

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 19.12.2019

Orders Pronounced on : 03.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.P.No.19920 of 2019

A.Sakunthala Devi ... Petitioner

Vs.

1. The Registrar General,
High Court, Madras-600 104.
 2. The Principal District Judge, Ariyalur.
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records of the first respondent in Proceedings Order R.O.C.No.55576/2017/C1, dated 28.03.2019 and quash the same.

For petitioner : Mr.V.Bhiman

For respondents : Mr.E.K.Kumresan

ORDER

R.SUBBIAH, J

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorari to call for the records of the first respondent in Proceedings Order R.O.C.No.55576/2017/C1, dated 28.03.2019 and quash the same.

2. While the petitioner was working as Assistant in the District Munsif Court, Jayankondam, two charges were framed against her. The first charge is that she had fabricated salary certificate of one M.Maharajan, who was working as Office Assistant in the same Court for the purpose of obtaining loan from M/s.Shriram City Union Finance Limited. The second charge is that the petitioner has not obtained permission from the appointing authority for availing of the loan, which is contrary

to the Tamil Nadu Government Servants (Conduct and Appeal) Rules, 1973. A regular departmental enquiry was conducted and the Special Judge No.1, Jayankondam was appointed as the Enquiry Officer. In the disciplinary/departmental proceedings, four witnesses have been examined on the side of prosecution and 13 documents were marked on their side. On the side of the delinquent, two witnesses were examined and no documentary evidence was marked. The Enquiry Officer submitted his enquiry report finding the petitioner/delinquent guilty of the said charges and the same were held to be proved. On the basis of the findings rendered by the Enquiry Officer, the disciplinary authority/Principal District Judge, Ariyalur/second respondent awarded the punishment of termination from service with effect from 07.03.2017. A criminal trial was also conducted, in which, he was earlier arrested and remanded to judicial custody and the trial in Sessions Case in S.C.No.51 of 2017 on the file of the Assistant Sessions Judge, Ariyalur, ended in acquittal in respect of the charges framed under Section 294(b), 323, 324, 326, 506 (i) and 307 IPC. Further, as against the punishment imposed by the disciplinary authority, the petitioner preferred statutory appeal/petition before this Court, and this Court, by the impugned proceedings dated 28.03.2019, confirmed the order of punishment of termination from service, thereby, the appeal petition was dismissed, against which, the present Writ Petition is filed for the relief stated supra.

3. The learned counsel for the petitioner submitted that the petitioner was appointed as Office Assistant on 01.09.1997 in the Sub-Court, Ariyalur and transferred on 01.04.1998 to Sub-Court, Karur and again from 21.05.1998, she was posted as Office Assistant in the District Munsif Court, Thanjavur. Thereafter, she was promoted as Junior Bailiff on 21.09.1999 and as such, she worked in the Principal District Munsif Court, Ariyalur, District Munsif Court, Jayankondam, Sub-Court, Ariyalur and also at the District Court, Perambalur. She worked as Senior Bailiff from 02.04.2007 in the District Court, Perambalur and also in the Principal District Munsif Court, Ariyalur till 06.06.2008. She was promoted as Junior Assistant on 07.06.2008 and was working in the Special Courts, Jeyankondam, Principal District Munsif Court, Ariyalur, the Special Court, Jeyankondam and also at the Judicial Magistrate Court, Ariyalur till 30.09.2011. She was thereafter promoted as Assistant on 01.10.2011 and worked as such in the Principal District Court, Ariyalur and the Principal District Munsif Court, Ariyalur and also as Grade-3 Bench Clerk from 09.03.2016 in the Judicial Magistrate Court, Jayankondam. She was lastly working as Assistant from 23.10.2016 in the District Munsif Court, Jayankondam till 07.03.2017, on which date, after disciplinary proceedings, she was terminated from service, which is under challenge in the present Writ Petition.

4. The learned counsel for the petitioner further contended that a complaint was lodged by the said Maharajan who is related to the petitioner. The petitioner obtained loan from M/s.Shriram Chit Fund and requested the said Maharajan to stand as surety. In fact, the salary certificate of Maharajan was obtained as per his own requisition as deposed by P.W.2 Subramaniam who was a retired Sheristadar. In his evidence, he has stated that between 21.11.2009 and 02.08.2013, he was working as Central Nazir in the Special Court, Jeyankondam. The complainant Maharajan gave an application on 29.04.2011 for salary certificate to get educational loan for his son, and the said salary certificate was also furnished to him after obtaining necessary orders from the Presiding Officer of the Court. During the same period, the petitioner had also applied for her salary certificate for obtaining educational loan for her son, which is not contradicted. The office copy of the salary certificate of the petitioner and the complainant which was not available in the office file, cannot give rise to a presumption that the said certificate is forged by the petitioner. Thus, according to the learned counsel for the petitioner, the said salary certificate was issued by P.W.2 to the complainant Maharajan as well as to the petitioner. Therefore, it cannot be said that the petitioner had fabricated the salary certificate and availed of the loan.

5. The learned counsel for the petitioner further submitted that during the cross-examination, P.W.1 rejected the suggestion that on the request made by the petitioner, he stood as a surety and received the sum of Rs.10,000/- and further another surety Shivaji had also received another sum of Rs.10,000/- and when the petitioner defaulted in making the payment to the said Chit Fund Company, the attachment of salary was made in favour of the said Maharajan/complainant and hence, he had given a false complaint against the petitioner. Absolutely, there is no possibility for the petitioner to produce a typed salary certificate with the signature of the Presiding Officer and also the initials of the preparation Clerk. In fact, thereafter, the petitioner has repaid the entire amount due to the said finance company and the execution proceedings in E.P.No.68 of 2013 in A.C.P.No.574 of 2012 had been settled and E.P. was terminated and the order of attachment was also raised even during December 2017. The Sessions Case in S.C.No.51 of 2017, in which the petitioner had been arrayed as A-2 before the Assistant Sessions Judge, Ariyalur, for the alleged offences under Section 294(b), 323, 324, 326, 506(i) and 307 IPC, ended in acquittal of the petitioner on 05.09.2018 on the merits of the case, only after going through the entire evidence. In respect of the second charge, the learned counsel for the petitioner submitted that the petitioner began her service as an Office Assistant and after efficient service, she rose to the post of Assistant. She

had studied SSLC and does not have the knowledge of the Rules of the Department. Her ignorance with regard to Rule 7 of the Tamil Nadu Government Servants Conduct Rules which insists for obtaining permission for getting loan, cannot be construed for awarding the punishment of termination from service. Hence, for these reasons, the learned counsel for the petitioner prayed for allowing the Writ Petition, by quashing the impugned order of the High Court.

6. By filing a counter affidavit of the second respondent, the learned counsel appearing for the respondents submitted that the said Maharajan, who was also the Office Assistant of the District Munsif Court, Jayankondam, gave oral complaint against the petitioner before the respective Officers for misuse of his salary slip and signatures for obtaining loan from the said Finance Company. The petitioner had promised to pay the entire debt pending to the said Finance Company. On 31.07.2015, the said Maharajan had also given a complaint against the petitioner for creating fake salary slip and signatures for getting trade loan from the said Finance Company. On 26.10.2015, a show cause notice was issued by the second respondent to the petitioner for her explanation and the petitioner submitted her explanation on 03.11.2015, as per which, the explanation was found not satisfactory and charges were framed against her on 16.11.2015. The Special Judge-1, Jayankondam was appointed as the Enquiry Officer relating to the disciplinary enquiry of the petitioner and he conducted enquiry. On the basis of the complaint lodged by the said Maharajan, who was examined a P.W.1 in the enquiry proceedings, it was found that the petitioner had misused his salary certificate without his knowledge and making use of the same, impersonated a person as if he is the certificate holder and seems to have obtained loan from the said Finance Company. The petitioner had also given the photos to the said Finance Company for security purpose. The photos affixed on the right side is identified as that of Mr.Sivaji, one of the sureties. As regards the other photo on the left side, which is marked as Ex.P-13, in the naked eye vision, it is found that the same is not that of the complainant and the petitioner was unable to say as to who is found in the said photo and she also seems to have accepted that the said photo is not that of the complainant. It is found that as rightly determined by the Enquiry Officer, the petitioner made use of the false certificate to be a genuine document and made blurred/smudged photo as if it relates to the complainant and accordingly influenced the Finance Company to advance the loan to the petitioner by committing fraud, thereby secured the loan.

7. The learned counsel appearing for the respondents further submitted that the second charge against the petitioner relates to the obtaining loan without proper copy of the sanction order

to be issued by the Establishment Section of the Court which acts according to the orders of the Presiding Officer of the Court on the administrative side. The petitioner served more than 14 years in the Establishment and the defence of the petitioner is that she was not aware of the procedures of obtaining the sanction of loan from the head of the institutions before availing of the loan, cannot be countenanced. Both the respondents as well as the Enquiry Officer had considered the issue in detail and passed a well-determined order of termination of the petitioner from service, which does not need any interference at the hands of this Court.

8. Heard both sides and keeping in mind the submissions made on either side, we had considered the same and perused the materials available on record.

9. Upon perusing the entire materials available on record, we see that the petitioner was rightly punished for the charges framed. The scope of interference in such matters and re-appreciating the evidence, that too in the departmental proceedings, is very limited and only when there is perversity in the proceedings, this Court could interfere with the same. Otherwise, this Court cannot sit as an appellate authority and render its findings. In fact, in the instant case, the Enquiry Officer, by considering the oral and documentary evidence in proper perspective, held the charges framed against the petitioner proved, thereby the petitioner was found guilty of the charges, which resulted in awarding punishment of termination from service by the disciplinary authority, which was confirmed by the first respondent/Registrar General of this Court.. We absolutely do not find any infirmity in the same, as there is no arbitrariness and none of the grounds is available to interfere with the impugned order.

10. In the above context, it is worthwhile to notice a decision of the Honourable Supreme Court in the case of the High Court of Judicature at Bombay through its Registrar Vs. Udaysingh and others, reported in AIR 1997 SC 2286, wherein it was held as follows:-

"10.The only question is; whether the Tribunal was right in its conclusion to appreciate the evidence and to reach its own finding that the charge has not been proved. The Tribunal is not a Court of appeal. The power of judicial review of the High Court under Article 226 of The Constitution of India was taken away by the power under Article 323-A and invested the same in the Tribunal by Central Administrative Act. It is settled law that the Tribunal has only power of

judicial review of the administrative action of the appellant on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the Court or Tribunal when the conclusion reached by the authority is based on evidence. Tribunal is devoid of power to reappreciate the evidence and would (sic) come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence...."

"13. Under the circumstances, the question arises: whether the view taken by the High Court could be supported by the evidence on record or whether it is based on no evidence at all? From the narration of the above facts, it would be difficult to reach a conclusion that the finding reached by the High Court is based on no evidence at all. The necessary conclusion is that the misconduct alleged against the respondent stands proved. The question then is; what would be the nature of punishment to be imposed in the circumstances? Since the respondent is a judicial officer and the maintenance of discipline in the judicial service is a paramount matter and since the acceptability of the judgment depends upon the credibility of the conduct, honesty, integrity and character of the officer and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the judicial officer, we think that the imposition of penalty of dismissal from service is well justified. It does not warrant interference.

11. Thus, a fitting answer is given by the Honourable Supreme Court in the decision cited supra, wherein it was held that this Court, under Article 226 of The Constitution of India, has no power to trench on the jurisdiction of the disciplinary authority and to appreciate the evidence. All that is permissible is to ensure that the conclusion arrived at is based on evidence supporting the finding or whether the conclusion is based on no evidence.

12. Further, the Supreme Court, in the following decision, relied on its own judgment regarding the scope of interference by the High Court in the disciplinary proceedings matters:

2017 (4) SCC 507 (Central Industrial Security Force Vs. Abrar Ali):

"13. Contrary to findings of the disciplinary authority, the High Court accepted the version of the respondent that he fell ill and was being treated by a local doctor without assigning any reasons. It was held by the disciplinary authority that the unit had better medical facilities which could have been availed by the respondent if he was really suffering from illness. It was further held that the delinquent did not produce any evidence of treatment by a local doctor. The High Court should not have entered into the arena of facts which tantamounts to reappraisal of evidence. It is settled law that reappraisal of evidence is not permissible in the exercise of jurisdiction under Article 226 of the Constitution of India.

14. In State Bank of Bikaner & Jaipur Vs. Nemi Chand Nalwaya [(2011) 4 SCC 584 : (2011) 1 SCC (L&S) 721], this Court held as follows: (SCC p.587, para 7):

"7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on

evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide B.C.Chaturvedi Vs. Union of India [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44], Union of India Vs. G.Ganayutham [(1997) 7 SCC 463 : 1997 SCC (L&S) 1806], Bank of India Vs. Degala Suryanarayana [(1999) 5 SCC 762 : 1999 SCC (L&S) 1036] and High Court of Judicature at Bombay Vs. Shashikant S.Patil [(2000) 1 SCC 416 : 2000 SCC (L&S) 144] .)"

15. In Union of India Vs. P.Gunasekaran [(2015) 2 SCC 610 : (2015) 1 SCC (L&S) 554] , this Court held as follows: (SCC pp. 616-17, paras 12-13):

"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed

by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

(a) the enquiry is held by a 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 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.

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

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in 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."

13. However, this Court, considering the service rendered by the petitioner in the Judiciary and also taking into account the facts and circumstances of the case, takes a lenient view instead of awarding a harsh punishment of termination from service. Accordingly, this Court is of the view that the said punishment of termination from service can be modified into one of compulsory retirement of the petitioner from service. In this regard, the following judgments relied on by the learned counsel for the petitioner supports the case of the petitioner:

(i) 2016 (14) SCC 243 (Iqbal Nath Sharma Vs. Union of India):

"9. Taking into account the said factors, we are of the view that though the act of misconduct found proved cannot be dealt with lightly, the punishment of removal may not be warranted while the other major punishment of compulsory retirement would meet the ends of justice. Therefore, we are convinced that the punishment of compulsory retirement, which is also one of the major punishments under Rule 11(vii) can be imposed instead of removal from service taking into account the long service of twenty years put in by the deceased appellant."

(ii) 2017 (4) SCC 507 (Central Industrial Security Force Vs. Abrar Ali):

"19. Though we are of the view that the High Court ought not to have interfered with the order passed by the disciplinary authority, the penalty of dismissal from service is not commensurate with delinquency. The respondent was found guilty of desertion of the Force for a period of five days and not improving his conduct in spite of imposition of penalties on three occasions earlier. For the above delinquencies, the penalty of dismissal from service is excessive and harsh. In our view, the penalty of compulsory retirement would meet the ends of justice. We are informed by the counsel for the appellants that the respondent is entitled for pension as he has completed 10 years of service. In order to avoid any controversy, we direct that the respondent shall be entitled for notional continuity of service till the date of completion of minimum service required to make him eligible for pension. He will not be entitled for payment of salary and allowances for that period."

14. Accordingly, while applying the principles laid down by the Supreme Court in all the above judgments, this Court modifies the punishment of termination of the petitioner to one of compulsory retirement. Resultantly, all the benefits that would flow from the compulsory retirement, shall be given to the petitioner expeditiously by the respondents.

15. With the above modification in the punishment and the resultant direction, the Writ Petition is disposed of. No costs.

WEB COPY

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

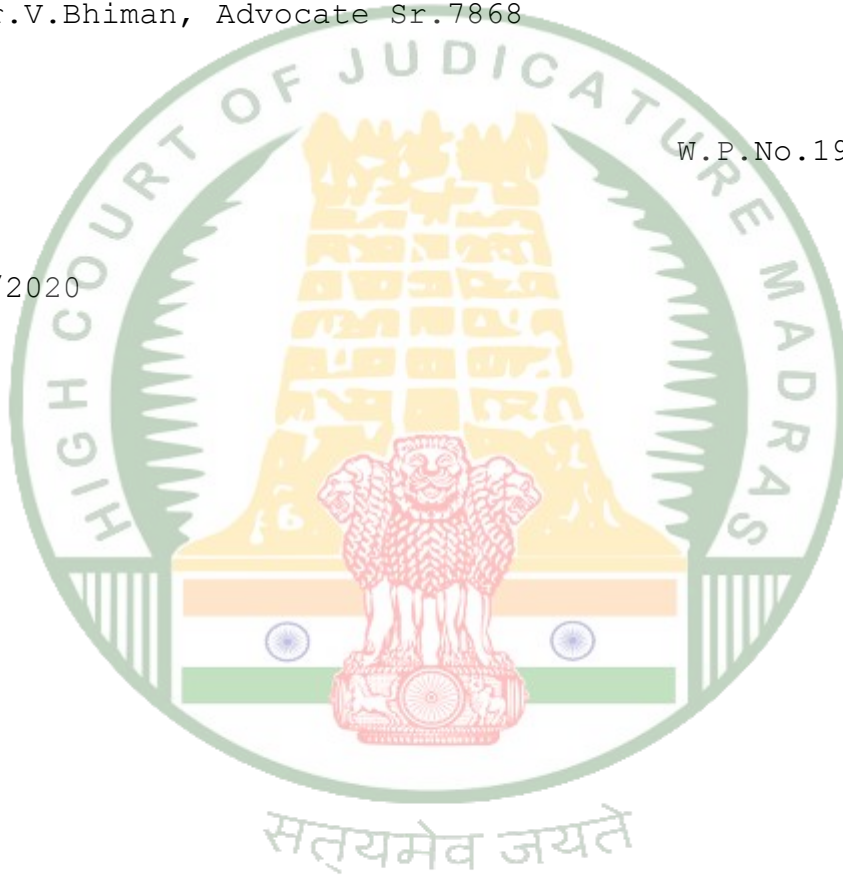
To

1. The Registrar General,
High Court,
Madras-600 104.
2. The Principal District Judge,
Ariyalur.

+1cc to Mr.V.Bhiman, Advocate Sr.7868

W.P.No.19920 of 2019

BS (CO)
srg 04/03/2020



WEB COPY