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Writ Appeal No.2018 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.09.2023

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal Nos.2018 &2023 of 2019
and C.M.P.Nos.13628 & 13605 of 2019**

1.Poompuhar Shipping Corp., Ltd.,
Rep., by its Chairman & Managing Director,
692, Anna Salai, MHU Complex,
4th Floor, Nandanam,
Chennai – 600 035.

2.The Appellate Authority Cum
Board of Director,
Poompuhar Shipping Corp., Ltd.,
692, Anna Salai, MHU Complex,
4th Floor, Nandanam,
Chennai – 600 035.

... Appellants in both W.As.,

Vs

1.C.S.Dillikumar

2.The State of Tamil Nadu,
Rep., by Secretary to Govt.,
Highways Department,
Fort St., George, Chennai - 9

... Respondents in both W.As.,



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COMMON PRAYER Writ Appeal filed under Clause 15 of Letters Patent against the order dated 20.11.2018 made in W.P.No.15304 of 2008 and W.P.No.37592 of 2007.

For Appellants : Mr.T.S.Baskaran

For Respondents in : Mr.R.Parthiban for R1
Mr.R.Kumaravel AGP for R2

COMMON JUDGMENT

(Order of the Court was made by K.KUMARESH BABU.,J.)

These Intra Court appeals have been preferred by the employer being aggrieved against the orders passed by the learned Single Judge in allowing the Writ Petitions filed by the first respondent herein.

2. Since the issue involved in the Writ Petitions relates to the disciplinary proceedings and payment of salary with regard to the first respondent they are taken up together with the consent of the counsel appearing on either side.



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3. The brief facts are that the first respondent was an employee of the appellants. During his tenure, originally a show cause notice was issued in the year 1998, thereupon charges were also framed against him. Pending enquiry into the charges, the first respondent was placed under suspension. Another charge memo was also issued in the year 1999. An enquiry into the aforesaid two charges were conducted and the reports were submitted in respect of two charge memos.

4. On 18.03.2004, the order of suspension was revoked, but no final decision on the enquiry that had been conducted was made. Thereafter, in the year 2006 another charge memo containing an unitary charge was framed against the first respondent. An enquiry was also conducted pursuant to the said charge memo and the enquiry report had also been submitted. As regards to the charge memos of the year 1998 and 1999, the enquiry officer had found that none of the charges were proved against the first respondent. As regards to the charge memo that was issued in the year



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2006, the enquiry officer had submitted a report holding that the charges have been proved. The disciplinary authority by its order dated 14.08.2007, had accepted the findings of the enquiry officer as regards to the charge memos issued in the year 1998 & 1999 and had dropped the proceedings. As regards to the charge memo of the year 2006, the disciplinary authority had accepted the findings of the enquiry officer and not being satisfied with the explanation given by the first respondent had imposed a punishment of stoppage of annual increment with cumulative effect for a period of six months. He was also not paid the pay for the period of suspension.

5. Being aggrieved against the order of punishment as well as the refusal to pay salary for the period of suspension, the first respondent had preferred W.P.No.37592 of 2007 and W.P.No.15304 of 2008. The learned Single Judge had allowed both the Writ Petitions by separate orders. Being aggrieved against the order passed in these Writ Petitions, the appellants are before us.

6. Heard Mr.T.S.Baskaran, learned counsel appearing for the



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appellants and Mr.R.Parthiban learned counsel appearing for the respondents.

7.Mr.T.S.Baskaran, the learned counsel appearing for the appellants would contend that the charge as against the first respondent which was issued in the year 2006 was that he had unauthorizedly made a payment of Rs.19,00,000/- (Rupees Nineteen Lakhs Only) to one mv.APJ Ahil on 04.05.1994. Such unauthorized payment made by the first respondent had been recovered and therefore, the unauthorized payment made by the first respondent is held to be proved. He would contend that during the enquiry the action on the part of the first respondent in making such unauthorized payment had been categorically proved much beyond doubt by documentary and oral evidence that were presented before the enquiry officer and against which, the first respondent had a remedy of filing an appeal before the Appellate Authority. He would contend that without availing the alternative remedy available to him, the first respondent had approached this Court by filing the Writ Petitions. He would sub-



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mit that the learned Single Judge had wholly erred in going into the facts, which is beyond the scope of judicial review available under Article 226 of the Constitution of India and had held that the appellants have failed to prove that the first respondent was responsible for the unauthorized payment. He would submit that the Writ Court ought to have relegated the first respondent to approach the Appellate Authority. He would further submit that the learned Single Judge had not found any error apparent on the face of the record to interfere with the well considered findings of the enquiry officer, which had been accepted by the disciplinary authority and the order passed by the disciplinary authority has also not found to be perverse.

8.As regards to the refusal to grant payment of salary for the suspended period he would submit that the first respondent had been placed under suspension pending enquiry into two charges and even though his suspension was revoked in the year 2004, a further charge memo was also issued to him which related to an incident that had taken place in the year 1999 for which he had been punished. He would contend that the first



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respondent had been paid subsistence allowance as per the Rules for the period of suspension and that the Rule also provides for refusal to pay if any punishment is awarded and the authority has been vested with the power to hold such period of suspension, to treat payment of subsistence allowance as pay and allowances and other entitlements as payments on suspended period as the appellants had not been honourably acquitted and that he had been inflicted with the award of punishment. On that context also he would submit that the learned Single Judge had wholly erred in holding that the first respondent was entitled for pay during the period of suspension. In that context he would further submit that the first respondent had not exhausted his alternative remedy of review before the Government and therefore, he would submit that the orders impugned in these Intra Court Appeals would have to be set aside and the orders passed by the authorities concerned would have to be restored.

9.Countering his arguments, Mr.R.Parthiban, learned counsel appearing for the first respondent would submit that as regards the disciplinary proceedings that had been initiated in the year 2006, it was



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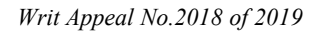
primarily on the allegation that the first respondent herein made authorised payment of Rs.19,00,000/- to a third party. He would submit that it is not the case of the appellants that the first respondent had made such unauthorised payment for certain personal benefits. He would submit that it is the practice and procedure of the employer, that each and every payment would have to be authorised by the Manager concerned. He would submit that at the relevant point of time the first respondent had been working as an Assistant Manager and had no authority to authorise such payment. He would further submit that whenever a payment is made by the appellant Corporation, such payment is made on an authorisation slip that had been issued by the Manager concerned. If the allegation that the first respondent had issued the authorisation, then the first respondent would have issued such authorisation slip as being practiced in the appellant corporation. No such authorisation slip was marked during the enquiry proceedings by the appellant Corporation to drive home their allegation and that the enquiry officer had relied upon the oral statement made by some of the witnesses without any supporting documents and on that ground alone he would submit that the entire allegation would have to fail and the first respondent



be exonerated from the charges that had been framed in the year 2006.

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10.As regards to his entitlement to receive the entire pay for the suspended period, he would submit that originally a charge memo was issued in the year 1998 and thereafter, further charge memo was issued in the year 1999 and the suspension order issued to the first respondent on 10.03.1999 was made on contemplation of an enquiry into the grave charges. He would submit that the second charge memo issued in the year 1999 was on 10.05.1999, enquiry was conducted and an enquiry report was submitted by the enquiry officer on 27.11.2003. It is an admitted fact that the enquiry officer had exonerated the first respondent of all the charges. However only after a period of four months, the order of suspension was revoked. The third charge memo was issued only in the year 2006. Therefore, he would contend that a punishment that was imposed for the third charge memo could not be put against the first respondent for denying the pay for the period of suspension on an earlier charge memo in which he had been exonerated by the enquiry officer and accepted by the disciplinary authority. He would further submit that even punishment that had been



12. The charge that had been framed against the first respondent is making of an unauthorised payment to a third party. The said charge firstly had been made after a period of more than a decade. The charge was that an unauthorised payment had been made and the first respondent had authorised such payment. To drive home the said allegation, the department had not produced any such authorisation that had been issued by the first respondent authorising such payment to a third party who was not eligible to receive such payment. The learned Single Judge in his discussion had considered the procedure in which payments are being made by the



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appellants Corporation. The learned Single Judge had given a categorical finding that the payments made by the Corporation is on a sequential process with checks at each stage. He had also held that the failure to furnish the payment voucher upon which such allegations had made, was fatal to the departmental proceedings. The procedure that had been extracted by the learned Single Judge had not been seriously disputed by the learned counsel appearing for the appellants. When that being so, we are of the firm view that there is no infirmity in the findings that had been arrived at by the learned Single Judge in setting aside the order of punishment that had been imposed upon the first respondent. That apart, the learned Single Judge had also found that the order inflicting punishment does not discuss as to why he had agreed with the findings of the enquiry officer. Infact, we had also perused the order of punishment imposed on the first respondent, we are also convinced that the disciplinary authority had not given any reasons as to why the explanation submitted by the first respondent was not acceptable to him to accept the findings of the enquiry officer. In that aspect we also reject the theory of alternative remedy that is sought to be pressed into service by the learned counsel for the appellants in support of



his contentions.

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13.That apart it is to be noted that the first respondent had superannuated almost 15 years ago and at this distant time, if the alternative theory is to be accepted, it would be only pushing the first respondent again to undergo an ordeal, which we do not propose as alternative remedy is not an absolute rule and the rejection of a Writ Petitions on the theory of alternative remedy is not always available and the Writ Court can exercise its jurisdiction on facts and circumstances of the each case.

14.As regards to the entitlement of pay, it is relevant to note that the sequence of dates, which we are tabulated hereunder:-

Sl. No	Date of Charge Memo	Particulars
1	30.10.1998 :-	First charge Memo – (3 charges)
2	10.03.1999 :-	Order of suspension contemplating enquiry into grave charges
3	10.05.1999 :-	Second Charge Memo – (2 charges)
4	27.11.2003 :-	Enquiry officer submitted his report dated (exonerating the first respondent from charges)
5	18.03.2004 :-	Suspension order was revoked



6	08.12.2006 :-	Third Charge Memo
7	14.08.2007 :-	Order of disciplinary authority as follows:- a) accepting the order of report as regards to the exoneration of first two (2) charges. b)imposed a punishment of stoppage of increment with cumulative effect for a period of six months

15.From the sequence of events recorded above, it could be seen that the first respondent was placed under suspension on contemplation of enquiry into grave charges. That would mean the first respondent was not suspended for a charge memo that was already issued in the year 1998. After the order of suspension, a charge memo was issued to the first respondent on 10.05.1999, upon which enquiry was conducted and the enquiry report exonerated the first respondent of all charges on 27.11.2003. However, the disciplinary authority without revoking the order of suspension nor taking a stand that he differed to the view of the enquiry officer continued the order of suspension for a further period of four months and had revoked the order of suspension only on 18.03.2004. Even in the order of revocation of suspension, the disciplinary authority had indicated that such revocation is made pending issuance of final orders in the charges that were framed against him. The reference to the said proceedings also in-



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dicates only the charge memos issued in the year 1998 and 1999. The disciplinary authority in the year 2007, after a period of four years had absolved the first respondent by accepting the report of the enquiry officer.

16. We are of the view that there is something amiss in the relationship between the appellants and the first respondent and that he was being sought to be victimised. We arrive at this conclusion for the simple reason that the first respondent having been exonerated by the enquiry officer in November 2003 was reinstated into service only in March 2004 that too by assigning a reason such revocation was passed pending final orders. After a period of two years, they had again issued a charge memo in the year 2006 for an event that had taken place in the year 1994. There has been no explanation for the delay in issuing such a charge memo. It is not the case of the appellants that they had the knowledge of such unauthorised payment only in the year 2006. These things only take us to an irresistible conclusion that the first respondent for some reason is sought to be victimised. Further as held supra, the first respondent was placed under suspension in the year 1999 on contemplation of a disciplinary enquiry for



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which charges were framed on 10.05.1999 and enquiry report exonerating the first respondent was given by the enquiry officer on 27.11.2003.

Therefore, the appellants could not be heard to say that the order of suspension would also relate to an enquiry which was initiated subsequently. When the first respondent was exonerated of the charges that were framed in the year 1998-99, he is entitled to seek treatment of the period of suspension as period of duty and he is entitled to receive all monetary and other attendant benefits, which he is rightly entitled to. Any other view as taken by the appellants would tantamount to award of punishment on the charges of the first respondent was exonerated.

17.In view of the aforesaid findings and reasonings we hold that there is no merits in these Intra Court Appeals and the same are dismissed accordingly. Consequently connected Miscellaneous Petitions are closed. However, there shall be no order as to costs.

18.Considering the fact that the first respondent had superannuated as early as in the year 2009 almost 15 years back, the



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appellants are directed to calculate the difference of pay that the first respondent is entitled to during the period of suspension and also recalculate his pay pursuant to the order of setting aside the order of punishment and make necessary payments to the first respondent within a period of eight weeks from the date of receipt of a copy of this order.

(R.S.K.,J.)

(K.B., J.)

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Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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