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W.A.(MD) No.1940 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.12.2021

CORAM:

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
ACTING CHIEF JUSTICE
and
THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.A. (MD) No.1940 of 2021
and
C.M.P. (MD) No.8668 of 2021

1. The Additional Chief Secretary to
the Government of Tamil Nadu,
Home Department (Transport-IIA),
Secretariat, Chennai - 600 009.
2. The Transport Commissioner,
Chepauk, Chennai - 5. ... Appellants/Respondents

-vs-

R.Malathi ... Respondent/Petitioner

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 08.11.2019, passed in W.P.(MD) No.20038 of 2019, on the file of this Court.

Prayer in WP(MD). 20038/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Calling for the records of the impugned order passed by the 2nd respondent in No.Pro.R.No.63776/VA2/2009 dated 13.6.2017 and the consequential impugned order passed by the 1st respondent in G.O.(D).No.697 Home (Transport IIA) Department dated 01.7.2019 quash the same and thus render justice.

For Appellants : Mr.M.Siddharthan, Addl.Govt.Pleader

For Respondent : Mr.RM.Arun Swaminathan



J U D G M E N T

[Judgment of the Court was made by
The Hon'ble ACTING CHIEF JUSTICE]

By this writ appeal, a challenge is made to the judgment dated 08.11.2019, whereby, the writ petition to challenge the order of punishment was allowed precisely on the ground of competence.

2. The facts of the case show that after initiation of disciplinary proceedings, a minor punishment imposed on the writ petitioner was stoppage of increment for six months without cumulative effect. The interference in the said punishment order has been made by the learned Single Judge precisely on the ground of competence of the authority to impose punishment. In paragraph 6 of the judgment, the issue has been dealt with in a specific term. The learned Single Judge noted that the Joint Transport Commissioner was the appointing authority for the petitioner, whereas, the order of punishment was passed by the Transport Commissioner i.e., higher authority, in other words, the appellate authority in the case of the petitioner.

3. In view of the aforesaid, the impugned punishment order was set aside on the ground of competence. It is after referring to the case of the judgment of the Hon'ble Supreme Court in **Surjit Ghosh v. Chairman and Managing Director, United Commercial Bank and others**, reported in **1995 (2) SCC 474**. The challenge to the said judgment has been made in reference to Rule 12 of the Tamil Nadu Civil Services (D & A) Rules, 1955 (for brevity 'the Rules'). Rule 12(2) provides for power of the higher authority of the appointing authority to impose penalties on members of State Services, such as restricted to punishment provided under items (i), (iii) to (viii) and (ix) of Rule 8 of the Rules. The Rule aforesaid is quoted hereunder for ready reference:

'(2) Power of the higher authority of the appointing authority to impose penalties on members of State Services.- Notwithstanding anything contained in these rules, the appointing authority or any authority administratively higher to the appointing authority may impose the penalties specified in items (i), (iii) to (viii) and (ix) of rule 8 on members of the State Services:

Provided that where the members of the State Services have been appointed by the Government or by any authority administratively higher than the appointing authority, the penalties specified in items (iii) in so far as it relates to withholding of promotion and



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items (iv), (vi), (vii) and (viii) in rule 8 shall be imposed only by the Government or by such higher authority:

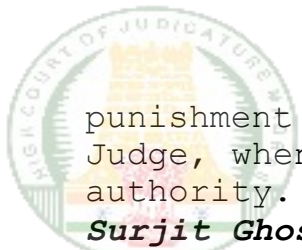
Provided further that where the State Government are the appointing authority for members holding the posts included in the State Services, the Heads of Departments concerned may impose any of the penalties specified in item (i) and item (iii) in so far as it relates to withholding of increments and items (v) and (ix) in rule 8 on those members other than such members who are immediately below such Heads of Departments:

Provided also that all authorities directly higher to the members holding the posts included in the State Services may frame charges against such members of the State Services under rule 17(b) or issue show cause notice under rule 17(a) even if they are not the competent authority to impose the penalty and they may conduct the inquiry themselves or request the competent authority to appoint an officer to conduct the inquiry. They shall remit the papers to the competent authority for passing final orders, after the case is processed upto the level of completion of inquiry or after receipt of explanation to show cause notice, as the case may be:

Provided also that where the appointing authority or the authority administratively higher to the appointing authority have passed orders of suspension under rule 17(e) on the members of the State Services, they may exercise the power to impose the penalty specified in item (ix) in rule 8 on such members. (Vide G.O.Ms.No.19, P&AR(N) Department, dated 11.2.2008) (w.e.f.11.2.2008)'

4. The Rule referred to above gives power to higher authority to the appointing authority to impose penalty and accordingly, in the instant case, the initiation of inquiry and imposition of penalty is by the higher authority than the appointing authority. It is the next higher authority to the appointing authority, as the Joint Transport Commissioner is below the Transport Commissioner in hierarchy of cadre. In view of the above, the challenge to the judgment has been made.

5. The learned counsel for the respondents contested the appeal, but could not show / establish as to how the order of



punishment could have been interfered with by the learned Single Judge, when the order of punishment has been passed by the competent authority. The case was not covered by the judgment in the case of **Surjit Ghosh** (supra). It is not only having distinguished facts, but the Rules applicable therein are different. The general Rule remains that an order of punishment can be passed by the appointing authority, and a higher authority would hear the appeal. In such cases of order of punishment passed by the Appellate Authority, interference in the order of punishment would be made on the ground of competency but in the instant case, the Rule provides the punishment in another way. Rule 12(2) provides competence of appointing authority and even the higher authority to impose punishment of the nature given items (i), (iii) to (viii) and (ix) of Rule 8 of the Rules. The aforesaid has not been referred to before the learned Single Judge for addressing the issue about the competence of the authority to pass the order of punishment. In view of the above, the judgment of the Hon'ble Supreme Court in **Surjit Ghosh** (supra), where the set of rules giving competence to impose punishment was different than as referred to by us in this case. It is not in all cases, the competence of the officer to impose the punishment would lack, only for the reason that he is the Appellate Authority. In the given case, the appointing authority has been vested with the power to impose the order of punishment, and the order passed thereupon cannot be nullified unless the Rules are struck down. The validity of the Rule 12(2) of the Rules is not challenged in this case.

6. In view of the above, we find reasons to interfere with the order of the learned Single Judge and the order dated 08.11.2019 is set aside. Accordingly, the writ appeal is allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-I)

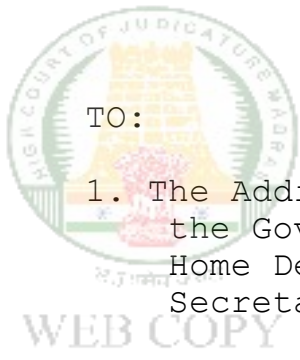
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Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.



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TO:

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the Government of Tamil Nadu,
Home Department (Transport-IIA),
Secretariat, Chennai - 600 009.

2. The Transport Commissioner,
Chepauk, Chennai - 5.

+1. CC to M/S.SPL.GP SR.No.39719

W.A. (MD) No.1940 of 2021 and
C.M.P. (MD) No.8668 of 2021
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RD(3.01.2022) 5P 4C