



W.P.(MD).No.14942 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.07.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.14942 of 2022

and

W.M.P(MD)No.10693 of 2022

G.Selvan

... Petitioner

Vs.

The District Officer,
Fire and Rescue Services,
Tenkasi District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the respondent herein in P.R.No.06/2021, Na.Ka.No.7508/A, 2021, dated 02.05.2022 and quash the same as illegal and unconstitutional and direct the respondents to pay all attendant monetary and other benefits to the petitioner within the time frame stipulated by this Court.

For Petitioner : Mr.G.Gangai Amaran

For Respondent : Mr.N.Muthu Vijayan
Special Government Pleader



W.P.(MD).No.14942 of 2022

WEB COPY

ORDER

The present Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order passed by the respondent herein in P.R.No.06/2021, Na.Ka.No.7508/A, 2021, dated 02.05.2022 and direct the respondents to pay all attendant monetary and other benefits to the petitioner within the time frame stipulated by this Court.

2.The petitioner was appointed as a Fireman on 09.09.1996. He was given a promotion to the post of Leading Fireman II on 31.05.2012 and further, he was promoted as Special Station Officer on 01.10.2021. A dispute arose for the preparation of a promotion panel to the post of Station Officer from the year 2016-2019. As a result of which, a Writ Petition was filed before this Court in W.P.No.125 of 2020 and the same was disposed of by order, dated 06.01.2020, whereby a direction was given to the respondent to prepare a panel for promotion to the post of Station Officer by year wise from the year 2016 to 2019 by including all the eligible persons as per the Special Rules, on such preparation of panel promotional orders, consequential services and monetary benefits be granted to

2/20



W.P.(MD).No.14942 of 2022

the promoted employees. The Court further directed that the process shall be completed within a period of three months. While so, one Renuka, who is a resident of Keezha Pavor, borrowed some amount from the petitioner for her personal needs and thereafter, she has repaid the same to the petitioner. The said Renuka lodged a criminal complaint against the petitioner before the Inspector of Police, Pavorchathiram Police Station alleging that the petitioner has threatened her and was also involved in fraudulent money transaction. The Inspector of Police conducted a detailed enquiry on the basis of the complaint made by Renuka and after recording the statement of the said Renuka, the Inspector of Police closed the said complaint. That apart, the said Renuka also sent another representation to the Deputy Inspector General of Police, South Zone on 08.09.2021 on the same allegation by suppressing the earlier complaint and its enquiry and closure by the police. Based on the said complaint given by Renuka and also on the basis of the anonymous complaint given to the District Vigilance Department, Tenkasi, the Assistant District Fire Officer submitted a report even without conducting any enquiry and held that the allegations made in the said complaints are proved and gave his report, dated 07.12.2021 and 09.12.2021. Based on that report, the respondent initiated departmental proceedings against the petitioner



W.P.(MD).No.14942 of 2022

by issuing a charge-memo on 12.04.2022. The petitioner submitted his detailed explanation on 15.04.2022 through his Station Officer by denying all the allegations. Without considering the explanation, the respondent also conducted an enquiry and issued a final order of stoppage of annual increment without cumulative effect for a period of one year vide proceedings, dated 02.05.2022. Challenging the said impugned order, dated 02.05.2022, this Writ Petition came to be filed.

3.The learned counsel appearing for the petitioner vehemently contended that the impugned order, dated 02.05.2022 passed by the respondent is not a reasoned order and the allegations were not elaborately discussed and properly proved as against the petitioner. Hence, this Writ Petition is liable to be allowed by quashing the punishment inflicted on him. He further submitted that before the promotion panel was prepared, the impugned order came to be passed.

4.The learned counsel appearing for the petitioner relied on the order passed by this Court in ***R.Govindarajan Vs. The Secretary, Housing and Urban Development*** reported in ***(2013) 5 MLJ 617***, wherein this Court has held as follows:-



WEB COPY



W.P.(MD).No.14942 of 2022

"4.Secondly, as rightly argued by the learned counsel for the petitioner, the disciplinary authority, after receiving the report submitted by the enquiry officer and a written representation from the petitioner, nowhere independently discussed the case of the petitioner, either on the basis of the report of the enquiry officer or independently discussing along with the explanation offered by the petitioner. Indeed, a perusal of the order passed by the disciplinary authority imposing punishment of recovery does not show any reason whatsoever. Again, when order passed by the appellate authority is perused by this Court, it could be seen that the appellate authority has committed serious error in reversing the findings of the enquiry officer in respect of charge No.1, without even giving any notice to the petitioner, and especially when the appeal filed by the petitioner challenging the findings relating to Charge Nos.2 to 5 and the charge No.1 was not even subject matter of the appeal, as it was already found not guilty by the enquiry officer. It is settled law that an executive action must be informed by reason. Any executive action can only survive for a potent reason. Moreover, any action which is simply unfair or unreasonable would not be sustained, for a reason that a charged employee should also be given fair and reasonable opportunity to defend his case by the disciplinary authority and even the order passed by the



W.P.(MD).No.14942 of 2022

disciplinary authority should be fair and reasonable.

In the present case, the impugned orders do not fall within the purview of the above principle.

5. Therefore, for the reasons stated above, this Court has no option except to set aside the impugned orders passed by the respondents and accordingly, they are set aside. Consequently, the writ petition is allowed. Needless to mention that if any recovery has been made by the respondents, the same shall be refunded back to the petitioner within a period of two months from the date of receipt of a copy of this order. No Costs.

5. The learned counsel further relied on the order passed by this Court in ***G.Manimekalai Vs. Revenue Divisional Officer and others*** reported in ***(2008) 4 MLJ 848***, wherein this Court has held as follows:-

"29. In the case on hand, though the charges were framed in 2002, the disciplinary authority has kept the file pending for nearly five years without passing any orders. The respondent was in possession of relevant documents and had he concluded the disciplinary proceedings in the year 2002 or immediately thereafter, the petitioner would



WEB COPY



W.P.(MD).No.14942 of 2022

have approached the competent authority/forum for appropriate relief. Passing orders on the charge memo, just 2 days before the panel dated 14.02.2007 for the post of Deputy Tahsildar for the year 2006, making promotions hurriedly on the same day and communicating the said penalty after 16.02.2007, certainly takes away the right of the petitioner to prefer an appeal/representation to the concerned authority against the non-inclusion of her name in the said panel. At this juncture, it should be noted that while preparing the panel of eligible candidates for the post of Deputy Tahsildar for the year 2006, the Revenue Divisional Officer, Dharmapuri in his letter, 25.11.2006, has categorically stated that no charges were pending against the petitioner. The respondents in their counter affidavit have not offered adequate explanation for the delay in the disposal of the disciplinary proceedings. If the action is not perused for five years, on receipt of the explanation, one would naturally be under the impression that the matter has given been a quietus. Though the third respondent in the counter affidavit has stated that the disciplinary action was initiated against the erring Tahsildar and the Village Administrative Officer, who were responsible for the grant of Nativity Certificate, no details have been given about the results of the disciplinary action initiated against them. Since I



WEB COPY



W.P.(MD).No.14942 of 2022

have already found that there is a violation of the principles of natural justice and taking into consideration the principles evolved by the Supreme Court that the alternative remedy would not operate as a bar in atleast three contingencies, (i) where a Writ Petition seeks enforcement of any of the fundamental rights, (ii) where there is violation of principles of natural justice, and (iii) where the order or the proceedings are wholly without jurisdiction or vires of an Act is challenged, the Writ Petitions filed by the petitioner are maintainable and the objection raised by the respondents cannot be countenanced.

30. In view of the above, the impugned order inflicting the penalty of stoppage of increment is liable to be set aside and accordingly, set aside. On perusal of the pleadings and considering the submissions, I do not find any justification in the prayer for quashing the impugned panel. Since the punishment has been quashed, as a consequence the petitioner is entitled to be included in the panel of Deputy Tahsildars for the year 2006 at the appropriate place. Therefore, the respondents are directed to include the petitioner in the panel to the post of the Deputy Tahsildars for the year 2006 at the appropriate place with due regard to her seniority, if she is otherwise eligible."



W.P.(MD).No.14942 of 2022

6.The learned counsel further relied on the order passed by this Court in ***Nawabkhan Vs. Superintendent of Police*** reported in ***(2008) 7 MLJ 1275***, wherein this Court has held as follows:-

“11.The above rulings will make it clear that when the enquiry officer is not the disciplinary authority, the petitioner delinquent has got a right to have a copy of the report of the enquiry officer before the disciplinary authority arrives at a conclusion with regard to the guilt or innocence of the delinquent with regard to the charges levelled against him. A denial of the report is a denial of reasonable opportunity. It is a right of an employee to have the report of the enquiry officer to defend himself effectively, otherwise he would not know in advance whether the report is in his favour or against him and what is held against him. If the report is furnished to him, he could have persuaded the disciplinary authority that the finding arrived at by the enquiry officer is perverse or that the finding is based on no evidence or irrelevant materials and evidence. Definitely it would cause prejudice to a delinquent, if the report is not furnished to him. Hence, for the reasons stated above, I am in full agreement with the learned senior counsel appearing for the petitioner that non-furnishing of the report of the enquiry officer has vitiated the entire proceedings.

.....



WEB COPY



W.P.(MD).No.14942 of 2022

14.The above extracted portion in the order of the original authority as well as appellate authority will clearly establish that neither of the authorities have considered the charges against the petitioner independently and arrived at their own conclusion in finding that the charges against the petitioner had been proved. Thus, it makes me to arrive at a conclusion that neither the original authority nor the appellate authority has not given any independent reason and the orders passed by them are liable to be set aside on the said sole ground. In fact, this Court had an occasion to consider similar type of order passed by the appellate authority in the decision ***K.Kandasamy Vs. Deputy Inspector General of Police*** reported in ***(2006) 4 MLJ 1382*** and has come to the conclusion that such orders are liable to be set aside. In the said Judgment, it has been held thus:-

“7. It is seen from the aforesaid portion of the impugned order that the Appellate Authority did not deal with any of the grounds of appeal raised by the petitioner. A departmental appeal is a continuation of the original proceedings. It is needless to point out that the last opportunity available for a delinquent, to canvass his case on merits, is at the appellate stage. After the appeal, a



WEB COPY



W.P.(MD).No.14942 of 2022

delinquent loses his right to challenge any disciplinary proceedings on merits, since the scope of interference on a revision or on a writ petition is very limited. Therefore, the rules themselves contemplate appellate authorities to go into the factual details and consider all the grounds of appeal before deciding an appeal. Unfortunately, the first respondent has chosen to dismiss the appeal by a non-speaking order and hence the appellate authorities order is liable to be set aside.

8. A similar question came up for consideration before this Court in Arokiadoss v. The Deputy Commissioner of Police, Law and Order (South), Madras-8 and Anr. 1989 Writ L.R. 274. In the said case also, an identical order similar to the one involved in the present case was passed by the Appellate Authority. Therefore, after considering the scope of the powers conferred upon the Appellate Authority, this Court held as follows in paragraph-3:

“Rule 6(1) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 reads as follows:

In the case of an appeal against an order imposing any penalty specified in Rule 2, the appellate authority shall consider--



WEB COPY



W.P.(MD).No.14942 of 2022

(a) Whether the facts on which the order was based have been established;

(b) Whether the facts established afford sufficient ground for taking action, and

(c) Whether the penalty is excessive, adequate or inadequate, and after such consideration shall pass orders as it thinks proper.

The rule enjoins the concerned authority to consider the three aspects set out therein specifically. Unless the appellate authority considers them it cannot be said that it has carried out its duties properly. The Supreme Court had occasion to discuss a similar question under Rule 27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Dealing with the word 'consider' used in the said rule, the Supreme Court observed that the word 'consider' implies due application of mind-vide *R.P. Bhatt v. Union of India*. The following paragraph in the above judgment of the Supreme Court can be usefully referred to with advantage--

The word 'consider' in Rule 27(2) implies 'due application of mind'. It is clear upon the terms of Rule 27(2) that the appellate authority is



WEB COPY



W.P.(MD).No.14942 of 2022

required to consider (1) whether the procedure laid down in the Rules has been complied with; and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) Whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) Whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc, the penalty, or may remit back the case to the authority which imposed the same. Rule 27(2) casts a duty on the appellate authority to consider the relevant factors set forth in Clauses (a), (b) and (c) thereof.

There is no indication in the impugned order that the Director General was satisfied as to whether the procedure laid down in the Rules had been complied with and if not, whether such non-compliance had resulted in violation of any of the provisions of the Constitution or in failure of justice. We regret to find that the Director General has also not given any finding on the crucial question as to whether the findings of the disciplinary authority were unwarranted by the evidence on record. It seems that he only applied his mind to the requirement of Clause (2) of Rule 27(2) viz.,



WEB COPY



W.P.(MD).No.14942 of 2022

whether the penalty imposed was adequate or justified in the facts and circumstances of the present case. There being non-compliance with the requirements of Rule 27(2) of the Rules, the impugned order passed by the Director General is liable to be set aside.

9. Thus it is clear that the appellate authority's order is in violation of the rules relating to disposal of appeals and consequently, it is liable to be set aside. Therefore, the writ petition is allowed.""

7.Per contra, the learned Special Government Pleader appearing for the respondent vehemently contradicted that the arguments putforth by the learned counsel appearing for the petitioner is incorrect and the petitioner was given proper opportunity of defending himself before the enquiry officer and the enquiry officer has taken into consideration the explanation given by the delinquent before Tenkasi Police Station in connection with the complaint made by one M.Renuka before the Police Station and it is pertinent to mention that this disciplinary proceeding has been initiated only on the complaint made by the said Renuka, who preferred a complaint before Tenkasi



W.P.(MD).No.14942 of 2022

Police Station as well. The delinquent had duly submitted his explanation within a period of seven days and he also participated in the enquiry along with his wife and he has also submitted that the initiation of enquiry has created a ruckus in his family, since the same has brought out certain allegations about the connection, which he has got with other woman named Nandhini Guruji, who is a married woman. However, the enquiry officer has negated all the explanations given by the delinquent and has imposed a minor punishment of stoppage of increment for a period of one year without cumulative effect. As against the said minor punishment, the delinquent has also preferred departmental appeal under Rule 19 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, before the Deputy Director of Fire and Rescue Services Department, Southern Region, Madurai and the same was also rejected by proceedings, dated 26.07.2022.

8.Heard Mr.G.Gangai Amaran, learned counsel appearing for the petitioner and Mr.N.Muthu Vijayan, learned Special Government Pleader appearing for the respondent and perused the materials available on record.



W.P.(MD).No.14942 of 2022

WEB COPY

9.This is a case where a minor punishment has been inflicted on the petitioner by the Department after proper enquiry on a complaint received from a woman about the delinquent having indulged in the misappropriation of money and jewelry from the affected woman in connection with another woman named Nandhini Guruji. However, even before this information is brought to the notice of the Department, the petitioner handled the same meticulously before the concerned Police Station and it seems that the matter was settled by settling the amount whatever has been alleged to have been misappropriated back to the complainant, namely Renuka. Even though the case was closed before the competent Police Station, the Department has taken the matter very seriously because the petitioner is working in a Uniformed Service and being a member of the Uniformed Service, the department has properly considered the illegal act of the petitioner colluding with another married one and having negated all the explanation given by the petitioner along with his wife, the Department has inflicted only a minor punishment and hence, this Court is not inclined to interfere with the same.



W.P.(MD).No.14942 of 2022

10. It is needless to point out that the disciplinary authority and on appeal, the appellate authority considered the issue properly and the disciplinary authority and the appellate authority being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline in the Uniformed Service. They are invested with the discretion to impose appropriate punishment, keeping in view the magnitude or gravity of the misconduct. The High Court while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. Only if the punishment imposed by the disciplinary authority shocks the conscience of the High Court, it would appropriately mould the relief. In this case, the punishment implemented is a minor punishment. Time and again, this Court and the Honourable Apex Court has repeatedly held that while exercising power under Article 226 of the Constitution of India, a Writ Court with a self-imposed limitation and application of judicial mind shall interfere with the quantum of penalty in disciplinary proceedings only when the punishment/penalty is shockingly disproportionate. That apart, Article 226 of the Constitution of India is not intended to enable the High Court to convert itself into a court of appeal and examine the correctness of the decision impugned and decide what is the proper



W.P.(MD).No.14942 of 2022

view to be taken and order to be made. The jurisdiction of the High Court is, therefore, supervisory and not appellate.

11.Considering the fact that both the disciplinary authority as well as the appellate authority have dealt with this matter properly, this Court is not inclined to interfere with the decision of the disciplinary authority. Hence, this Writ Petition is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

18.07.2023

NCC : Yes
Index : Yes
Internet : Yes
ps



WEB COPY



W.P.(MD).No.14942 of 2022

To

The District Officer,
Fire and Rescue Services,
Tenkasi District.



WEB COPY



W.P.(MD).No.14942 of 2022

L.VICTORIA GOWRI, J.

ps

W.P.(MD)No.14942 of 2022

18.07.2023