded any beneficial points in favour of the petitioner. On proper appreciation of the materials, the enquiry officer has held that the charges framed against the petitioner stood proved.

16. The petitioner, being a member of the disciplined force, as stated above, ought to conduct himself in a proper manner, both in his personal life and official life. However, the act of the petitioner has resulted in causing physical and mental trauma on his wife against which complaint was lodged to the extent of alleging threat to her life from the hands of the petitioner. It is to be pointed out that the petitioner belongs to a disciplined force and the highest standards of conduct is expected of persons working in the said force. However, the whole episode resulting in the initiation of the disciplinary proceedings and the subsequent finding as to the delinquency of the petitioner cannot be brushed side and with the above view in mind, the disciplinary authority has decided to impose punishment.

17. Further, it is to be pointed out that the standard of proof required in a disciplinary proceedings is not in the same league as that of the evidence required in a criminal trial and the enquiry officer as also the other authorities are to appreciate the evidence on the touchstone of preponderance of probabilities and not on the basis of the provisions of the statute. In such a backdrop, the analysis of the materials by the disciplinary authority and his decision to impose punishment on the petitioner, being on the basis of preponderance of probabilities, does not call for any interference.

18. Insofar as the punishment imposed on the petitioner is concerned as to its just and reasonableness, this Court would like to advert to the ratio laid down by the Courts under Article 226 of the Constitution with regard to the punishment imposed.

19. 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 delinquency. Only when the punishment is disproportionate and shocking 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)

20. In the case on hand, a careful perusal of the entire records reveal that pursuant to the submission of the report of the enquiry culminating in the imposition of punishment, the rejection of the appeal by the appellate authority and the revisional authority, 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, which is least expected from the incumbents of a disciplined force and they deserve no mercy. The disciplinary authority has properly appreciated the materials placed before him and has imposed the punishment above, which has been affirmed by the appellate and the revisional authorities. 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 affirmed by the reviewing 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.

21. 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 VIII)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

vsi2

To

- 1.The Director General of Police,
O/o. Director General of Police,
Kamarajar Salai,
Mylapore,
Chennai - 4.

WEB COPY

2. The Deputy Inspector General of Police,
O/O. Deputy Inspector General of Police,
Dindigul,
Theni District.

3. The Superintendent of Police,
O/o. Superintendent of Police,
Theni District.

+1cc to M/s.S.Xavier Felix, Advocate Sr.41611
+1cc to the Special Government Pleader Sr.5965
+1cc to the Government Pleader Sr.41408

W.P. No.23653 of 2014

kj[col
srg 20/01/2021



WEB COPY