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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.03.2021

Delivered on : 26.04.2021

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Writ Petition No.24544 of 2013
and
M.P.No.1 of 2013

A.Ezhilarasi

... Petitioner

..vs..

1. The Deputy Commissioner of Police
Headquarters, I/C: Armed Reserve
Coimbatore City.

2. The Commissioner of Police,
Coimbatore City.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the respondents in connection with the impugned order passed in C No.F3/WP 38907/2006 dated 03.11.2011, CPO No.1854/2011, C No.F3/WP 38907/2006 dated 29.11.11 and Na.Ka.No.O-1/39492/2013 dated 03.08.2013 and quash the same and direct the respondents to settle the death benefits of late S.Anandan, formerly AR Nayak 2056, as if he died while he was in service along with interest @ 12% p.a. and further direct the respondents to appoint the petitioner on Compassionate ground and further direct the respondents to grant all attendant benefits to the petitioner.

For Petitioner : Mr.Venkataramani, Sr.C.
for Mr.M.Muthappan

For Respondents : Mr.P.Chinnadurai, AGP

ORDER

The prayer made in this writ petition is to issue a certiorarified mandamus to call for the records relating to the orders dated 03.11.2011, 29.11.2011 and 03.08.2013 passed by the respondents and quash the same and consequently direct the respondents to settle the death benefits of one S.Anandan as if



during the pendency of which, he died on 08.03.2008 due to heart ailment. Therefore, the said writ petition was contested by the petitioner and her two children.

2.8 By order dated 22.09.2011, the aforesaid writ petition was disposed of, setting aside the orders passed by the respondents 1 and 2 and remitting the matter to the respondents for fresh consideration with regard to quantum of punishment, for which, three months time was granted.

2.9 Pursuant to the aforesaid order, the first respondent by order dated 03.11.2011, modified the punishment imposed on the petitioner's husband into one that of compulsory retirement. A consequential order of modification of punishment was also passed on 29.11.2011. However, the monetary benefits payable were not disbursed to the petitioner.

2.10 Thereafter, the petitioner submitted a representation dated 29.07.2013 seeking compassionate appointment, which was rejected on 03.08.2013. Feeling aggrieved, the petitioner is before this Court with the present writ petition for the aforesaid relief.

3. The learned senior counsel appearing for the petitioner has made two fold submissions. The first submission is that when this court had set aside the order of removal from service passed by the disciplinary authority as confirmed by the appellate authority and remanded the matter to the respondents for fresh consideration in the earlier WP.No.38907 of 2006 by order dated 22.09.2011, the charges framed against him, get abated due to the death of the petitioner's husband and the disciplinary action initiated against him is no longer pending and in such circumstances, the respondents ought to have quashed the punishment imposed on the petitioner's husband, whereas they modified the same into one of compulsory retirement, which is illegal, arbitrary, and contrary to law. He further submitted that even otherwise, the modified punishment of compulsory retirement is shockingly disproportionate to the charges framed against the petitioner's husband. The second submission is that in view of the setting aside the order of punishment by the order of this Court in WP.No.38907 of 2006, it is presumed that the petitioner's husband died, while he was in service and therefore, the petitioner is entitled for appointment on compassionate grounds, but her claim was rejected, stating that her husband, by the order of modified punishment, compulsorily retired from service, which is also arbitrary, illegal and contrary to law. Thus, the learned senior counsel prayed to set aside the orders impugned herein and consequently, direct the respondent authorities to provide compassionate appointment and grant all the monetary benefits due to her husband.



4. On the other hand, the learned Additional Government Pleader appearing for the respondents submitted that taking note of all the facts and circumstances of the case and also based on the material evidence, the respondents have rightly passed the orders impugned herein and therefore, the same do not require any interference at the hands of this Court.

5. This court considered the submissions made on either side and carefully perused the materials available on record.

6. From the facts referred to above and the documents enclosed in the typed set of papers, certain basic facts are not in dispute and the same need not be traversed herein.

7. The main crux of the matter is that earlier, the petitioner's husband challenged the order imposing the major penalty of removal from service, by filing WP.No.38907 of 2006, which was allowed by this Court, vide order dated 22.09.2011, the relevant portion of which, for better appreciation, is extracted below:

"10. Though it may be true that the petitioner did not exhaustively plead about the various family circumstances, which prevented him from immediately reporting for duty, yet such averments made in the writ affidavit have not been stated to be false. In the absence of any reason to disbelieve the peculiar condition in which the petitioner was pushed, this court is able to perceive the mental agony and trauma, which the petitioner would have undergone owing to his mother's sickness, his child's death, his wife is suffering from congenital heart disease, the second daughter having been operated upon for heart ailment coupled with the burden to care of his brother's family who died in a road accident. Therefore, all the circumstances could be taken into consideration for taking a more lenient view against the petitioner.

11. Therefore, considering the entire facts and circumstances of the case and taking note of the decision rendered by the Hon'ble Supreme Court, followed by this Court and the decision of the Hon'ble Division Bench, this is the fit case where the order of penalty of removal from service imposed on the deceased writ petitioner is liable to be set aside.

12. In view of the above reasoning, the writ petition is allowed and the impugned order is set



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9.It appears that during the pendency of the earlier writ petition, the petitioner's husband died and the matter was proceeded by the petitioner and her children. This Court considering the pathetic situation under which, the petitioner's husband remained absent from duty, had set aside the order of punishment of removal from service and remanded the matter to the respondent authorities for fresh consideration with regard to the quantum of punishment and accordingly, allowed the writ petition, by order dated 22.09.2011. Following the said direction, the first respondent reconsidered the issue and rightly modified the punishment into one of compulsory retirement on sympathetic ground.

10.Though the learned senior counsel for the petitioner made his first submission that in view of the earlier order passed by this Court in WP.No.38907 of 2006 filed by the petitioner's husband, the charges framed against him get abated on account of his death and the disciplinary action does not survive and hence, the respondent authorities ought to have quashed the punishment imposed on him, but they modified the same into one of compulsory retirement, which is arbitrary, illegal and contrary to law, this Court is not inclined to accept the same. Inasmuch the petitioner's husband has died only after the order of punishment of removal from service was imposed on him by the respondent authorities and not during the pendency of disciplinary proceedings, the question of abatement of charges does not arise at all and hence, the first submission of the learned senior counsel for the petitioner has no legs to stand.

11.It is also relevant to point out at this juncture that this Court under its power conferred by Article 226 of Constitution of India, can interfere in the matter of disciplinary proceedings if the disciplinary/enquiry proceedings were conducted in violation of manner prescribed and against the principle of natural justice and if the order of concerned authority is non speaking and unreasoned; and the judicial review is permissible with respect to decision making process and not against the decision itself, unless it is shown that the decision is without any evidence or suffers from malafide or malice or harsh or without jurisdiction. In Indian Oil Corpn. Ltd. v. Ashok Kumar Arora, (1997) 3 SCC 72, it was held by the Supreme Court as under:-

"At the outset, it needs to be mentioned that the High Court in such cases of departmental enquiries and the findings recorded therein does not exercise the powers of appellate court/authority. The jurisdiction of the High Court in such cases is very limited for instance, where it is found that the



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domestic enquiry is vitiated because of non-observance of principles of natural justice, denial of reasonable opportunity; findings are based on no evidence, and/or the punishment is totally disproportionate to the proved misconduct of an employee."

In Lalit Popli v. Canara Bank, (2003) 3 SCC 583, the Supreme Court has observed as follows:-

"17. While exercising jurisdiction under Article 226 of the Constitution the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority.

18. In B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] the scope of judicial review was indicated by stating that review by the court is of decision-making process and where the findings of the disciplinary authority are based on some evidence, the court or the tribunal cannot reappreciate the evidence and substitute its own finding.

19. As observed in R.S. Saini v. State of Punjab [(1999) 8 SCC 90 : 1999 SCC (L&S) 1424] in paras 16 and 17 the scope of interference is rather limited and has to be exercised within the circumscribed limits. It was noted as follows: (SCC p. 96)

"16. Before advertent to the first contention of the appellant regarding want of material to establish the charge, and of non-application of mind, we will have to bear in mind the rule that the court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or



paid to her, if not already paid, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Commissioner of Police
Headquarters, I/C: Armed Reserve
Coimbatore City.
2. The Commissioner of Police,
Coimbatore City.

+1cc to Mr.M.Muthappan, Advocate, S.R.No.25365
+1cc to the Government Pleader, S.R.No.25698

W.P.No.24544 of 2013

VSN-II(CO)
HS(22/07/2021)