IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 04..08..2023
Orders Pronounced on : 11..08..2023

Coram

THE HON'BLE MR JUSTICE N.SATHISH KUMAR

Writ Petition No.28749 of 2022
and
Writ Petition No.28750 of 2022

W.P.No.28749 of 2022

M.P.Kaliappan

..... Petitioner

-Versus-

The State of Tamil Nadu,
Rep. by its Additional Chief Secretary to Government,
Home (Transport-II) Department,
Secretariat, Chennai 600 009.

..... Respondent

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorari calling for the records of the respondent in connection with the impugned order passed by him in G.O.(2D) No.48, Home (Tr.II) Department, dated 14.02.2022 against the petitioner and quashing the same.

W.P.No.28750 of 2022

A.Manickam

..... Petitioner

-Versus-

The State of Tamil Nadu,
Rep. by its Additional Chief Secretary to Government,
Home (Transport-II) Department,
Secretariat, Chennai 600 009.

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorari calling for the records of the respondent in connection with the impugned order passed by him in G.O.(2D) No.49, Home (Tr.II) Department, dated 14.02.2022 against the petitioner and quashing the same.

For Petitioner (s) : Mr.K.M.Ramesh, Senior Counsel for Mr.A.Ganesan for petitioner in both WPs

For Respondent (s) : Mr.V.Jeevagiridharan, Addl. Government Pleader for respondent in both WPs

COMMON ORDER

Challenging the punishment of stoppage of increment for a period of three years with cumulative effect imposed against the petitioners by the respondent by way of two separate government orders under G.O. (2D) No.48, Home (Transport-II) Department, dated 14.02.2022 and G.O. (2D) No.49, Home (Transport-II) Department, dated 14.02.2022, the petitioners have come forward with the present writ petitions individually.

2.0. The facts leading to the filing of the present writ petitions in brief are as under:-

2.1. The petitioner in W.P.No.28740 of 2022 viz., Kaliappan was selected by Tamil Nadu Public Service Commission (TNPSC) to the post of Motor Vehicles Inspector Grade-II in the Transport Department and was appointed on 06.12.2000. He was promoted as Motor Vehicles Inspector Grade-I on 17.03.2007 and was further promoted as Regional Transport Officer (RTO) on 17.04.2017. He is at present working as RTO, Thirupathur in Thiruppathur District.

2.2. The petitioner in W.P.No.28750 o f2022 was selected by the TNPSC to the post of Motor Vehicles Inspector Grade-II in the Transport Department and was appointed on 04.04.2001. He was promoted as Motor Vehicles Inspector Grade-I on 01.06.2007. He is at present working as MV Inspector Grade-I in the office of the RTO, Villupuram.

2.3. A surprise check was conducted by the District Inspection Cell Inspector along with officials of the Directorate of Vigilance and Anti-corruption in the office of the RTO, Vellore, on 29.10.2020 between 17.45 and

22.15 hours. Such joint surprise inspection, led to the seizure of an unclaimed and unaccounted cash of Rs.85,680/- from the office premises, touts and from the office staff. On the above allegations, two separate proceedings were initiated against P.Dharani (AO1), the then RTO, Vellore and the petitioner (AO2 and AO3), the then Motor Vehicle Inspectors Grade-I by the Commissioner, Tribunal for Disciplinary Proceedings in TDP Case No.1 of 2018 and T.D.P.No.2 of 2018. On 24.05.2018, charges were framed against all the three Accused Officers.

2.4. The charge as framed against the Accused Officers 1 to 3 by the tribunal are as under:-

Charge No.1 (TDP Case No.1 of 2018)

That, actuated by corrupt and dishonest motive and abuse of your (Accused Officer-1, Accused Officer-2 and Accused Officer-3) official position and authority, you (Accused Officer-1) while working as Regional Transport Officer, Vellore, you (Accused Officer-2) while working as Motor Vehicles Inspector, Grade-I, Regional Transport Office, Vellore, and you (Accused Officer-3) while working as Motor Vehicles Inspector, Grade-I, Regional Transport Office,Vellore, obtained illegal gratification other than legal remuneration in as much as during a joint surprise check conducted by

Inspection Cell Inspector, District Inspection Cell Office, Collectorate, Vellore and Officials of Vigilance and Anti-Corruption, Vellore Detachment, on 29.10.2010 between 17.45 hrs and 22.15 hrs, which resulted in the seizure of unclaimed and unaccounted cash totaling to a sum of Rs.85,680/- (Rupees Eight Five Thousand Six Hundred and Eight only) which was seized from (i) office premises a sum of Rs.27,730/- (i.e., Rs.26,700/- from Rack near B2 seat (Accused Officer A.Jayasankar) and Rs.1030/- from the window of office; (ii) An unaccounted cash of Rs.46,910/- from private persons / Touts namely Thiruvalargal 1. I.S. Ravichandran - Rs.1250/-, 2. V.Janardhanan – Rs.3830/- , 3. S.Mohammed Sherif – Rs.30/-, 4. R.Senthilkumar – Rs.1390/-, 5.M.Nagarajan-Rs.3380/-, 6.G.Thanikkachalam – Rs.9320/-, 7.G.K.Saravanan-Rs.8656/-, 8.S.Mohandoss – RS.13,445/-, 9.S.Mohideen-Rs.2090/-, 10.J.Vinoth-Rs.1450/- and 11. M.Suresh Babu – Rs.1760/- respectively who were present and handling the official documents inside the office (iii) an unaccounted cash of Rs.11,040/- from office staff i.e., Rs.2300/- from Dhanalakshmi (A.O.) Rs.1550/- from D.Sujatha (A.O.), Rs.3040/- from K.Varadhan (A.O.), Rs.3750/- from Data Entry Operator Ahel Gnanaraj and Rs.400/- from Data Entry Operator Sureshkumar.

For the presence and seizure / recovery of the above said amount of

RS.85,680/- (Rupees Eighty Five Thousand Six Hundred and Eighty only) you A.O.1, A.O.2 and A.O.3 could not satisfactorily account for.

Thereby you (Accused Officer-1, Accused Officer-2, and Accused Officer-3) have failed to maintain absolute integrity and devotion to duty and violated Rule 20 of The Tamil Nadu Government Servants Conduct Rules, 1973.

Charge No.2 (TDP Case No.2 of 2018)

That, actuated by corrupt and dishonest motive and in abuse of your (Accused Officer's) official position and authority, you (Accused Officer-1), while working as Regional Transport Officer, Regional Transport Office, Vellore, you (Accused Officer-2) while working as Motor Vehicles Inspector, Grade-I, Regional Transport Office, Vellore and you (Accused Officer-3) while working as Motor Vehicles Inspector, Grade-I, Regional Transport Office,Vellore, in as much as during a joint surprise check conducted by Insepction Cell Inspector, District Inspector Cell Office, Collectorate, Vellore and officials of Vigilance & Anti-Corruption , Vellore Detatchment, on 29.10.2010 between 17.45 hrs and 22.15 hrs, you (Accused Officer-1, Accused Officer-2 and Accused Officer-3) found to have engaged 11 private individuals touts namely, 1. Thiru.S.Mohamed Sherieff S/o.Sultan, NO.3 Yakkum Saibbu

Street, Kaspa, Vellore, 2.Thiru.MOhan Doss, S/o. Saminathan, NO.187,R.S.Road, Gudiyatham, Vellore District, 3. Thiru.G.K.Saravanan, S/o.Kanna, No.50, Pillaiyar Kovil Street, Kaspa, Vellore-3, 4. Thiru.V.Janardhanan S/o.Velu, No.9, Erikkarai Street, G.S.Mahall Back Side, Devi Nagar, Konavattam, Vellore, 5. Thiru.G.Thanigaichalam, S/o.Ganesha Mudaliyar, No.39A, Bajanai Kovil Street, Ozhiyathur Village Tirumani Post, Katpadi Taluk, Vellore, 6.Thiru.M.Nagarajan, S/o.Monogharan, No.16, B.R. Street, Jolarpet, Tirupathur Taluk, Vellore District, 7.Thiru.Ravichandran S/o. Srinivasan, No.72A, South Madaveethi,Nellurpet, Gudiyatham, Vellore District, 8.Thiru.S.Moinudheen S/o. M.S.Siraj, No.57A, Nehru Nagar, Malai Adivaram, Sathuvacheri, Vellore, 9.Thiru.M.Suresh Babu S/o. Margabandu, No.20, Sunnambukara Street, Kaspa, Vellore, 10. Thiru.J.Vinoth, S/o. Jayam, No.613, 40th Street, Phase-II, Sathuvacheri, Vellore, 11.Thiru.R.Senthilkumar S/o. Rajendran, No.12/13, Jabeem Street, Gandhinagar, Sathuvacheri, Vellore, to perform official work and allowed them to have physical access to the office and to have access to documents and through them received illegal gratifications other than legal remunerations from the general public who appeared in the Regional Transport Office for their needs.

Thereby you (Accused Officer-1, Accused Officer-2 and Accused

Officer-3) have failed to maintain absolute integrity and devotion to dutyand violation Rule 20 of the Tamil Nadu Government Servants Conduct Rules, 1973.

2.5. It could be seen from the records that apart from TDP Case Nos. 1 and 2 of 2018 relating to P.Dharani (A.O.1) and the petitioners herein (A.O.2 and A.O.3), V.Dhanalakshmi (Superintendent), D.Sujatha (Assistant), K.Varadhan (Jr. Assistant) and Jayashankar (Record Clerk) of the Regional Transport Office, Vellore were tried in T.D.P. Case Nos.3 to 6 respectively. The enquiry was commenced on 26.06.2018 and ended on 14.08.2018. During enquiry before the tribunal, on the side of the prosecution, 33 witnesses were examined and 13 documents were exhibited. On the side of Accused Officers, no one was examined, however, 2 documents were exhibited.

2.6. On considering the oral and evidence brought on record, the Commissioner for Disciplinary Proceedings, concluded that a surprise check by the officials of inspection cell along with the officials of V & AC has led to a seizure of unaccounted and unclaimed cash amounting to Rs.85680/- of which a sum of Rs.26700/- was found hidden in between the registers stacked at the rack which were being maintained by the office and a sum of Rs.1300/- was found alongside of the window at the outside; (ii) many private persons were present amongst the officers and staff of the office with cash; (iii) the private persons, who were present in the office at the relevant point of time, though stated that they were not touts, they have not produced any proof to show that they were present at the office only to avail the vehicle related services of the department; there is reasonable ground to believe that they are only touts; such touts would not have free access in the office unless they were illegally permitted by the charged officers; all these illegal transactions would have been taken place only with the knowledge and accused officers were also responsible for all these illegal transaction. Ultimately, the Commissioner, Tribunal for Disciplinary Proceedings held that the charges against the petitioners were proved. Thereafter, the petitioners were called upon to submit the explanation on the findings of the tribunal. On a careful and independent examination of the charges levelled against the accused officers, findings of the tribunal, representations of the accused officer, the government by way of impugned order had proceeded to impose punishment of stoppage of increment for a period of three years with cumulative effect. Aggrieved by the same, the petitioners/Accused Officers are before this Court.

3. The respondent filed counter affidavit denying the allegations made in the writ petition and inter alia contending that during surprise check, a cash of

Rs.26,700/- was found hidden in between the registers stacked and maintained by the office and the same was proved to be unaccounted through P.W.1 and corroborated by P.W.31. Similarly, a cash of Rs.46,910/- was found and seized from the touts who were not related to the official functioning of the office. There were also recoveries from the other delinquent officials.

3.2. It is further contended by the respondent that the so-called touts though denied that they were not touts, no proof was produced by them to show that they came to the office at the relevant point of time to avail the services of the department. The presence of 11 private individuals among the officers and staff of the department at a particular point of time would itself prove the charge that they might have access only with the illegal authorization of the accused officers. The writ petitions are devoid of merits and the same are not sustainable either in law or on facts.

4. Heard Mr.K.M.Ramesh learned senior counsel appearing on behalf of Mr.A.Ganesan, learned counsel on record for the respective petitioners in the writ petitions and Mr.V.Jeevagiridharan, learned Additional Government Pleader appearing on behalf of the sole respondent.

5. Though various grounds have been raised in the writ petitions , the

main plank of arguments advanced by the learned senior counsel for the petitioners is that there is no evidence available on record to prove the charges framed against the petitioners. According to the learned senior counsel, no amount whatsoever was seized from the Delinquent Officers at the time of the alleged surprise check. Mere seizure of cash from the private individuals and from the office premises would not be sufficient to hold that they were bribe amounts. The respondent government did not consider the relevant factors while passing the impugned order of punishment rather the respondent government had taken into consideration the irrelevant factors against the petitioners. The finding of the enquiry officer was without any evidence and therefore, the punishments imposed on the respective petitioners have to be set aside.

6. The learned senior counsel would also point out a discrepancy in the seizure of cash said to have been made on the date of surprise check. According to him, originally, a sum of Rs.98390/- was stated to be seized during surprise check and later on it was reduced to Rs.85680/-.

7. The learned senior counsel would also submit that the charges were

framed after lapse of 7 years and 6 months and such inordinate delay in the initiation of disciplinary proceedings has caused serious prejudice to the petitioners and on this ground the entire proceedings is liable to be quashed.

8. I have considered the rival submissions and also perused the records carefully.

9. It is not in dispute that on 29.10.2010 between 17.45 hrs and 22.15 hours a surprise check was conducted by the Inspector of the District Inspection Cell Inspector along with officials of the Directorate of Vigilance and Anti-corruption in the office of the RTO, Vellore, where the petitioners were working as Motor Vehicles Inspector Grade-I and District Special Cell , which resulted in the seizure of unclaimed and unaccounted cash totalling to a sum of Rs.85,680/-. Though learned senior counsel for the petitioner submitted that there is a discrepancy in respect of the amount seized, it was only a total mistake. The amount actually recovered under the seizure mahazar was only Rs.85,680/- and not Rs.98,390/- . To this effect, a rectification mahazar was also prepared in which the petitioners have also affixed their signature. Therefore, the petitioners cannot now take advantage of such calculation error.

10. It is seen from the records that during surprise check, a sum of Rs.26,7000/- which was found hidden in between the pages of the registers maintained by the office and a sum of Rs.1,300/- which was found scattered nearby window at the outside, were seized. The amount seized from the rack near B2 was proved to be unaccounted and the amount recovered from nearby window at the outside was found to be unclaimed. As also, certain amounts were recovered from some of the staff members and they were also departmentally proceeded with. The presence of 11 outsiders at a particular point of time in the office was also found to be one of the strong circumstances against the petitioners. The tribunal found that those outsiders were none other than touts. The tribunal discarded their evidence for want of acceptable evidence that they came to the office at that particular time to avail the services of the department. On considering the evidence, both oral and documentary, adduced on either side, the tribunal applying rule of preponderance of probabilities found that those unlawful and illegal money transactions must have taken place only with the knowledge of the petitioners and the RTO who were superior officers in the office and held that the charges were proved. The disciplinary authority, after considering the available materials independently, including the further representations of the petitioners, concurred with the

findings of the tribunal and proceeded to impose the punishment of stoppage of increment for a period of three years with cumulative effect.

11. The contention that no amount was seized from either of the petitioner cannot be countenanced as strict rules of evidence as applicable in a criminal trial are not applicable in disciplinary proceedings. The Supreme Court has been consistently held that the writ courts should be slow in reappreciating the entire evidence in the disciplinary proceedings.

12. The Supreme Court in the case of **Union of India and others vs. P. Gunasekaran reported in (2015) 2 SCC 610** has held as under:

> "**12.** Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

(*a*) the enquiry is held by a 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 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.

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

(*i*) reappreciate the evidence;

(*ii*) interfere with the conclusions in the enquiry, in 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."

13. In **Union of India v. Subrata Nath, 2022 LiveLaw (SC) 998,** the Supreme Court, while approving the law laid down by the two-judges of the Supreme Court in P.Gunasekaran's case (supra) in para 22 has held as under:-

"22. To sum up the legal position, being fact finding authorities, both the Disciplinary Authority and the Appellate Authority are vested with the exclusive power to examine the evidence forming part of the inquiry report. On finding the evidence to be adequate and reliable during the departmental inquiry, the Disciplinary Authority has the discretion to impose appropriate punishment on the delinquent employee keeping in mind the gravity of the misconduct. However, in exercise of powers of judicial review, the High Court or for that matter, the Tribunal cannot ordinarily reappreciate the evidence to arrive at its own conclusion in respect of the penalty imposed unless and until the punishment imposed is so disproportionate to the offence that it would shock the conscience of the High Court/Tribunal or is found to be flawed for other reasons, as enumerated in P. Gunasekaran (supra). If the punishment imposed on the delinquent employee is such that shocks the conscience of the High Court or the Tribunal, then the Disciplinary/Appellate Authority may be called upon to re-consider the penalty imposed. Only in exceptional circumstances, which need to be mentioned, should the High Court/Tribunal decide to impose appropriate punishment by itself, on offering cogent reasons therefor."

14. On going through the entire report of the enquiry officer and the impugned orders passed by the respondents, this court is of the view that the findings of the enquiry officer are well founded. Admittedly, the petitioners were working as Motor Vehicles Inspectors Grade-I at RTO Vellore at the relevant point of time when the surprise check was conducted by an officer of the District Inspection Cell with the officers of the V & AC. Under the cover of seizure mahazar a sum of 85680/- was recovered from the office premises. In that amount, a sum of Rs.26,700/- was found concealed in between the registers stacked at the rack and maintained by the office. The petitioners have not offered any plausible explanation in their representations for the

unaccounted amount which was seized in their presence from inside the office premises that too from the rack maintained by the office. Further, another sum of Rs.1030/- was found scattered near the window at the outside but within the office premises. That apart, 11 outsiders were found in the office and the tribunal found that they were none other than the touts engaged by the petitioners to perform official duties illegally. Thus, based on these proved facts, applying the rules of preponderance of probabilities the enquiry officer found that the charges against the petitioners were proved. As already stated supra, strict rules of evidence cannot be applied to a disciplinary proceedings. The available evidence would only probabilise the version of the prosecution that all those illegal money transactions would not have taken place without the knowledge of the petitioners.

15. The learned senior counsel for the petitioners though pointed out that there is a delay of more than 7 years in initiating the disciplinary proceedings, the petitioners have not specifically pleaded and established how such delay has prejudiced them in the conduct of their defence. A mere delay in the initiation of disciplinary proceedings cannot vitiate the entire proceedings in the absence of any prejudice caused to the delinquent officers.

16. The petitioners have also not made out that the punishment imposed is disproportionate to the proved charges. Hence, this court does not want to go into the proportionality of the punishment [vide **Union of India v. Ex. Constable Ram Karan, (2022) 1 SCC 373].**

17. In such view of the matter, this court finds no perversity or illegality in the findings of the tribunal and the impugned orders of punishment passed against the petitioners.

In the result, both the writ petitions are dismissed. The impugned orders of punishment are confirmed. No costs.

11..08..2023

Index : yes / no
Neutral Citation : yes / no
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To

1.The Additional Chief Secretary to Government,
Home (Transport-II) Department,
Government of Tamil Nadu,
Secretariat, Chennai 600 009.

N.SATHISH KUMAR.J.,

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