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W.P.(MD)No.3231 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 06.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P. (MD)No.3231 of 2011

and

M.P. (MD) No.2 of 2011

A.Sebasthiammal

... Petitioner

- vs -

1.The Secretary to the Government,
Cooperative, Food and Consumer
Protection (Sippi-1) Department,
Fort St. George,
Chennai - 9.

2.The Regional Joint Registrar
of Co-operative Societies,
Mannarpuram,
Trichy - 20.

3.The Special Officer/Joint Registrar,
Thiruchirappalli District,
Central Cooperative Bank Ltd.,
Fort Station Road,
Trichy - 2.

... 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 of the Respondents resulting in the third respondent's impugned order dated 19.08.2008 passed in No.02272/08 (A.1) A.10 and the subsequent confirmation by the second respondent's proceedings dated 27.02.2009 in Na.Ka.No.10807/08/Sa.Ba and the first respondent's proceedings dated 09.09.2010 in G.O.Ms.No.128, Co-operative, Food and Consumer Protection (Sippi 1) Department and quash the same and direction directing the respondents to pay all the attendant monetary benefits with due increments.

For Petitioner
For Respondents 1 & 2

For Respondent 3

: Mr.V.R.Venkatesan
: Mr.A.Karthick
Government Advocate
: Mr.K.Saravanan



ORDER

This Writ Petition is filed seeking for issuance of a Writ of Certiorarified Mandamus calling for the records of the Respondents resulting in the third respondent's impugned order dated 19.08.2008 passed in No.02272/08 (A.1) A.10 and the subsequent confirmation by the second respondent's proceedings dated 27.02.2009 in Na.Ka.No.10807/08/Sa.Ba and the first respondent's proceedings dated 09.09.2010 in G.O.Ms.No.128, Co-operative, Food and Consumer Protection (Sippi 1) Department and quash the same and direction directing the respondents to pay all the attendant monetary benefits with due increments.

2. The case of the petitioner is that the petitioner joined as Sub Staff in the year 1998 at Central Cooperative Bank at Srirangam and it is one of the branches of Trichy Central Cooperative Bank. The petitioner has put an unblemished service of 11 years and during her service, she has earned very good reputation from her superiors as well as from the General public and subsequently, she was promoted as Cashier and posted at Manachannallur Branch and at the time of filing this Writ Petition, she was working as Assistant in Edamalaipatti Pudur Branch at Trichy.

3. While she was working as Sub Staff at Srirangam Branch of the third respondent bank, she had borrowed five jewel loans from the bank by pledging her jewels weighing 144 grams vide Loan Nos.7578, dated 12.06.2003; 8850, dated 11.02.2004; 9137, dated 31.03.2004; 9307, dated 27.04.2004 and 9579 dated 15.06.2004. Thereafter, the petitioner redeemed her jewels by paying entire loan amount together with interest. Though the petitioner paid the entire loan amount, one Savuridass who was working as Manager at Srirangam Branch and one A.Divyanathan, who was working as Gold Appraiser, failed to deliver the jewels to the petitioner. Since the said Savuridass was the superior of the petitioner, she requested him several times to give her redeemed jewels. However, at the instigation of the said Savuridass, the Gold Appraiser, namely, Divyanathan has taken away the gold jewels from the bank and pledged the same with Bargavi Benefit Funds Ltd., Srirangam and by pledging those jewels, they obtained loan for their personal benefits. Through this transaction, they committed an offence of cheating and fraud. Since they are bank staff where the petitioner was working as Sub Staff, the petitioner was not in a position to take severe action against them. In order to drag on the matter, the said Manager Savuridass made several requests to the petitioner not to take severe action against them and if



the petitioner makes any attempt to take criminal action or give a complaint before the higher authorities of the bank, the petitioner would face the consequences. However, for non-returning of jewels, the petitioner lodged a complaint before Srirangam Police Station on 19.03.2008 and on receipt of the complaint, they gave LP No.108/08 but there was no action on the part of the police authorities. Subsequently, the petitioner made another complaint on 23.12.2007 against the said Savuridass and Divyanathan before the third respondent/Special Officer to take appropriate action against them by conducting detailed enquiry in this regard and recover the jewels from her co-workers. Since no action was initiated by the third respondent, the petitioner sent another representation on 23.01.2008 to the then Special Officer requesting her to initiate appropriate action in this regard. While so, instead of taking action against the erred officials, the third respondent framed charges against the petitioner on 31.03.2008 and issued charge memo calling upon the petitioner to give explanation.

4.The sum and substance of the charges is that the petitioner, without obtaining prior permission from the bank authorities, has gone to the police station to attend the case lodged by the Gold Appraiser of the bank namely Divyanathan thereby she violated the bank rules and the petitioner has produced the xerox copy of the jewel loan receipt and pay-in-slip for redemption of jewel loan without prior permission of her superior to the police station and the main charge against the petitioner is that the petitioner has failed to cooperate with the departmental enquiry and she has given reply with an intention to prejudice the enquiry. The said charge memo was served on her on 05.04.2008 and the petitioner was given time for submission of the explanation upto 30.04.2008. On 05.05.2008 the petitioner has given a detailed explanation to the charges levelled against her. Being not satisfied with the explanation offered by the petitioner, the third respondent appointed an Enquiry Officer to conduct an enquiry on the allegations levelled against the petitioner. The Enquiry Officer conducted an enquiry and submitted his report on 14.08.2008 and held that charge No.2 is not proved, however, drawn a proven report with regard to charge Nos.1 and 3. Based on the proven minute, the disciplinary authority, namely, the third respondent herein imposed a punishment of postponement of increment for one year with cumulative effect. Aggrieved by the order of punishment, the petitioner preferred a revision before the second respondent and the second respondent has confirmed the order of the third respondent and thereafter, the petitioner preferred an appeal before the first respondent and the first respondent also confirmed the order passed by the original authority and the revisional authority. Against which, the present Writ Petition is filed.



5.The learned Counsel appearing for the petitioner would submit that though the petitioner is a Sub Staff of the third respondent bank and filed a complaint before the law enforcing agency as well as before the third respondent against her superiors on the ground that they have not returned her jewels after collecting the loan amount, instead of punishing the erred officials, punishing the petitioner is unsustainable one. Accordingly, the leaned Counsel appearing for the petitioner prayed for allowing the Writ Petition.

6.Per contra, the learned Counsel appearing for the third respondent would submit that admittedly, the petitioner collected her jewels on the same day when she paid the entire loan amount, however, due to the internal dispute, the petitioner made a false complaint against her co-workers, namely, Savuridass and Divyanathan before the law enforcing agency as well as before the third respondent, for which the third respondent conducted an enquiry. However, the petitioner did not cooperate with the enquiry and deviated the entire proceedings and brought the bank in a critical position before the law enforcing agency and thereby affecting the bank's reputation. However, a minimum punishment was imposed on the petitioner which does not call for any interference from this Court. Accordingly, the learned Counsel would pray for dismissal of the writ petition.

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

8.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



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)

9. 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."

10. 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



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



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



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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)

11. 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.

12. Admittedly, in the present case, while the petitioner was working as Sub Staff, there was a dispute between the petitioner and the superior officials for non-returning of her jewels. The petitioner being an employee of the bank, she would well aware the procedure of the bank and however, for the reasons best known to the petitioner, she approached the law enforcing agency as well as the department. The third respondent appointed an Enquiry Officer and after conducting enquiry, the Enquiry Officer held that two charges were proved against her and one charge was not proved. Therefore, for the proven charges against the petitioner, the punishment of postponement of increment for one year with cumulative effect was imposed by the original authority. This Court can exercise its power of writ jurisdiction under Article 226 of the Constitution of India to appreciate the evidences in an appeal, unless the evidences are perverse. The review by the court is of decision-making process and where the findings of the appellate authority are based on some evidence, the Court cannot re-appreciate the evidence and substitute its own finding.

13. Insofar as the punishment awarded to the petitioner is concerned for the delinquency, it has been the consistent view of
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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)

14. In the case on hand, a careful perusal of the entire records 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 while imposing the punishment of stoppage of increment for one year with cumulative effect and on appeal and revision, the appellate and revisional



authorities have appreciated the materials independently and concurred with the view of the disciplinary authority.

15.However, on an overall consideration of the materials, though this Court is not inclined to interfere with the punishment, as the charges against the petitioner is not serious one and no misappropriation is involved, this Court is inclined to modify the punishment of postponement of increment for one year with cumulative effect into one of " warning". Therefore, the petitioner is entitled for promotion and other benefits.

16.With the above modification, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RECORDS)

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/ /2021

Sub Assistant Registrar(CS)

SRM

To

1.The Secretary to the Government,
Cooperation, Food and Consumer
Protection (Sippi-1) Department,
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2.The Regional Joint Registrar
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+1 CC to SGP (SR-452[F] dated 07/01/2021)

W.P(MD)No.3231 of 2011

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