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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2021

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MR JUSTICE KRISHNAN RAMASAMY

W.A.No.1558 of 2021
C.M.P.No.9838 of 2021 and W.P.No.12885 of 2010

1. The Principal Secretary to Government,
Department of School Education,
Secretariat, Chennai-600 009.
 2. The Director of School Education,
Directorate of School Education,
Chennai.
 3. The Joint Director,
(Paniyalar Thougudhi),
Directorate of School Education,
Chennai.
- .. Appellants/Respondents

Vs.

K.R.Palanisamy .. Respondent/Petitioner

Prayer : Writ Appeal filed under Clause 15 of Letters Patent
against the order dated 11.09.2018 in W.P.No.12885 of 2010.

Prayer in W.P.No.12885 of 2010:-

Writ of Certiorari Calling for the records relating to the
proceedings with proceedings of the 1st respondent in Government
Order (ID) No.370 (Department of School Education) dated
06.10.2009 and to quash the same.

For Appellants : Mr.R.Neelagandan
State Government Counsel

For Respondent : Mr.Agilesh

J U D G E M E N T

This is an appeal filed by the Government seeking to set
aside the order of the learned Single Judge dated 11.09.2018
made in W.P.No.12885 of 2010, wherein and whereby, the order of



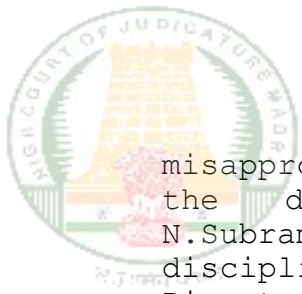
the Government rejecting the petition submitted by the writ petitioner seeking to modify the punishment of removal from service imposed on him into one of compulsory retirement was set aside and certain directions were issued.

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2. The writ petitioner had served as an Assistant Elementary Educational Officer between 13.06.1990 and 30.06.1995 at Bhavanisagar, Erode District and after his transfer to the teacher post, a special audit was conducted with respect to the Provident Fund Accounts (PF) maintained in the office of the Assistant Elementary Educational Officer, which revealed misappropriation of funds committed by the petitioner and two others, namely, Prabhakaran and N.Subramanian. Their modus operandi was that without there being applications from the teachers for PF loan, the accused persons issued proceedings by preparing bill entries and took cash from the bank without disbursing the same to the concerned teachers. The amount so misappropriated was pegged at Rs.2,98,547/- and therefore, the criminal prosecution was initiated and the same ended in conviction, thereby, sentencing the writ petitioner and others to undergo two years imprisonment with appropriate fine amounts. On appeal, the appellate court, namely, Fast Track Court, Gopichettipalayam, affirmed the conviction and sentence on 13.02.2003. He preferred revision petition in Crl.R.C.No.221 of 2003 and this Court vide order dated 19.03.2004, modified the sentence of imprisonment into the one of fine of Rs.50,000/-. In the interregnum, the petitioner was removed from the service vide proceedings dated 28.08.2003 issued by the third respondent in the writ petition/third appellant herein. The appeal preferred by the writ petitioner questioning the said order was rejected by the second respondent on 30.04.2004 confirming the order of the third respondent. Annexing the order of this Court in the aforesaid criminal revision case, the petitioner filed a petition before the Government, the rejection order of the same in G.O.(ID) No.370, School Education Department, dated 06.10.2009 is put to the challenge before the writ Court. The writ court vide the impugned order dated 11.09.2018 allowed the writ petition. Thus, the appeal came to be filed.

3. According to the writ petitioner, one of the co-accused persons, namely, N.Subramanian was also punished by the criminal court and dismissed from service, but the Director of Elementary Education had modified the dismissal order and thereby inflicted the punishment of compulsory retirement. Thus, he sought for the similar benefit, which was granted by the writ Court and the said order need not be disturbed.

4. The appellants herein, as the respondents, pleaded before the Writ Court that since the writ petitioner became B.T. Assistant subsequent to the commission of the alleged



misappropriation, the Director of School Education dealt with the disciplinary proceedings, whereas, the co-accused N.Subramanian remained in the same post and hence, the disciplinary proceedings against him was concluded by the Director of Elementary Education and thus, two different authorities passed two different orders with respect to the two delinquents, and such exercise of power cannot be found fault with. It is also contended that this Court in the criminal revision case confirmed the conviction of the writ petitioner and only modified the sentence imposed on him and therefore, there is no reason for the appellate authority to modify the punishment of removal from service, as has been prayed by the writ petitioner.

5. The learned counsel appearing on behalf of the respondent/ writ petitioner contended that the writ petitioner and two other co-accused have been tried for the same set of allegations both in the criminal proceedings as well as the departmental proceedings and imposed with the similar punishment, but the two different appellate authorities passed two different orders, one modifying the punishment of removal from service to compulsory retirement, while the other refused to do so, which cannot be held right in the eye of law. The learned Single Judge, upon appreciation of all the materials, rightly passed the impugned order. The learned counsel prayed for dismissal of this appeal.

6. We have heard the learned counsels on either side and perused the materials placed before us.

7. It is to be stated that the writ petitioner, who is the respondent herein, involved in the criminal case along with two other accused. They have been proceeded with departmentally and criminally and both the proceedings ended against them. In the criminal case the trial court and appellate court found the accused guilty and sentenced them. This Court, which is the revisional court, while confirming the conviction, only modified the sentence to one of fine. Similarly, in the departmental proceedings also, the writ petitioner and other accused were found guilty and they were imposed with the punishment of removal from service. However, when they went on appeal, since the writ petitioner became B.T. Assistant subsequent to the commission of the alleged misappropriation, the Director of School Education dealt with the appeal, whereas, the co-accused N.Subramanian held the same post and hence, order in his appeal was passed by the Director of Elementary Education modifying the punishment imposed against him to one of compulsory retirement.

8. This Court is of the view that for the same set of allegations, though the accused were tried by the Court in its



criminal jurisdiction and all the three have been given similar punishment, in the disciplinary proceedings at the appeal stage, the writ petitioner alone was treated differently, which is impermissible. The reason attributed for such discrimination being that the two different authorities exercised the appellate jurisdiction cannot hold water, as has been held by the learned Single Judge, for the simple reason that the doctrine of equality is applicable to all similarly placed persons. For holding so, the learned Single Judge also relied upon the judgment of the Hon'ble Supreme Court in *Rajendra Yadav V. State of Madhya Pradesh*, (2013) 3 SCC 73.

9. The learned counsel for the respondent also placed reliance on the judgments of the Hon'ble Supreme Court in *Director General of Police V. G.Dasayan*, (1998) 2 SCC 407 and *Anand Regional Coop. Oil Seedsgrowers' Union Ltd. V. Shaileshkumar Harshadbhai Shah*, (2006) 6 SCC 548, to contend that the co-delinquents should be treated on a similar footing.

10. In *Naresh Chandra Bhardwaj v. Bank of India*, (2019) 15 SCC 786, the Hon'ble Supreme Court held as follows :

"5. It is trite to say that the domain of the courts on the issue of quantum of punishment is very limited. It is the disciplinary authority or the appellate authority, which decides the nature of punishment keeping in mind the seriousness of the misconduct committed. This would not imply that if the punishment is so disproportionate that it shocks the conscience of the court the courts are denuded of the authority to interfere with the same. Normally even in such cases it may be appropriate to remit the matter back for consideration by the disciplinary/appellate authority. However, one other cause for interference can be where the plea raised is of parity in punishment but then the prerequisite would be that the parity has to be in the nature of charges made and held against the delinquent employee and the conduct of the employee post the incident. It is the latter aspect which is sought to be advanced by the learned counsel for the appellant by relying upon the judgment in *Rajendra Yadav v. State of M.P.* (2013) 3 SCC 73. On this very aspect the learned counsel for the respondents drew out attention to a subsequent judgment in *Lucknow Kshetriya Gramin Bank v. Rajendra Singh*, (2013) 12 SCC 372, which had taken note of the earlier judgment referred to aforesaid.

6. There is really no difference in the proposition, which is sought to be propounded except



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that in the latter judgment the principles have been succinctly summarised in the last paragraph of the judgment, which read as under:

"19. The principles discussed above can be summed up and summarised as follows:

19.1. 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.

19.2. 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.

19.3. 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.

19.4. 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.

19.5. The only exception to the principle stated in para 19.4 above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct was 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 co-delinquent accepts the charges, indicating remorse with unqualified apology, lesser punishment to him would be justifiable."

(emphasis supplied)

7. The principle, thus culled out, is that remitting a matter on the issue of quantum of



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punishment would be as set out in para 19.5 aforesaid of Lucknow Kshetriya Gramin Bank v. Rajendra Singh, (2013) 12 SCC 372, i.e. where a 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 is based on the principle of equality but then there has to be an absolute parity."

11. A reading of the above paragraphs makes it abundantly clear that 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, but, an exception is carved out therein to the effect that if the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct was identical or the co-delinquent was foisted with more serious charges, then the Court is at liberty to interfere with the punishment. In such case, instead of remitting the matter back, the Court can substitute a suitable punishment.

12. If the principle enunciated in the above judgments is applied to the facts of the instant case, it is clear that the writ petitioner is entitled for the similar treatment, that has been extended to N.Subramanian and after passage of time, remitting the matter again to the authorities would not serve any purpose. Thus, directing the authorities to modify the punishment imposed on the writ petitioner to the one that has been imposed on N.Subramanian would meet the ends of justice. Thus, the learned Single Judge rightly set aside the Government Order refusing to extent such benefit to him. We find no reason to interfere with the said order.

13. For the foregoing reasons, the Writ Appeal is dismissed and the order of the learned Single Judge is confirmed. The appellants are directed to comply with the directions issued by the learned Single Judge within a period of four weeks from the date of receipt of a copy of this order. However, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IX)

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Sub Assistant Registrar

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To

1. The Principal Secretary to Government,
Department of School Education,
Secretariat, Chennai-600 009.

2. The Director of School Education,
Directorate of School Education,
Chennai.

3. The Joint Director,
(Paniyalar Thougudhi),
Directorate of School Education,
Chennai.

W.A.No.1558 of 2021

SJ(CO)
CT(03/09/2021)