



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 04.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

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W.P. (MD)No.11014 of 2010

and

M.P. (MD) No.2 of 2020

R.K.Sakunthala

... Petitioner

- vs -

1.The Joint Registrar of Co-operative Societies,
Madurai.

2.The Special Officer,
Madurai District Pandiyan Consumer
Cooperative Wholesale Store Ltd., No.1437,
Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned orders passed by the respondents in Na.Ka.No.1451/07/Pa.Tho.2, dated 02.02.2009 and in Na.Ka.No.2276/09 Sa.Pa. dated 18.05.2010 and consequently, directing the respondents to reinstate the petitioner in service with back wages, all monetary and attendant benefits and other benefits.

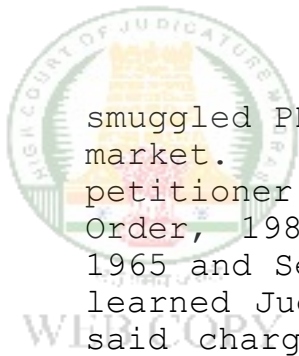
For Petitioner : Mr.Mohammed Ayub, Advocate
for M/s.Veera Associates

For Respondents : Mr.D.Muruganantham,
Additional Government Pleader for R-1
No Appearance for R-2

ORDER

This Writ Petition has been filed challenging the orders passed by the respondents in Na.Ka.No.1451/07/Pa.Tho.2, dated 02.02.2009 and in Na.Ka.No.2276/09 Sa.Pa. dated 18.05.2010 and consequently, to direct the respondents to reinstate the petitioner in service with back wages, all monetary and attendant benefits and other benefits.

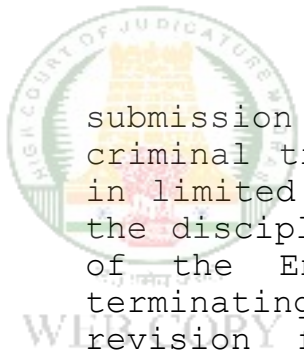
2. It is the case of the petitioner that she was working as Assistant Saleswoman in the 2nd respondent ration shop. While so, the petitioner was placed under suspension on 15.12.2007 by the proceedings of the 2nd second respondent and charge memo was issued alleging that the petitioner had misappropriated the society's fund by manipulating fake bills and by aiding in the illegal transfer of



smuggled PDS rice and sugar of the ration shop, for sale in the open market. Further, criminal action was initiated against the petitioner by framing of charge under Section 6(4) of TNSC (RTCS) Order, 1982 read with 7(1)a(2) of the Essential Commodities Act, 1965 and Section 8 of the Essential Commodities Act, 1955 before the learned Judicial Magistrate, Madurai, in C.C.No.32 of 2009. To the said charge memo, the petitioner submitted a detailed explanation and not being satisfied with the said explanation, enquiry was initiated and after conduct of enquiry by affording opportunity to the petitioner, the enquiry officer held the charges proved. After providing copy of the enquiry report and calling for further explanation, which was submitted by the petitioner, the second respondent imposed the punishment of termination of the petitioner from service vide order dated 02.02.2009. Aggrieved by the order of termination, the petitioner preferred a revision before the first respondent and the first respondent, without considering the petitioner's contention and applying his mind independently to the materials available on record, confirmed the order of punishment passed by the second respondent vide order 18.05.2010. Challenging the same, the present Writ Petition is filed.

3.The learned Counsel appearing for the petitioner submits that admittedly, the petitioner is the only Saleswoman available in the said ration shop and due to crowd, some mistakes had crept in preparing the bills for which the punishment imposed by the second respondent is grave and highly disproportionate. Hence, this Court has to necessarily interfere with the order of punishment. Accordingly, he prayed for allowing the Writ Petition.

4. Per contra, the learned Additional Government Pleader appearing for the respondents by referring to the counter submitted that the second respondent had issued orders suspending the petitioner on 15.12.2007 on the ground that the petitioner committed fraud by making bogus bills, creating stock deficits and aided in smuggling of ration commodities intended mainly for the supply to ration card holders, in collusion with the lorry owner. It is the further submission of the learned Addl. Government Pleader that the enquiry was conducted in a fair and proper manner and the oral and documentary evidence was adduced and the petitioner was also given opportunity to cross examine the witnesses. On the finding of guilt recorded by the enquiry officer, the petitioner had also remitted the fine amount of Rs.3,122.80, which clearly shows that the petitioner had admitted her guilt. It is the further submission of the learned Addl. Government Pleader that of police report dated 28.12.2007 clearly shows that the police had enquired and obtained deposition from the lorry driver who carried the smuggled rice and sugar intended for the distribution to card holders of three ration shops including the petitioner's fair price shop. Admittedly, out of three Salesmen, two Salesmen were interrogated and arrested by police and before arresting the petitioner, the petitioner had moved the Court and obtained anticipatory bail. It is the further



submission of the learned Addl. Government Pleader that unlike criminal trial the evidence required in a disciplinary proceedings is limited and on the touchstone of preponderance of probabilities, the disciplinary authority is supposed to act. Based on the report of the Enquiry Officer, the second respondent passed orders terminating the petitioner from service, and the appeal and the revision filed by the petitioner have been rejected by the respective authorities on independent application of mind and, therefore, no interference is warranted with the orders impugned herein.

5. This Court paid its careful consideration to the contentions advanced by the learned counsel on either side and perused the materials available on record.

6. The Hon'ble Supreme Court, in **B.C. Chaturvedi v. Union of India, (1995 (6) SCC 749)**, while dealing with issue relating to the power of the Court relating to judicial review of the order passed in disciplinary proceedings, held as under :

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by



the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel [(1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1 LLJ 38] this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

(Emphasis Supplied)

7. The above view has been reiterated by the Hon'ble Supreme Court in **Principal Secy. Govt. of A.P. v. M. Adinarayana, (2004 (12) SCC 579)**, wherein, it has been held as under :-

"23. We have read this charge in the light of allegations in support thereof. In the instant case, it is not disputed that the respondent has neither supplied any prior information on the Government nor did he send any prior intimation to the Government. By not doing this, he has contravened the provisions of Rule 9. The Tribunal has also categorically held that the respondent has not applied for prior information before he purchased the items from the competent authority nor he intimated to the competent authority forthwith soon after the purchase of the several items. Therefore, in our view, the charged officer has violated Rule 9 of the Conduct Rules and thus is guilty of misconduct within Rule 2-H (sic) of the Andhra Pradesh Disciplinary Amendment Act, 1993. In view of the abovesaid finding we hold that respondent is guilty of both the charges framed against him within Rule 2 (b) of the Conduct Rules of 1961 framed under the Amendment Act, 1993.

* * * * *

26. In our opinion, judicial review cannot extend to the examination of the correctness of the charges



as it is not an appeal but only a review of the manner in which the decision was made. We have, therefore, no hesitation in setting aside the order of the Andhra Pradesh Administrative Tribunal and the judgment of the Division Bench of the High Court for reasons stated (supra). The order passed by the Government removing the respondent from service is in order and, therefore, the appeal filed by the appellant State stands allowed. Further, there will be no order as to costs."

8. In a recent decision in **Director General of Police, RPF & Ors. - Vs - Rajendra Kumar Dubey (C.A. No.3820/2020 dated 25.11.20)**, the Hon'ble Supreme Court, advertent to the various decisions of the Apex Court relating to the interference by the High Court in exercise of its writ jurisdiction with respect to disciplinary proceedings, including the decision in *Chaturvedi's case* (supra), held as under :-

"12.1 It is well settled that the High Court must not act as an appellate authority, and re-appreciate the evidence led before the enquiry officer.

We will advert to some of the decisions of this Court with respect to interference by the High Courts with findings in a departmental enquiry against a public servant.

In **State of Andhra Pradesh v S.Sree Rama Rao**, a three judge bench of this Court held that the High Court under Article 226 of the Constitution is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is not the function of the High Court under its writ jurisdiction to review the evidence, and arrive at an independent finding on the evidence. The High Court may, however interfere where the departmental authority which has held the proceedings against the delinquent officer are inconsistent with the principles of natural justice, where the findings are based on no evidence, which may reasonably support the conclusion that the delinquent officer is guilty of the charge, or in violation of the statutory rules prescribing the mode of enquiry, or the authorities were actuated by some extraneous considerations and failed to reach a fair decision, or allowed themselves to be influenced by irrelevant considerations, or where the conclusion on the very



face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. If however the enquiry is properly held, the departmental authority is the sole judge of facts, and if there is some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a writ petition.

These principles were further reiterated in the **State of Andhra Pradesh v Chitra Venkata Rao**. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The court exercises the power not as an appellate court. The findings of fact reached by an inferior court or tribunal on the appreciation of evidence, are not re-opened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ court, but not an error of fact, however grave it may be. A writ can be issued if it is shown that in recording the finding of fact, the tribunal has erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence. A finding of fact recorded by the tribunal cannot be challenged on the ground that the material evidence adduced before the tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point, and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal.

In subsequent decisions of this Court, including **Union of India v. G. Ganayutham, Director General RPF v. Ch. Sai Babu, Chennai Metropolitan Water Supply and Sewerage Board v T.T. Murali, Union of India v. Manab Kumar Guha**, these principles have been consistently followed.

In a recent judgment delivered by this Court in the **State of Rajasthan & Ors. v. Heem Singh** this Court has summed up the law in following words :

"33. In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid



reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy - deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognized it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to re-appreciate evidentiary findings in a disciplinary enquiry or to



substitute a view which appears to the judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain."

In **Union of India v. P. Gunasekaran**, this Court held that the High Court in exercise of its power under Articles 226 and 227 of the Constitution of India shall not venture into re-appreciation of the evidence. The High Court would determine whether : (a) the enquiry is held by the 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 which are 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.

In paragraph 13 of the judgment, the Court held that :

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

- (i) re-appreciate the evidence;
- (ii) interfere with the conclusions in the enquiry, in the 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."

(Emphasis Supplied)

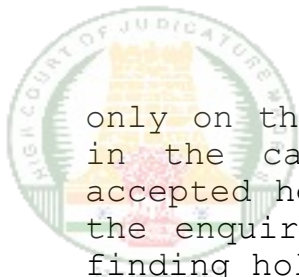


9. From the ratio laid down above, it is implicitly clear that the Courts, in exercise of its power of judicial review, cannot extend the examination to the correctness of the act of the disciplinary authority, but only limit itself to the manner in which the decision has been arrived at by the authorities and whether the same is in accordance with law. This Court is to test only the correctness of the decision arrived at by the authorities on the basis of the evidence before it and not proceed with the case as if it is an appeal against the impugned order.

10. Admittedly, the petitioner was a Saleswomen in the fair price shop run by the second respondent. A show cause notice was issued to the petitioner on 26.03.1008 alleging that the petitioner committed fraud such as making bogus bills, creating stock deficit and thereby aided in smuggling of rationed commodities, intended mainly for the ration card holders, in collusion with the lorry owner. After conduct of enquiry, in adherence to the principles of natural justice, the enquiry officer submitted a report holding the charges proved. It further transpires from the records that even in the enquiry, the petitioner had admitted her guilt and stated that the errors had crept in due to pressure of work due to overcrowding in the fair price shop and that there was no intent on the part of the petitioner to prepare bogus bills. Though such a stand is taken by the petitioner, this Court is not able to appreciate the said stand as a genuine reason, which paved the way for the acts perpetrated by the petitioner. The acts perpetrated by the petitioner, by no stretch of imagination, could be said to be inadvertent acts, as the records reveal the hand in glove act of the petitioner with the lorry drivers, who have spoken about the collusion in the smuggling of the PDS materials.

11. It is to be pointed out that the commodities sold through the fair price shops are meant for poor who find it difficult to have even two meals a day and to eradicate their poverty, the Government is distributing the essential commodities at subsidised prices to the card holders. The act of the petitioner clearly reveals that she had not only been diligent in discharge of her duties, but had also given a reply, which would not be accepted to be an inadvertent act by any prudent person, leave alone this Court.

12. Public Distribution System is primarily meant to cater to the needs of poor people. The main allegation against the Petitioner is that, she prepared bogus bills and smuggled PDS commodities for sale in the open market, thereby depriving the same to needy people. In spite of sufficient opportunity of hearing, the petitioner has not disproved the charges alleged against her, but, in fact, had accepted her guilt and remitted the amount. It is further to be pointed out that insofar as departmental proceedings are concerned, the standard of proof required is not as required at the time of criminal trial as the respondents are not required to prove the case against the petitioner beyond reasonable doubt, but



only on the touchstone of preponderance of probabilities. However, in the case on hand, the petitioner, on her own volition has accepted her guilt and remitted the amount and over and above that, the enquiry officer, on the basis of the materials has rendered a finding holding the petitioner guilty.

13. On a holistic consideration of the materials available on record, this Court is of the considered opinion that the findings recorded in the enquiry are just and reasonable and this Court, under the guise of judicial review, cannot conduct a roving expedition as if the matter is in appeal before this Court. The petitioner having not produced any material to substantiate his case, the finding recorded by the enquiry officer, as accepted by the authorities below to fasten the guilt on the petitioner does not require any interference.

14. Insofar as the punishment awarded to the petitioner is concerned for the delinquency, it has been the consistent view of the Courts that, it is always within the domain of the Appointing Authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking the conscience, the Courts interfere with the same, in exercise of powers under Article 226 of the Constitution of India. In **Prem Nath Bali - Vs - High Court of Delhi** reported in **(2015 (16) SCC 415)**, the Hon'ble Supreme Court has held as under:

"20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be



in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority."

(Emphasis Supplied)

15. In the case on hand, a careful perusal of the entire records relating to the enquiry as also the order passed by the disciplinary authority, as confirmed by the other authorities, it clearly transpires that the disciplinary authority has applied his mind to the enquiry report and all the other materials while imposing the punishment of termination and on revision, the revisional authority has appreciated the materials independently and concurred with the view of the disciplinary authority. On an overall consideration of the materials, this Court is in consensus with the order passed by the disciplinary authority as confirmed by the revisional authority and the punishment imposed on the petitioner is just and reasonable considering the nature of delinquency and no sympathy can flow from this Court for such an act. Therefore, the punishment imposed on the petitioner is in no way shocking the conscience of this Court or disproportionate to the delinquency and, therefore, this Court is not inclined to interfere with the same.

16. It must not be lost sight of that interests of administration demands that, undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly. Disciplinary proceedings are meant not really to punish the guilty, but to keep the administrative machinery unsullied by getting rid of bad elements. Allowing the unscrupulous elements to continue in the system would not only erode the public confidence in the administrative machinery but any interference by this Court would also have a detrimental effect on the faith the public has imposed on the Judiciary. Persons, like the petitioner, who are leeches attaching themselves to the public machinery, time and again, suck the blood of the public, by their intolerant acts and weeding out them from the system is the need of the hour so that the downtrodden and needy do not suffer by their cunning and devious acts. The petitioner, having been found guilty of the charges, she has been dealt with promptly in accordance with law and this Court, sitting under Article 226 is not inclined to interfere with the same in exercise of its powers of judicial review, which, as stated above, has to be exercised with caution and the present case does not fall under the category where the exercise of judicial review is warranted. Hence, this Court does not find any reason to interfere with the punishment imposed by the authorities concerned.



17. For the reasons aforesaid, this Writ Petition fails and the same is dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1.The Joint Registrar of Co-operative Societies,
Madurai.

2.The Special Officer,
Madurai District Pandiyan Consumer
Cooperative Wholesale Store Ltd., No.1437,
Madurai.

+1 CC to M/s.GP (SR-59[F] dated 05/01/2021)

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-131[F] dated 05/01/2021)

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04.01.2021

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