

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

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| <b>Reserved on</b>   | 19.04.2023 |
| <b>Pronounced on</b> | 21.08.2023 |

CORAM

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR**  
**AND**  
**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

**Writ Appeal No.1529 of 2012**

**and**

**M.P.No.2 of 2014**

1.The Director of School Education,  
D.P.I.Compound,  
College Road,  
Chennai -600 006.

2.The Joint Director of school,  
Education (Personnel)  
D.P.I.Compound, College Road,  
College Road, Chennai-600 006.

3.The Chief Educational Officer,  
Enquiry Officer,  
Villupuram- 605 602.

... Appellants

Vs

K.Ragupathy

...Respondent

Prayer: Writ Appeal has been filed under Clause 15 of Letters Patent against the order dated 04.01.2012 made in W.P. No.13864 of 2010 and allow the Writ Appeal.

For appellants : Mr.L.S.M.Hasan Fizal  
Additional Government Pleader.

For Respondent : Mr.s.Saravana Kumar

**J U D G M E N T**

(Judgment of the Court was delivered by K.GOVINDARAJAN

THILAKAVADI J.)

This writ appeal arises from the order dated 04.01.2012 in W.P.No.13864 of 2010, where under and whereby the writ petition filed by the respondent herein was allowed.

2.The respondent/Writ petitioner filed the above writ petition for quashing the proceedings of the appellants 1 and 2 dated 24.06.2009

bearing ref. No. Na.Ka.147374/C3/E3/97 imposing the punishment of dismissal from service and the consequential order of the 1<sup>st</sup> appellant Appellate Authority dated 22.04.2010 bearing reference No.Moo.Mu. No. 70357/C4/E1/2009 rejecting the Appeal preferred by the petitioner and quash the same as being illegal, arbitrary, vindictive, without jurisdiction and in violation of the principles of natural justice and consequently, direct the Respondents 1 and 2 to pay all benefits including monetary for the period the petitioner was placed under suspension i.e., 11.01.1998 to 21.12.2001, grant promotion to the post of Headmaster w.e.f 19.02.2003 when the petitioner's juniors were promoted, grant monetary benefits as Headmaster from that date including the salary arrears, calculate the terminal benefits payable to the petitioner based on the salary he would have drawn had he been promoted as Headmaster on 19.02.2003 within a time frame.

3.The facts in brief relevant for the purpose of adjudication are that the respondent/writ petitioner was appointed as School Assistant through the Tamil Nadu Public Service Commission in the year 1975-76. Thereafter, the

respondent/writ petitioner was promoted as Additional Assistant Educational officer, Ulundurpet. The respondent/writ petitioner has been served with a suspension order dated 11.01.1998 placing him under suspension and subsequently, he has been served with a charge memo dated 18.09.1998 alleging that he had committed certain irregularities during the period between 14.01.1994 and 30.06.1995. As he was placed under prolonged suspension, respondent/writ petitioner preferred an application in O.A.No.1666/1999 before the Tamil Nadu Administrative Tribunal, Chennai and the Tribunal, by its order dated 23.08.2011, directed the 1<sup>st</sup> appellant to complete the disciplinary proceedings within four months. The 2<sup>nd</sup> appellant through its proceedings dated 21.12.2001 revoked the suspension order passed against the respondent/writ petitioner and posted him as Special Graduate Teacher (Maths) Government High School in Pudupattu. Thereafter, the 1<sup>st</sup> appellant, through its proceedings dated 24.05.2002, directed the respondent/ writ petitioner to submit his explanation to the charge memo dated 18.09.1998.

4. The respondent/writ petitioner submitted a detailed explanation dated 03.07.2002, denying the charges levelled against him and he has specifically stated that as a superior officer, he has signed the respective records only after the concerned Clerk and the Superintendent confirmed their verification and as such, he cannot be held liable or responsible for the allegations levelled against him. The Clerk and the Superintendent concerned, who had actually prepared the basic records pursuant to which payments were made were not questioned and punished. Therefore, the entire action on the appellants are arbitrary and discriminatory. The Department has also passed necessary recovery orders and admittedly amounts were recovered. The 2<sup>nd</sup> appellant, without appreciating the explanation offered by the respondent/writ petitioner, appointed the 3<sup>rd</sup> appellant as the Enquiry officer as per the proceedings dated 24.09.2002.

5. The 3<sup>rd</sup> appellant sent a notice dated 21.11.2002 stating that Enquiry would be held on 29.11.2002. On the said date, the 2<sup>nd</sup> appellant had merely

asked the respondent/writ petitioner about the comments on the charges levelled against him. The Department has not examined any witness or marked any document in support of the charges. The Enquiry officer had not conducted the enquiry in the manner known to law.

6. The respondent's promotion was also withheld and his juniors have been promoted as Headmasters, as per the proceedings of the 2<sup>nd</sup> appellant dated 19.02.2003, overlooking the respondent/writ petitioner. The 3<sup>rd</sup> appellant submitted his report dated 24.05.2003 stating that the final report can be given only on seeing the outcome of the criminal proceedings. The respondent/writ petitioner sent a representation dated 11.06.2003 to the appellants seeking for the relief of dropping the disciplinary proceedings initiated against him and to treat the period of suspension as on duty. The respondent/writ petitioner again sent a detailed representation dated 23.06.2003 objecting the second appellant's action in not considering his name and promoting him to the post of Headmaster. Since the second

appellant was silent on his representations, the respondent/writ petitioner preferred a writ petition in W.P.No.21697/2005 and this Court passed an order dated 28.10.2008, directing the 2<sup>nd</sup> appellant to finalize the disciplinary proceedings initiated against him within a period of six months.

7. To his shock and surprise, the respondent/writ petitioner was served with a show cause notice dated 03.12.2008 enclosing the Enquiry Report dated 02.03.2005 alleging that the charges levelled against the respondent/writ petitioner have been proved and sought for explanation. The respondent/writ petitioner sent a detailed representation dated 08.12.2008 and requested to drop all further proceedings. The respondent/writ petitioner also filed a writ petition in W.P.No.1342/2009 to quash the charge sheet dated 18.09.1998 and the consequential show cause notice issued by the 2<sup>nd</sup> appellant dated 03.12.2008 and this Court, by the order dated 27.01.2009, directed the appellants to pass final orders within 15 days from the date of receipt of a copy of the order with liberty to challenge the same by the respondent/writ petitioner.

8. The respondent/writ petitioner attained the age of superannuation on 31.01.2009 and the appellants refused to permit the respondent/writ petitioner to retire pending disciplinary proceedings and thereafter passed an order dated 24.06.2009 dismissing the respondent/writ petitioner from service. Challenging the said order of the 2<sup>nd</sup> appellant, the respondent/writ petitioner preferred an appeal to the 1<sup>st</sup> appellant on 20.07.2009 and the same was also rejected by the order dated 22.04.2010. Being aggrieved against the said orders, the respondent /writ petitioner has preferred the present writ petition with the above said prayer.

9. On the other hand, the appellants would submit that the order of dismissal from service of the petitioner is the culmination of examination of the report of the Enquiry Officer and independent analysis of the record by the competent authority into the charges of misappropriation of the funds of the State. Hence, the respondent/writ petitioner is not entitled for the relief claimed in the writ petition, and it is liable to be dismissed.

10. The learned Single Judge on considering the materials on record allowed the said writ petition stating that the respondent/writ petitioner is entitled to be promoted if he is otherwise qualified and eligible for promotion to higher cadre and accordingly, notional promotion should be given to the petitioner apart from other retiral and attended monetary benefits and the above exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of this order.

11. The appellants/State challenged the order of the learned Single Judge in this appeal. The learned Special Government Pleader submitted that there is no illegality or infirmity in the impugned orders. It is contended that the impugned orders were passed on the basis of the report of the Enquiry Officer and on the basis of the materials available on record. It is further contended that the explanation offered by the respondent/writ petitioner is unacceptable for the simple reason that it is his responsibility to verify and not merely to sign the files prepared by the subordinate staffs. It is also contended that prior notice was sent to the respondent/writ petitioner well in

advance before conducting the enquiry and the enquiry was conducted as per the rules. The learned Special Government Pleader contended that the irregularities committed by the respondent/writ petitioner were found only during the course of audit inspection and based on the audit report, a charge memo was issued against him and pursuant to the charge memo, disciplinary proceedings were initiated against the respondent/writ petitioner. It is submitted that this is a matter relating to loss of money to the Government to the tune of Rs.15 lakhs. The learned Special Government Pleader submitted that criminal proceeding was initiated by CBCID police and the same is pending as on date and as such, the question of promoting the respondent/writ petitioner or dropping any further action, could be taken only after the outcome of the criminal proceedings. It is submitted that the second show cause notice was also served before awarding the punishment by affording an opportunity to the respondent/writ petitioner and as such, the respondent/writ petitioner may not have any grievance. Lastly, it is submitted that the respondent/writ petitioner has willingly participated in the enquiry

and he has not raised any objection or sought for production of any witness or document.

12. The learned counsel appearing for the appellants would further submit that the preponderance of probability is sufficient to constitute an offence in the departmental disciplinary proceeding and only in the criminal proceedings, for conviction, the guilt of the accused should be proved beyond all reasonable doubts. The learned Single Judge failed to take note of the fact that the order of dismissal from service of the petitioner is the culmination of examination of the report of the Enquiry Officer and independent analysis of the record by the competent authority into the charges of misappropriation of the funds of the State. He would further submit that the learned Single Judge failed to appreciate the above facts and that by setting aside the order of dismissal of the writ petitioner and sanction of retiral and monetary benefits would weaken the case against the writ petitioner and other co-accused in the criminal proceeding and the disciplinary proceeding initiated against the

other delinquent officials. The order of the learned Single Judge for notional promotion and sanction of retiral and monetary benefits to the writ petitioner is against all canons of justice when several lakhs of rupees found to be misappropriated by the writ petitioner. It is further submitted that as per Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the name of a person, against whom criminal case is pending and final orders not passed cannot be included in the panel for the next avenue of promotion. Hence, the order of the learned Single Judge is liable to be set aside.

13. On the other hand, the learned counsel appearing for the respondent/writ petitioner vehemently contended that the entire proceeding is vitiated as the enquiry itself was not conducted in the manner known to law. He would submit that not even a single witness was examined by the department and no document was marked on the side of the department to substantiate the allegations levelled against the writ petitioner.

14. His further contention is that the respondent/writ petitioner has submitted detailed explanation denying the allegations levelled against him and stated that he is no way responsible for the lapses of irregularities and he has signed the files after verification by the subordinate staffs, namely, the Clerk and the Superintendent. It is further contended that this is a case of no evidence and the enquiry was not conducted in the manner as per the principles and guidelines stipulated by the Hon'ble Apex Court in number of decisions and as such, the entire proceedings is vitiated and the impugned orders are liable to be quashed. The learned counsel for the petitioner, in support of his contentions, would place reliance on the following decisions:

(1) *State of Uttarakhand and Others vs. Kharak*

*Singh* reported in (2008) 8 SCC 236

(2) *Roop Singh Negi v. Punjab National Bank and*

*others* reported in (2009) 2 SCC 570

15. We have given our careful and anxious consideration to the rival submissions made by the learned counsels for the respective parties and

perused the entire materials available on record and the impugned orders passed by the appellants 1 & 2.

**Points for consideration :-**

1. Whether the Department has discharged its burden of establishing the charges levelled against the petitioner by conducting proper, fair and *bona fide* enquiry by examining witnesses and marking documents in the departmental proceedings?

2. Whether this Court can act as an appellate authority and re-appreciate the evidence led before the Enquiry Officer?

3. Whether this Court can interfere with the conclusions in the enquiry, in the case the same has been conducted in accordance with law; go into the adequacy of the evidence; go into the proportionality of punishment unless it shocks its conscience?

4. Whether the pendency of the criminal proceedings against the writ petitioner has any binding on the orders passed by the Disciplinary Authority?

5. Whether the punishment imposed by the disciplinary authority shocks the conscience of the Court and calls for interference?

**Point Nos.1 to 4:-**

16. The question involved in this matter is whether the department has discharged their burden of establishing the charges levelled against the writ petitioner by conducting proper, fair and *bona fide* enquiry and by examining witnesses and marking documents in the departmental proceeding in the manner known to law.

17. According to the learned counsel appearing for the appellant is that the enquiry against the respondent was conducted according to Rules and the punishment was awarded on the gravity of charges proved. On the other

hand, the learned counsel for the respondent/writ petitioner pointing out the infirmities in conducting enquiry submitted that the enquiry was not properly conducted and was not free from bias.

18. Before analyzing the correctness of the above submissions, it is useful to refer the various principles laid down by the Hon'ble Apex Court in the case of *State of Uttaranchal and others vs. V.Kharak Singh* reported in *(2008) 8 SCC 236* as to how enquiry has to be conducted and which procedures are to be followed. From the above decisions, the following principles would emerge:

*“(i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.*

*(ii) If an officer is a witness to any of the incidents which is the subject-matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the enquiry officer. If the said position becomes known after the appointment of the enquiry officer, during the enquiry, steps should be taken to see that the*

*task of holding an enquiry is assigned to some other officer.*

*(iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged and give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.*

*(iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any.”*

19. In another judgment of Hon'ble Supreme Court in ***Union of India Vs H.S.Goel (MANU/SC/0271/1963: (1964) 4 SCR 718)***, it was held as follows:-

*“In exercising its jurisdiction under [Art. 226](#) on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular*

*conclusion. That is a matter which is within the competence of the authority which dealt with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not. Applying this test, we are inclined to hold that the respondent's grievance is well-founded because, in our opinion, the finding which is implicit in the appellant's order dismissing the respondent that charge number 3 is proved against him is based on no evidence.”*

20. In the judgment of Allahabad High Court in ***Moni Shankar Vs. Union of India and Anr. (MANU/SC/7298/2008: (2008) 3 SCC 484)***, it was held:

*“17. The departmental proceeding is a quasi judicial one. Although the provisions of the Evidence Act*

*are not applicable in the said proceeding, principles of natural justice are required to be complied with. The Court exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality”*

21. Therefore, the principle laid down in the above judgments is that, the enquiries must be conducted bonafide and care must be taken to see that

the enquiries do not become empty formalities. Apart from the above principles, by virtue of Article 311(2) of the Constitution of India, the departmental inquiry had to be conducted in accordance with rules of natural justice.

22. In the present case, it is pointed out by the learned counsel for the respondent/writ petitioner that not even a single witness was examined by the Department and no document was marked on the side of the department to substantiate the allegations levelled against the petitioner herein. However, the allegation against the respondent/writ petitioner according to the appellant is that it is the responsibility of the respondent/writ petitioner to verify and sign the files prepared by the subordinate staffs. The learned Special Government Pleader submitted that the enquiry was conducted as per the Rules and the irregularities committed by the writ petitioner were found only during the course of audit inspection and based on the audit report, a charge memo was issued against the respondent/writ petitioner and pursuant to the charge memo, disciplinary proceedings were initiated against the

respondent/writ petitioner. Admittedly, the charge memo dated 18.09.1998 was served on the respondent/ writ petitioner in respect of the alleged transaction said to have taken place during the year 1994-95. Therefore, there is a delay of 3 to 4 years for issuing the charge memo even when the suspension order was passed by the 2<sup>nd</sup> respondent on 11.01.98. The explanation for this on the side of the appellant is that, such irregularities were found only during audit inspection. Admittedly, the department has not chosen to examine any witness much less the author of the audit report.

23. However, the Hon'ble Supreme Court, in ***B.C.Chaturvedi Vs. 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 by the disciplinary authority, held as under:-

*“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 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 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 or based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power an 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 proceedings. When the authorities 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 re-appreciate 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 in consistent 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.*

*The disciplinary authority is the sole Judge of facts. Where appeal is presented the appellate authority has coextensive power to re-appreciate 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.”*

24. In the present case, the Charge against the writ petitioner is that, while officiating as School Assistant, Government Higher Secondary School, Thyagadurgam, committed financial irregularities and misappropriated funds to the tune of Rs.15,02,571/-. According to the appellants, the writ petitioner was dismissed from service by the disciplinary authority based on the enquiry

report. The Enquiry Officer report was based on the audit report. Therefore, it is not the case where there is no evidence at all before the Enquiry Officer. The order passed by the Enquiry Officer was based on the audit report. It is not in all the cases, the author of the document to be examined. 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. Unless 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 (**Ref: 1995(6) SCC 749**).

25. In fact, the writ petitioner fail to raise any objection or sought for production of witness or document at the time of enquiry. Therefore, the Hon'ble Single Judge ought not to have held that the impugned orders are with illegalities or infirmities and liable to be quashed. When the impugned

orders itself is a self explanatory document which elaborate the rejection of the explanation of the writ petitioner based on the reasoning contained in the enquiry report. The allegation against the writ petitioner is that he has caused huge mointory loss to the Government to the tune of Rs.15,02,571/- by not carrying out his duties deligently, which has resulted in the punishment of dismissal of service on the writ petitioner. Even though the criminal proceedings initiated against the writ petitioner has not reached its finality, the settled principle is that, in disciplinary enquiry the strict proof of legal evidence and findings on that evidence are not relevant. The power of judicial review, of the Constitutional Courts, is an evaluation of decision making process and not the merit of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. It is true that strict Rules of evidence are not applicable to departmental enquiry proceedings. However, the only requirment of law is that the allegation against the delinquent must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a

finding upholding the gravity of the charge against the delinquent employess. It is true that mere conjecture or surmises cannot sustain the finding of guilt even in the departmental enquiry proceedings.

26. This Court while exercising the jurisdiction judicial review it would not interfere with the findings of facts arrived at the departmental enquiry proceeding except in a case of mala fides or perversity I.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.

27. In the case on hand, the charge sheet was served upon the petitioner/ delinquent for committing financial irregularities and misappropriation of funds to the tune of Rs.15,02,571/-. Thereafter enquiry was conducted and report was submitted to the disciplinary authority based

on a audit report. Accordingly, the disciplinary authority imposed punishment to the petitioner. The contention of the petitioner is that no witness were examined to substantiate the charges levelled against him and even the author of the audit report was not examined. This contention of the petitioner cannot accepted for the reason that based on the audit report the enquiry conducted and findings were rendered by the Enquiry Officer. Therefore, it is not the case that there is no evidence at all. Non-examination of the author of the audit report do not vitiate the disciplinary proceedings. Apart from that, the petitioner willingly participated in the enquiry and he had not raised any objections before the Enquiry Officer in this regard. Even before this Court the petitioner has not stated that the audit report is bereft of truth. Only affording opportunity of hearing, the Enquiry Officer marshalled the record of enquiry and based on the audit report in reference to each charge recorded a finding and held that the charges against the petitioner stood proved. It was later revisited by the disciplinary authority, accept the finding of fact recorded by the Enquiry Officer in his report, with its prima

facie opinion, called upon the petitioner to submit his explanation and after affording an opportunity of hearing and dealing with the objections raised by the petitioner in his written reply expressed its brief reasons while upholding the finding recorded by the Enquiry officer in his report and confirmed its opinion, thereby inflicting penalty of dismissal from service by order dated 22.04.2010 in No.Moo.Mu.No.70357/C4/E1/2009.

28. Nowhere the Delinquent Officer has established that the non-examination of the author of the audit report prejudiced the case of the delinquent officer. It is well settled law that the doctrine of principles of natural justice are not embodied rules. It cannot be put in a straight jacket formula. It depends upon the facts and circumstances of each case. To sustain the allegation of violation of principles of natural justice, one must establish that prejudice has been caused to him for non observance of natural justice. (Ref: Syndicate Bank and others V. Venkatesh Gururao Kurati, MANU/SC/0670/2006 : (2006) 3 SCC 150). More over, the pendency of the

criminal proceedings do not take away the jurisdiction of the disciplinary authority if there is any evidence on record to the disciplinary action, when there is misconduct attributable to the delinquent officers.

29. Therefore, we are fully convinced that, considering the nature of the charges, the appellants decided to impose punishment on the delinquent. The writ petitioner is duty bound to verify the files before signing it. The lethargic attitude of the writ petitioner resulted in huge monetary loss to the Government. The Disciplinary Authority and the Enquiry Officer have found as a fact that the petitioner has committed misconduct based on the audit report. This is a finding of fact based upon acceptable evidence and supported by cogent and convincing reasons and this Court cannot re-appreciate the evidence and come to its own conclusion. Accordingly, we do not find any manifest error apparent on the face of the records warranting interference in the findings of the authorities.

**Point No.5**

30. Now coming to the question of penalty imposed on the writ petitioner, dismissing from service. It has been consistent view of the Court 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 to the conscience, the Courts should interfere in the same in exercise of powers under Article 226 of the Constitution. In ***Prem Nath Bali Vs High Court of Delhi (2015(16) SCC 415***, the Hon'ble Supreme Court held as under:-

*“It is 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.”*

31. Once such discretion is exercised by the appointing authority in inflicting the punishment then the Courts are slow to interfere in the

quantum of punishment and only in rare and appropriate case substitute 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 contravention of the Rules.

32. 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.

33. From the ratio laid down by the Apex Court above, it is crystal clear that the power to interfere with the punishment should be exercised only if 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 and thereby, shocking the conscience of the Court or if it is in contravention of the Rules.

34. Now examining the merit of charges it has been transpired from the arguments put forth on the side of the appellants that it is the responsibility of the writ petitioner/ respondent to verify the files prepared by the subordinate staffs and then sign them. Since, the writ petitioner merely signed the files prepared by his subordinates without verifying them resulted in loss to the Government to the tune of Rs.15,00,000/-. According to the writ petitioner, he is not a competent person to clear the bills or utilized the money and he simply signed the files prepared by his subordinates and the subordinates are only responsible for the alleged loss. In fact, the audit report is not before us to find out the overt act of the delinquent officer in respect of the alleged misappropriation. There is no independent evidences with regard to the entrustment of amounts with the writ petitioner. Therefore, merely on the basis of audit report, which is an inconclusive proof, it cannot be construed

that the writ petitioner/respondent has misappropriated the amount. A decision must be arrived at on some evidence, which is legally admissible. Though the provisions of the Evidence Act may not be applicable in a departmental proceedings, but the principles of natural justice must be followed. As the report of the Enquiry Officer was based merely on the audit report and not supported by any other evidence, the allegation of misappropriation cannot be sustained. More over the disciplinary proceedings were initiated against three persons for the same set of allegations and transactions, but the order of dismissal was passed only against the writ petitioner/respondent. There cannot be any selective order of dismissal. Even in the order passed by the Disciplinary Authority, it is mentioned as follows:-

“3.திரு.கு.ரகுபதி மீது தொடுக்கப்பட்ட குற்றச்சாட்டுகள் அனைத்தும் ஆவணங்களின் அடிப்படையில் தொடுத்ததாகும். ஒரு அலுவலகத்தின் தலைமை அலுவலராக இருக்கும்பொழுது நிதி சம்பந்தப்பட்ட ஆவணங்களில் ஒப்புதல் அளிக்கும்போது விதிகள் அதற்கு இடம் அளிக்கிறதா என்பதை அன்னார் சரிவர பார்த்திருக்க வேண்டும்.

4.மேலும் அன்னார் முறையற்ற ஒப்பளிப்பு அளித்ததால்  
விதிகளுக்கு புறம்பாக அரசு கருவூலத்திலிருந்து பணம்  
எடுக்கப்பட்டுள்ளது. சில ஆசிரியர்களிடமிருந்து பணம் திரும்ப  
பெற்றாலும் இவர் செய்த தவறால்தான் ஆசிரியர்கள்  
விதிகளுக்கு புறம்பாக பணம்பெறும் நிலை ஏற்பட்டுள்ளது.”

35. Therefore, in our view, the allegations levelled against the writ petitioner cannot be made a ground for dismissal of services of the petitioner. The fact that the writ petitioner has caused a huge loss to the Government by not carrying out his duties diligently cannot be denied. However, the appellants, on a holistic consideration, could have retired the writ petitioner under compulsory retirement, which entitles the writ petitioner, the service benefits. More over, the entire amount has been recovered and therefore, there is no loss to the Government. In such a backdrop, this Court is of the considered view that, if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court, it would

appropriately mould the relief in order to shorten the litigation, as per the principles laid down in ***B.C.Chaturvedi Vs Union of India***, in which it was held that,

*“The Court can appropriately mould the relief, either directing the disciplinary/appellate authority, to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof”*

36. The writ petitioner has already attained the superannuation. Therefore, it would not be appropriate to direct the disciplinary/appellate authority to reconsider the penalty imposed. This Court has considered the settled legal principles on the issue of proportionality of punishment which were applied in very many cases in which it was held that the Court has the power to interfere with the quantum of penalty under exceptional circumstances where the Court is of the view that administration of justice is better served. It is not in dispute, except the present charges, the petitioner

has served without any blemish. Moreover, the learned counsel for the writ petitioner has pointed out certain infirmities in the findings of the enquiry, particularly, in view of non-examination of witnesses. Though the Hon'ble Supreme Court has held that in case of quantum of penalty, there should be compelling and strong circumstances, which must be recorded and such interference cannot be on the basis of misplaced sympathy and generosity. Considering the concept of rendering justice, this Court has no hesitation to hold as far as the present case on hand is concerned, that interference is called for, which is not based on misplaced sympathy or generosity, but on the basis of rendering equitable justice, which is a hallmark of judicial review by this Court, which is exercising its constitutional jurisdiction under Article 226 of the Constitution of India.

37. On the basis of overall facts and circumstances as discussed and narrated above, this Court is of the considered view that there must be fair play in all administration decision, particularly, in the matter of imposing

punishment, when it takes away the very livelihood of the employee, which is not only going to affect him, but also affect his family members. Therefore, great care is to be taken by the authorities and the tribunal which is vested with the statutory duties to administer justice by applying the settled principles. This Court has no other option, but to conclude that the order of dismissal from service has to be necessarily interfered with.

38. In the result, the order of the second respondent dated 24.06.2009 bearing reference No.Na.Ka.147374/C3/E3/97 imposing punishment of dismissal from services is modified as compulsory retirement. The substituted punishment will take effect from the original date of punishment viz., 24.06.2009. On such modified penalty being imposed, the writ petitioner/respondent is entitled to all other consequential benefits arising thereof, including the pensionary benefits and arrears, if any. It is further made clear that the aforesaid exercise shall be completed within a period of two months from the date of receipt of a copy of this order. Accordingly, this

Writ Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

**(D.K.K.,J.) (K.G.T.,J.)**

**21.08.2023**

Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order

Vsn/cp

To

1. The Director of School Education,  
D.P.I.Compound,  
College Road,  
Chennai -600 006.
2. The Joint Director of school,  
Education (Personnel)  
D.P.I.Compound, College Road,  
College Road, Chennai-600 006.
3. The Chief Educational Officer,  
Enquiry Officer,  
Villupuram- 605 602.

Writ Appeal No.1529 of 2012

**D.KRISHNAKUMAR, J.**  
**and**  
**K.GOVINDARAJAN THILAKAVADI, J.**

vsn/cp

**PRE- DELIVERY JUDGEMENT MADE IN**  
**Writ Appeal.No.1529 of 2012**  
**and M.P.No.2 of 2014**

**21.08.2023**