



W.P.(MD)No.12944 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:05.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.12944 of 2020

K.Muthumani

... Petitioner

Vs.

1.The Principal Secretary to Government,
Co-operative, Food and Consumer
Protection (CN2) Department,
St. George Fort,
Chennai.

2.The Joint Registrar of Co-operative Societies,
Virudhunagar Region,
Collector Office Complex,
Virudhunagar.

3.The Management,
Sp. Spl. 103, Panaikudi Primary Agricultural
Co-operative Credit Society,
Panaikudi Village, Esali Post,
Narikudi Taluk, Virudhunagar District.

... Respondents

Prayer:Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records culminating in order in G.O(D)No.214, dated 27.12.2018, issued by the first respondent and quash the same consequently direct the respondents



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to reinstate the petitioner in service of the third respondent society, with continuity of service, back wages and other attendant benefits.

For Petitioner : Mr.M.Ganesan

For R-1 : Mr.A.Baskaran,
Additional Government Pleader

ORDER

This writ petition has been filed to quash the Government Order in G.O(D)No.214, dated 27.12.2018, issued by the first respondent and consequently, to direct the respondents to reinstate the petitioner in service of the third respondent society, with continuity of service, back wages and other attendant benefits.

2. The case of the petitioner is that the petitioner was working as Secretary in the third respondent. A charge memo was issued alleging misappropriation of society fund. Subsequently, an Enquiry Officer was appointed, who in turn held that the charges were proved. Therefore, the petitioner was dismissed from service on 16.10.2012. Aggrieved by the said order, the petitioner filed a revision to the second respondent and the same was dismissed. Challenging the same, the petitioner has filed a



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review petition before the respondent, wherein the first respondent has passed the impugned order, dated 27.12.2018, modifying the punishment as one of 'compulsory retirement'. Hence, challenging the same, the petitioner has filed this writ petition with the aforesaid prayer.

3.The learned counsel appearing for the petitioner would submit that though the petitioner admitted the guilt of improper maintenance of records as he is the only one person in that Society, for which, the punishment of compulsory retirement imposed is highly disproportionate and further, the petitioner paid the alleged misappropriated amount along with interest prior to the enquiry. However, the same was not considered by the first respondent and had mechanically passed the impugned order, which is not sustainable and hence, prays for allowing of this writ petition.

4.The learned Additional Government Pleader appearing for the first respondent would submit that the service condition of the petitioner is governed by special by-laws of the third respondent Society. As per



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by-law 38, the petitioner is bound to keep maintenance of accounts and he will be responsible for the correct and upto date accounts of the society. However, the petitioner has intentionally failed to maintain the accounts and caused loss to the society. Therefore, disciplinary proceedings was initiated by the third respondent and a charge memo was issued for the irregularities and the misappropriation committed by the petitioner. After obtaining a detailed explanation from the petitioner, a domestic enquiry was conducted and based on the enquiry report as if the charges were proved, the petitioner was dismissed from service. Subsequently, challenging the order of dismissal from service, the petitioner filed a revision petition before the second respondent and one another revision before the first respondent for the same cause of action. Both the revisions were dismissed. Thereafter, the petitioner filed a review petition before the first respondent, wherein the first respondent modified the punishment of dismissal from service into compulsory retirement. The first respondent, who is the reviewing authority passed the final order after detailed discussion observing that the petitioner has caused financial loss to the society and the accounts also have not been



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properly maintained and further, the petitioner committed so many irregularities. The petitioner has also admitted all the allegations and remitted back the misappropriated amount with interest. However, the first respondent took a lenient view and modified the punishment and therefore, there is no irregularity in the said order, which does not warrant interference of this Court and hence, prays for dismissal of this writ petition.

5. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

6. Admittedly, the petitioner worked as Secretary in the third respondent society. It is also admitted that the petitioner is the Chief Executive of the third respondent society and he is duty bound and responsible for the correct and up to date accounts of the society. The allegation is that the petitioner misappropriated the amount and the said guilt was accepted by the petitioner and he paid the entire amount before enquiry and further, the petitioner also admitted that he has not properly



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maintained the records due to work pressure. However, the grievance of the petitioner is that the punishment of compulsory retirement is highly disproportionate.

8. In similar circumstances, 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 :

“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 conclusions are based on some evidence, the 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.



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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 :



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(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. - Vs - 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



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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 the 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.



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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 court of appeal over the decision of the authorities 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*



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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 tribunal.

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.



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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



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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 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.*



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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;



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(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. It has been the consistent view of the Courts that it is always within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, but the only determination that is left to the Court is the proportionality of the punishment with regard to the gravity of the charges that stood proved against the delinquent. Only when the punishment is disproportionate and shocking



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to the conscience of the Court, should the Courts interfere with the same in exercise of powers under Art. 226 of the Constitution. The Hon'ble Supreme Court, in **Prem Nath Bali – Vs - High Court of Delhi (2015 (16) SCC 415)**, 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



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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)

13. The materials available on record also reveal that the enquiry has been conducted in accordance with law and as per the procedure contemplated under the relevant Rules. Once the report of the Enquiry Officer has been accepted by the disciplinary authority and punishment has been imposed on the petitioner, which has been unsuccessfully challenged by the petitioner before the appellate authorities, this Court is only left with the task to determine whether the punishment imposed on the petitioner is disproportionate to the charges framed and shocks the conscience of the Court.

14. To the above, it can be held that the punishment imposed on the petitioner, in no way could be termed to be disproportionate to the delinquency and further, it cannot also not be said that it shocks the conscience of this Court. The task entrusted on this Court is only to find

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out whether the authorities have applied their mind to the materials before imposing the punishment.

15. In the above backdrop, this Court, on a perusal of the materials placed, is the firm opinion that the punishment imposed on the petitioner could in no way be said to be disproportionate and shocking to the conscience of this Court. Interference, if any, with the punishment imposed on the petitioner by this Court would be nothing but misplaced sympathy, which has no room in the justice delivery system, when it is the duty of the Court to see that justice is not only done but should seem to be done. Therefore, the punishment, in the considered view of this Court, is just and reasonable and this Court is of the opinion that no interference is warranted with the impugned order of punishment passed by the first respondent.

16. For the reasons aforesaid, this writ petition is devoid of merit and accordingly, the same is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is



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closed.

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NCC:Yes/No

Index:Yes/No

To

- 1.The Principal Secretary to Government,
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Protection (CN2) Department,
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Chennai.
- 2.The Joint Registrar of Co-operative Societies,
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M.DHANDAPANI,J.

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