



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.12.2021

CORAM:

THE HON'BLE MR. JUSTICE V. PARTHIBAN

W.P.No.31437 of 2019

1. C.Devivanayagam(Deceased)
2. Meenambal
3. D.Kalaiselvi
4. D.Arumugam

...Petitioners

(P2 to P4 substituted as LRS of deceased sole petitioner vide order dt. 16.11.2021 mad in W.M.P.No.19921/ 2021 in W.P.No.31437/ 2019)

Vs.

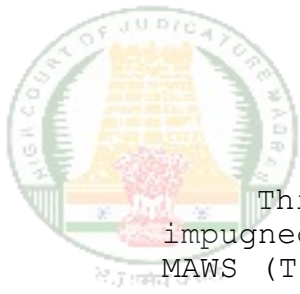
1. The Government of Tamil Nadu
Represented by its Secretary,
Municipal Administration &
Water Supply Department,
Fort St. George, Chennai - 9.
2. The Director of Town Panchayats,
No.75, Santhome High Road,
7th and 8th Floor, Urban Administrative Office Campus,
Raja Annamalai Puram,
Chennai - 28.
3. The District Collector,
Dharmapuri,
Dharmapuri District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the proceedings in the impugned order passed by the 1st respondent in G.O.(D) No.338, MAWS (TP-4) Department dated 27.08.2019 and quash the same and consequently direct the respondents to permit the petitioner to attain superannuation on 31.07.2014 with all monetary and other attendant benefits including retirement benefits.

For Petitioner : Mr.K.Raja
for Mr.N.Kulandaivelu

For Respondents : Mr. L.S.M. Hasan Fizal
Additional Government Advocate



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O R D E R

This writ petition has been filed challenging the impugned order passed by the 1st respondent in G.O.(D) No.338, MAWS (TP-4) Department dated 27.08.2019 and quash the same and consequently, direct the respondents to permit the petitioner to attained superannuation on 31.07.2014 with all monetary and other attendant benefits including retirement benefits.

2. The case of the petitioner is that he joined as Junior Assistant in the year 1973 and was given promotion as Assistant in the year 1992 and was further promoted as Executive Officer Grade-I in the year 1995, as Selection Grade Executive Officer in the year 2000 and as Assistant Director in Town Panchayat in 2009. The petitioner is no more and according to the legal heirs of the petitioner, late Government servant had served for over four decades. While in service, he was issued with charge memo under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules on 28.02.2013.

3. The charges against the petitioner were that he had colluded with other officials and fixed lower land tax in order to gain pecuniary advantage and caused loss to the Municipality. He had also misused his position and collected tax and non-remittance of the same, resulted in loss of revenue to the Municipality. Further, the charge was that he had allowed some private individuals to attend official work and allowed them to handle official records in the office of the Municipality.

4. An enquiry was conducted into the charges and the Enquiry Officer submitted his report and found that the important charge that he had charged lesser land tax in respect of 36 persons and had charged tax for less extent of land for which tax ought not to have been imposed in respect of 22 properties were found to be not proved. According to the Enquiry report, there was no clear instruction prior to 2009 as to how the land tax to be assessed.

5. However, the Disciplinary Authority disagreed with the findings of the Enquiry officer on the basis of the advise of the DVAC, who is not a competent person to disagree. As regards other two charges, late Government servant had acceptable explanation, but, still it was not favourably considered by the Disciplinary Authority. Ultimately, an order of dismissal was passed by the 1st respondent vide G.O.(D). No.338, MAWS (TP-4) Department dated 27.08.2019. As against that, the present writ petition was filed.

6. In the writ petition, several grounds have been raised including the delay of more than five years, for which, there was no explanation at all from the respondents. According to the writ petitioner, the charges were framed at the instance of the Department of Vigilance and Anti Corruption and the



Disciplinary Authority had abdicated his independent jurisdiction in favour of DVAC which was again legally not permissible. According to the writ petitioner, the DVAC had no role either to give direction or mandate initiation of disciplinary proceedings against the petitioner. Apart from various other legal grounds, the important ground that was raised in the writ petition is as to be proportionality of the punishment imposed on the petitioner. Once the first charge which was the most serious as contained in charge memorandum was held to be not proved, the imposition of dismissal from service is disproportionate to the gravity of the misconduct of the petitioner.

7. Mr.K.Raja, learned counsel appearing for the petitioners would argue only on the proportionality of punishment, particularly, the fact that during the pendency of the writ petition, the petitioner expired and is no more and his legal heirs have been brought on record vide this Court's order dated 16.11.2021. According to the learned counsel, the petitioner died on 22.05.2021 due to COVID-19 related complications.

8. Mr. L.S.M. Hasan Fizal, learned Government Advocate appeared on behalf of the respondents and a detailed counter affidavit has been filed. In the counter affidavit, the fact of framing of charges and conduct of enquiry and imposition of penalty has been stated in detail. These facts are not disputed at all. Ultimately, on behalf of the petitioners, the submission made is only with reference to the imposition of extreme penalty of dismissal from service, which according to the learned counsel, was ex facie excessive and harsh. The learned counsel, in fact, would point out several legal infirmities in framing of charges, conduct of enquiry and disagreement of the Disciplinary Authority which cut into the root of entire disciplinary action. However, he is not inclined to canvass on those legal principles but confined his submissions only on the proportionality of the punishment imposed on the petitioner.

9. In support of his contention on the quantum of punishment, the learned counsel would refer to a decision reported in (2017) 7 MLJ 390 (S.Ganapathy vs. Chairman cum Managing Director) and relied on paragraph 14 and 15, which are extracted here under.

14. In the light of the above pronouncements of the Hon'ble Supreme Court, it is clear that there should be some nexus between the punishments imposed on various employees, who were charged with the same offence. Of course, the contention of the respondent Bank that an officer working in a senior position and having more responsibility, should suffer a larger punishment, cannot be completely brushed



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aside. At the same time, it is for the Court to ensure that the punishment so imposed is not so disproportionate to the proved misconduct. The Disciplinary Authority while imposing punishment of stoppage of increment for the other two officers, at least one of whom was in the same cadre as the petitioner, had chosen to impose a punishment of reduction in rank by two stages, thereby pushed the petitioner as an entry level officer after 32 years of service in the bank. This, in my considered opinion, definitely offends Article 14 of the Constitution of India. Of course, I would like to point out the fact that equality cannot be claimed in all spheres. A Division Bench of this Court in *M. Rajamanickam v. The Executive Director, Bharath Heavy Electricals Ltd., Tiruchirappalli* ? 14 and others reported in 1997 Writ L.R.536 has held that when the Management has chosen impose punishment on one person while accepting an apology from the other and directed his reinstatement, the appellant can claim equal privilege of tendering apology, as otherwise, it will amount to hostile discrimination. While holding so, the Division Bench has observed as follows:

26. We are of the view that there is no iota of evidence which would differentiate the case of the present appellant from that of the other employee Meenakshisundaram. The discrimination is writ large on the record and the Court cannot overlook the same. Therefore, we see no justification in treating the appellant differently without pointing out how he was guilty of more serious misconduct or the degree of indiscipline in this case was higher than compared to that of Meenakshisundaram. Learned counsel for the management failed to explain to us the distinguishing features therefore, we are satisfied in putting both of them in the same bracket. Therefore, we have no hesitation to come to the conclusion that the treatment meted to the present appellant suffers from the vice of arbitrariness and Article 14 forbids any arbitrary action which would tantamount to denial of equality as guaranteed by Article 14 of the Constitution of India. The Court must accordingly interpose and quash the discriminatory action.



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27. Further, we are also not inclined to remit the case to the Disciplinary Authority or the Appellate Authority as the case may be, since in our opinion the appellant was subjected to a hostile discrimination in regard to the award of punishment. Therefore it is still open to us in exercising the jurisdiction under Art. 226, to interfere with the order of punishment on the ground that the penalty imposed on the appellant is hostile discrimination, harsh and disproportionate to the proved misconduct?.

15. In the light of above categorical pronouncement of the Division Bench, I find that the punishment imposed on the petitioner is disproportionate considering the punishment imposed on the other two delinquent officers. However, since the petitioner holds a more responsible position, he cannot insist that the same punishment should be imposed against him. Therefore, I deem it fit to modify the punishment and impose a lesser punishment of reduction in rank by one stage, instead of two stages.

10. The learned counsel also referred to certain other decisions which are in the opinion of this Court are irrelevant and cannot be made applicable. Despite this Court directed the learned counsel to produce relevant decisions in support of his legal contention on the proportionality principle evolved by the Court, but no effort has been spared by the counsel for the reason best known to him.

11. In any case, in consideration of the facts and circumstances of the case, this Court is of the view that the punishment of dismissal from service of the petitioner appear to be excessive and harsh considering the totality of the facts and circumstances of the case.

12. The enquiry findings, in substance, is in favour of the petitioner in regard to the most serious charge out of the three charges and the other two charges, even it is held to be proved cannot invite such extreme punishment from the Disciplinary Authority.

13. When an order of dismissal is imposed on an employee, the authority who impose such punishment would have to take into account any extenuating circumstances before such punishment was imposed. In this case, even assuming that the charges were proved against the petitioner, at least the Disciplinary Authority ought to have weighed the consequences of imposing the punishment of dismissal order on the petitioner, as such extreme punishment has a disastrous consequence not only on the petitioner but on the family members as well. Only in extreme case where an employee is found to be incorrigibly bad and not to be retained in



service in furtherance of public interest such punishment is warranted.

14. As far as the facts and circumstances of the present case are concerned, such extreme view ought not to have been taken by the authorities. In any event, this Court is of the considered view that the punishment of dismissal from service appear to be disproportionate to the gravity of the misconduct proved against the petitioner. At the same time, the late petitioner deserved to be visited with major penalty for serious dereliction of duties. In the said circumstances, this Court, on an equitable consideration is of the considered view that instead of the dismissal from service, the same can be moderated as that of compulsory retirement from service of the petitioner with effect from the date when the dismissal order had been given effect to.

15. In view of the above, the impugned order passed by the 1st respondent in G.O.(D) No.338, MAWS (TP-4) Department dated 27.08.2019 is set aside and the Authority is hereby directed to pass appropriate orders by moderating the order of dismissal to one of 'Compulsory Retirement' and grant all terminal benefits to the legal heirs who have been added as parties herein of late Government employee.

16. The respondent is directed to pass appropriate orders in this regard within a period of six weeks from the date of receipt of a copy of this order.

17. Accordingly, this Writ Petition is allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi/gba

To

1. The Secretary, Government of Tamil Nadu
Municipal Administration &
Water Supply Department,
Fort St. George, Chennai - 9.
2. The Director of Town Panchayats,
No.75, Santhome High Road,
7th and 8th Floor, Urban Administrative Office Campus,
Raja Annamalai Puram, Chennai - 28.
3. The District Collector,
Dharmapuri, Dharmapuri District.

+1 cc to Government Pleader Sr.NO. 59446, 66131

+1 cc to Mr.N.Kulandaivelu, Advocate Sr.NO. 66194

W.P.No.31437 of 2019

RLD(CO)

A.SK(06.01.2022)