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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE ON WHICH RESERVED : 01.11.2021

DATE ON WHICH PRONOUNCED : 24.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.A.NO.2893 OF 2012

AND

C.M.P.NO.15771 OF 2021

1. G.Ramachandran (died) ... Appellant/Petitioner
2. R.Mallika
W/o.Late.G.Ramachandran
3. R.Punithakumaran
S/o.Late.G.Ramachandran
4. R.Chandrakumari
W/o.S.Mahendran
5. R.Indrakumari
W/o.S.Eswaren
6. R.Babu
S/o.Late.Mr.G.Ramachandran
7. R.Menaga
D/o.Late.G.Ramachandran ... Appellants 2 to 7

(Appellants 2 to 7 brought on record the legal heirs of the deceased first appellant viz., G.Ramachandran vide Court order dated 29.09.2021 made in CMP.No.15771 of 2021 in WA.No.2893 of 2012)

.Vs.

The Secretary to Government,
Commercial Tax Department,
Fort St. George,
Chennai - 600 009.

... Respondent/Respondent



PRAYER:-

Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 18.07.2012 in W.P.No.21889 of 2004.

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PRAYER IN W.P.NO.21889 OF 2004:-

Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ in the nature of Certiorari, calling for the records pertaining to the impugned order of the respondent passed in G.O.Ms.No.89, Commercial Tax (H1) Department dated 27/04/2004 and quash the same and consequently, direct the respondent to regularize the period of suspension as duty with all pensionary, retirement and monetary benefit with cost.

For Appellants : Mr.V.Raghupathi

For Respondent : Mr.K.Tippu sultan
Government Advocate

J U D G M E N T

(Judgment of the Court was made by R.VIJAYAKUMAR,J.)

The unsuccessful writ petitioner is the appellant herein.

2. The writ petitioner was working as a Sub-Registrar at Anna Nagar, Sub-Registrar Office, Chennai. He was issued a charge memo on 13.09.2000 on the allegation that he demanded and received a bribe of Rs.4,000/- from one Raju for registering a sale deed. The writ petitioner submitted his explanation to the said charge memo. An enquiry officer was appointed to go into the allegation. The enquiry officer examined the witnesses and the writ petitioner was permitted to engage a counsel and also to cross-examine the witnesses. Thereafter, an enquiry reported was submitted finding the writ petitioner guilty of charges.

3. The Registration Department sought opinion of the Tamil Nadu Public Service Commission with regard to the imposition of the punishment. On 17.06.2003, the Tamil Nadu Public Service Commission gave its opinion that it a fit case for ordering removal from service. Based on the said advise, the respondent herein passed an order in G.O(Rt).No.89, dated 27.04.2004 removing the petitioner from service. The said order was challenged in W.P.No.21899 of 2004 mainly on the ground that



there are contradictions in the oral and documentary evidence of the complaint and the enquiry officer has not properly appreciated the inconsistency in the written statement filed before him.

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4. The learned counsel for the writ petitioner had contended that though three persons have deposed before the enquiry officer, they have refused to sign in the statement and hence, their statements should not have been considered by the enquiry officer. The counsel for the writ petitioner had further contended that there is absolutely no evidence for imposing a major penalty of removal from service. The learned Single Judge after considering the submission of the writ petitioner has held that strict rule of evidence does not apply to departmental enquiry and hence, non-signing of the statement by the deponents before the enquiry officer cannot be fatal to the enquiry report. The learned Single Judge has further held that the High Court while exercising its power under Article 226 of the Constitution of India, cannot re-appreciate the evidence and arrive at a different conclusion unless the findings are perverse. The learned Single Judge further held that the allegation of corruption is a serious misconduct and hence, the punishment imposed, namely removal from service, cannot be said to be disproportionate to the proved charges. As against the said order, the present Writ Appeal has been filed.

5. Pending writ appeal, the appellant had passed away on 07.04.2017 and his legal heirs have been substituted as appellants 2 to 7 in the writ appeal. The learned counsel for the appellants contended that there are various contradictions among the statement of the deponents and the allegation that the writ petitioner has received the bribe of Rs.4,000/- has not been proved. The learned counsel further contended that there is absolutely no evidence to prove the delinquency that the petitioner had demanded and accepted the bribe amount of Rs.4,000/- for registering a sale deed and hence, any finding to the said effect is perverse. The learned counsel for the appellant further contended that the disciplinary authority has not properly considered the explanation submitted by the petitioner. Pursuant to the enquiry report, a non-speaking order has been passed by the disciplinary authority removing the petitioner from service.

6. We have heard the learned counsel for the appellants and the respondent.

7. The main contentions of the appellants is that there are contradictions between the deposition of various witnesses but it cannot be considered by the Court while exercising power under Article 226 of the Constitution of India. The judgement of



Hon'ble Supreme Court reported in (2015) 2 SCC Page 610 (Union of India and others Vs.P.Gunasekaran) in paragraph 13 has held as follows:

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"13.Under Article 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."

8. The Hon'ble Supreme Court has further held that the High Court has no power to go into the adequacy or reliability of the evidence.

9. In the present case, we find that even though there are some contradictions in the deposition of some deponents before the enquiry officer, the same are not material contradictions which would affect the result of the enquiry. That apart, it is not a case of no evidence and hence, findings of the enquiry officer cannot be said to be perverse.

10. The learned counsel for the appellants made an alternative submission that the writ petitioner had passed away pending writ appeal on 07.04.2017. The writ petitioner has already put in 38 years of unblemished service in the department and the punishment of removal from service would result in deprivation of pensionary benefits to the family members of the deceased employee.

11. In the present case, the allegation in the charge memo is that the purchaser of the property had paid a sum of Rs.4,000/- as bribe to the delinquent, but later the delinquent



had returned the said amount to the purchaser on the advise of the vendor of the property. If we allow the contention of the petitioner that amount has been returned and hence, no punishment could be imposed, cannot be accepted. If this is allowed, everyone will demand bribe as a matter of right and on a complaint, the amount will be returned and thereafter, will contend that the amount has been returned, hence, no punishment could be imposed. The reason for interference of the order of dismissal from service is that the family members should not suffer on account of the demise of the employee.

12. In the said circumstances, we find that the punishment imposed by the disciplinary authority for removal from service is disproportionate. When the punishment imposed is found to be disproportionate, this Court has no power to substitute, but can only remit the matter back to the disciplinary authority to reconsider the punishment. But, in the present case, the delinquent had passed away on 07.04.2017 and we find that it may not be possible to remit the matter back to the disciplinary authority. As per Rule-8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, both compulsory retirement and removal from service are deemed to be major penalty. The petitioner has put in 38 years of service and he had passed away pending writ appeal. Hence, in view of the peculiar circumstances of the case, we interfere in the quantum of punishment. We impose the punishment of compulsory retirement instead of removal from service. It is needless to point out that the substitution of punishment as a compulsory retirement will result in consequential benefit to the family members of the deceased delinquent. As the misconduct is one of moral turpitude, no gratuity is payable. The eligible person is only entitled to family pension on account of the Compulsory Retirement. The said benefit shall be extended to the family members of the deceased delinquent from 01.12.2021 onwards.

13. With the above said modification, this Writ Appeal is partly allowed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

msa



To

The Secretary to Government,
Commercial Tax Department (H1),
Fort St. George,
Chennai - 600 009.

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+1cc to Mr.V.Raghupathi, Advocate, S.R.No.60798
+1cc to the Government Pleader, S.R.No.61082

W.A.NO.2893 OF 2012 AND
C.M.P.NO.15771 OF 2021

SSI (CO)
PBS/08/12/2021