



W.A(MD)No.54 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On: 29.03.2023

Delivered On: 24.04.2023

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

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and

C.M.P(MD)No.158 of 2023

1.The Governing Council of the Rukmani,
Shanmugam Polytechnic College,
Represented by its Chairman,
Varichiyur, Madurai-625 020.

2.S.Valliappan,
Correspondent,
Rukmani Shanmugam Polytechnic College,
Varichiyur, Madurai-625 020.

... Appellants

Vs.

1.K.K.Chockalinkam,
Plot No.115, Jubilee Town 2000,
Gomathipuram,
Madurai-625 020.

2.The Commissioner and Director,
Directorate of Technical Education,
Guindy, Chennai.

... Respondents



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PRAYER : Writ Appeal is filed under Clause 15 of the Letters Patent, to set aside the order dated 21.07.2022 in W.P(MD)No.2137 of 2013.

For Appellant : Mr.T.Pon Ramkumar

For R-1 : Mr.A.Thirumurthy

JUDGMENT

[Judgment of the Court was delivered by **L.VICTORIA GOWRI, J.**]

This is an Appeal filed by the Governing Council of the Rukmani Shanmugam Polytechnic College, Varichiyur, Madurai represented by its Chairman, assailing the order passed by the Hon'ble Single Judge in W.P(MD)No.2137 of 2013. The respondents 2 and 3 in the Writ Petition are the Appellants herein. The writ petition was filed for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the order No.22/GC/2011 dated 12.12.2011 passed by the second respondent and quash the same and consequently, direct the respondents to refund the sum of Rs.1,750/- recovered from the petitioner and to treat the period



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from 04.05.2006 A.N. to 28.02.2010 A.N. as duty period and grant full salary, other service, retirement and monetary benefits with 18% interest till the date of payment.

2. The Factual matrix of the case is briefly stated as under:

2.1. The first respondent joined as an Assistant at Mohammad Sathak Polytechnic College, Keelakkarai, Ramnad District on 01.09.1980 and subsequently, on migration, he joined in the second Appellant Polytechnic College on 06.03.1986. Thereafter, the first respondent was promoted as Superintendent on 04.06.1988 and as Bursar on 20.08.1990 and later, posted as Personal Assistant to the Principal of the second Appellant College from 02.04.1993. The first respondent was paid salary from Grant-in-aid and his service was governed by the Grant-in-Aid code of Madras Technical Education Department. The first respondent looked after the administration, accounts and audit of the Government Aided Course, namely, Diploma in Textile Technology under the supervision, bill and cheque drawing authority of the second Appellant. The second Appellant was offering two Self-Financing Courses, namely, Diploma in

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Electronics and Communication Engineering and Diploma in Computer Engineering. The second Appellant himself is exclusively and separately dealing with the appointment and administration of staffs, income and expenditure of Self-Financing Courses, under his proprietorship capacity.

2.2. On 04.05.2006, a charge memo was issued to the first respondent by the second Appellant framing four charges and the first respondent was placed under suspension from 04.05.2006. Hence, a disciplinary proceeding was initiated against the first respondent and a Lecturer was appointed as an Enquiry Officer and in the enquiry proceeding, three charges were held to be proved. Then a show cause notice was issued on 08.12.2006 directing the first respondent to show cause as to why his service should not be terminated. Challenging the charge memo, appointment of Enquiry Officer and the show cause notice for punishment, the first respondent had filed W.P(MD)No.11524 of 2006. On 09.05.2007, this Court set aside the said charge memo dated 04.05.2006 and the show cause notice dated 08.12.2006 and held that the second Appellant has no jurisdiction to initiate disciplinary proceedings



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against the first respondent. Further, the second Appellant was granted liberty to issue a fresh charge memo.

2.3. In such circumstances, without revoking the suspension order, the second Appellant, the incumbent Chairman of the first Appellant Governing Council, vide letter dated 29.06.2007 called for an explanation to the two allegations, namely,

(1) As alleged in the complaints dated 24.04.2006 and 28.04.2006 by Mr.Karuppasamy @ Vasanthakumar, an Instructor of Self Finance Course, wherein, the first respondent was alleged to have withheld his original certificates and three days salary, though full month salary of Rs.1,750/- was drawn and shown as paid in the pay bill.

(2) As per the report, dated 22.03.2006 of Mr.Ponneeswaran, Assistant, the Teachers Provident Fund (TPF) amount deducted from the salary of the staffs on pay disbursement day for the months from October 2005 to February 2006, were not remitted into the Government account immediately and not shown in the Un-Disbursed Pay Register or Cashbook and the first respondent had kept the amount in hand and



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remitted that belatedly. Thus, he had committed misconduct.

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2.4. In the said charge memo, the suspension was continued with effect from 30.04.2008. On receipt of the explanation from the first respondent, an Enquiry Officer was appointed and a notice was issued on 08.12.2009. Challenging the said charge memo and the appointment of Enquiry Officer, the first respondent filed W.P(MD)Nos.11700 and 13474 of 2009, both of which were dismissed by a common order of this Court dated 26.03.2010, directing the Enquiry Officer to give an opportunity to the first respondent and further directing the first respondent to submit an explanation and proceed with the enquiry.

2.5. While so, the first respondent was permitted to retire from service on superannuation on 28.02.2010, without prejudice to the disciplinary action and the first respondent was relieved from service on 30.06.2010. The first respondent filed another writ petition in W.P(MD)No.9994 of 2010 to quash the condition prescribed for the respondent's retirement on superannuation and for a consequent direction



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to pay pension and other retirement benefits. On 03.08.2010, this Court allowed the writ petition referring to an order of the Hon'ble Division Bench of this Court and held that permission to retire an employee without prejudice to the disciplinary proceeding is not authorised under any Rule and directed the Appellants to consider the payment of retirement benefits to the first respondent at the earliest. Against which, the Appellants filed W.A(MD)No.675 of 2010 and the Hon'ble Division Bench of this Court on 15.11.2010 allowed the writ appeal and remanded back the matter to the Hon'ble Single Judge. Thereafter, this Court on 05.04.2011 granted liberty to the Appellants to proceed with the disciplinary proceedings under Rule 9 (2) (a) of the Pension Rules and the proceedings shall be completed within a period of three months. On the basis of which, the Enquiry Officer commenced the enquiry on 07.05.2011 and completed the same on 02.07.2011.

2.6. Based on the enquiry report, a show cause notice dated 02.09.2011 was issued directing the first respondent to submit the comments on the enquiry report and the proposed major punishment. The



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first respondent submitted his explanation on 10.09.2011 and thereafter, the first Appellant passed the impugned order dated 12.12.2011, imposing punishment stating that as per the Tamil Nadu Pension Rules, 1978, Rules 20 and 22 (2), the period of suspension from 05.05.2006 to 28.02.2010 shall not be counted as qualifying service and to recover the sum of Rs.1,750/- from the terminal benefits, which was wrongly claimed by the first respondent in the name of Karuppasamy @ Vasanthakumar as cited in Charge No.1 of the charge memo, dated 30.04.2008. Challenging the said punishment, the present writ petition in W.P(MD)No.2137 of 2013 was filed by the first respondent.

2.7. The Hon'ble Single Judge had set aside the impugned order dated 12.12.2011 and thereafter directed the Appellants to refund the amount already deducted, that is, Rs.1,750/- to the first respondent and further directed the Appellants to regularize the suspension period from 04.05.2006 to 20.02.2010 and to consider the same as duty period and subsequently directed to disburse the full salary and terminal benefits to the first respondent for the following reasons:



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“1. With respect to charge No.1, the Enquiry Officer did not take into account the statement given by the de-facto complainant, namely, Karuppasamy.

2. With respect to charge No.2, though the first respondent requested to examine the Bank Account of the Management and the Witness No.2, Mr.Ponneeswaran, but the same was not considered and that amounted to violation of principles of natural justice.

3. Moreover, the impugned order has been passed without assigning any reason and the same is a cryptic order. Hence it is liable to be set aside.”

3. Heard the rival submissions made by the learned Counsels for the Appellants and the respondent anxiously and carefully perused the materials available on record. The learned Counsel for the Appellants took us through various grounds raised in the appeal and the contents of the documents submitted by him. The learned Counsel for the first respondent elaborately refuted the various grounds putforth by the Appellants and took us through the documents relied upon by him.



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4. The Gamut of the controversy:

While the first respondent was serving as the Personal Assistant to the Principal of the second Appellant College on 04.05.2006, a charge memo in Ref. No.011 was issued to the first respondent by the second Appellant framing four charges, thereby placing the first respondent under suspension from 04.05.2006. This was the turning point which gave rise to four rounds of writ petitions as follows:

“4.1. W.P(MD)No.11524 of 2006 was filed challenging the charge memo and appointment of Enquiry Officer and the show cause notice for punishment, which was allowed by this court on 09.05.2007, by setting aside the charge memo and show cause notice dated 04.05.2006 and 18.12.2006 respectively and consequently directing the second Appellant to issue a fresh charge memo.

4.2. Without recalling the suspension, the first Appellant called for an explanation from the first respondent for the two allegations. Without accepting the first respondent's explanation, the first Appellant issued



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another charge memo dated 30.04.2008 framing two charges. After the first respondent had submitted his explanation on 09.11.2008, an Enquiry Officer was appointed and a notice was issued on 08.12.2009. Challenging the charge memo and appointment of the Enquiry Officer, two writ petitions were filed by the first respondent in W.P(MD)Nos. 11700 and 13474 of 2009 respectively. This Court through a common order dated 26.03.2010, dismissed both the aforesaid writ petitions, directing the Enquiry Officer to give an opportunity to the first respondent and further directing the first respondent to submit his explanation and proceed with the Enquiry.

4.3. On 26.02.2010, when the first respondent was permitted to retire from service on superannuation on 28.02.2010, without prejudice to the disciplinary action, thereby relieving the first respondent on 30.06.2010, the first respondent filed another petition in W.P(MD)No. 9994 of 2010, to quash the condition prescribed for the first respondent's retirement. The petition was allowed on 03.08.2010, against which the Appellants filed W.A(MD)No.675 of 2010, in which the Hon'ble



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Division Bench of this Court, remanded back the matter to the Hon'ble Single Judge. The Hon'ble Single Judge vide order dated 05.04.2011 granted liberty to the first Appellant to proceed with the disciplinary proceedings under Rule 9 (2) (a) of the Pension Rules and that the proceedings shall be completed within a period of three months, without prejudice to the disbursement of terminal benefits and provisional pension to the first respondent.

Thereafter, the Governing Council of Rukmani Shanmugam Polytechnic College appointed Mr.M.Kanagasabapathi, District and Sessions Judge (retired) as Enquiry Officer in the matter of the first respondent. The Enquiry Officer conducted the departmental enquiry into the charges levelled against Mr.K.K.Chokkalingam / first respondent, non-teaching member of Rukmani Shanmugam Polytechnic College. In that exercise, the Enquiry Officer examined three witnesses on the side of the prosecution through whom 16 documents were marked and examined one witness on the side of the first respondent through whom 5 documents were marked. The enquiry was commenced on 07.05.2011

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and was concluded on 02.07.2011. The Enquiry Officer submitted his report on 15.07.2011 holding that both charges framed against the first respondent stood proved. On 02.09.2011, a copy of the said report dated 15.07.2011 was furnished on the first respondent seeking his comments along with the letter bearing LR.No.19/B/2011, informing that it has also been provisionally concluded to impose the following penalties:

“1. Deduction of Rs.1,750/-, which has been wrongly claimed in the name of Karuppasamy @ Vasanthakumar, from the eligible terminal benefits of the first respondent.

2. Period of suspension from 05.05.2006 F.N. to 28.2.2010 A.N. (date of superannuation) shall not be counted as qualifying service.”

On 10.09.2011, the first respondent submitted his explanation and on considering the same, the first Appellant through his letter No. 22/GC/2011 dated 12.12.2011 passed the impugned order as follows:

“The meeting of the Governing Council of Polytechnic College held on 09.12.2011, the Governing Council, after



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considering the report of the Enquiry Officer, who is a former District and Sessions Judge, and your comments thereon, decided to reject your comments and to accept the report of the Enquiry Officer based on the detailed reasoning contained therein. Charges being of serious nature, the Governing Council decided to impose the punishment of “as per Tamilnadu Pension Rules, 1978, Rule 20 and 22(2) the period of suspension from 05.05.2006 F.N. to 28.02.2010 A.N. (date of superannuation) shall not be counted as qualifying service”, while to recover the sum of Rs.1,750/- from the terminal benefits of K.K.Chockalinkam which has been wrongly claimed by him in the name of Karruppasamy @ Vasanthakumar as cited in charge 1 of the charge memo dated 30.04.2008.”

4.4. Challenging this impugned order dated 12.12.2011 W.P(MD)No.2137 of 2013 came to be filed, in which the Hon'ble Single Judge proceeded to set aside the said impugned order on the ground that the impugned order has been passed without assigning any reason and the same is a cryptic order. The other two reasons cited by the Hon'ble Single Judge is that the Enquiry Officer did not consider the statement



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given by the de-facto complainant, namely, Karuppasamy and that the Enquiry Officer did not heed to the request of the first respondent to examine the Bank Account of the Management and the second witness, namely, Mr.Poneeswaran and the same would amount to violation of principles of natural justice.

5. Charges, Investigation and Enquiry Report:

(i) Charge No.1: The first respondent while serving as the Personal Assistant to the Principal of second Appellant College, one P.Karuppasamy @ Vasanthakumar during 2005, joined as the Instructor in the Electronics and Communication, Self-Financing, Diploma Course. Thereafter on 03.11.2005, the said Karuppasamy left job at Rukmani Shanmugam Polytechnic College and joined elsewhere. However, the first respondent on the premise that Karuppasamy @ Vasanthakumar worked for the full month of November 2005 deducted one full month salary of Rs.1,750/- by preparing salary bill to that effect and retained the money with himself by creating documents as if the salary has been

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disbursed to Karuppasamy.

(ii) Charge No.2: The first respondent who was handling the salary and other connected deductions and remittances of the various staffs to the respective Government Departments in several occasions without remitting the respective deductions to the Government exchequer, kept various amounts himself and has committed illegality.

5.1. The Governing Council of Rukmani Shanmugam Polytechnic College promptly appointed Mr.M.Kanagasabapathi, District and Sessions Judge (Retired) as the Enquiry Officer to proceed with the enquiry, against the first respondent under Rule 9 (2) (a) of Pension Rules. The said Enquiry Officer conducted an elaborate departmental enquiry after proper investigation and appreciation of evidence by allowing both sides to produce documents and allowing witnesses of both the sides to depose evidence. On the basis of the charges, evidence of witnesses and materials available on record, the Enquiry Officer in his report concluded that both charges framed as against the first respondent have been proved.



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5.2. The same was placed before the Governing Council of the Rukmani Shanmugam Polytechnic College and an explanation was also called for the said enquiry report dated 15.07.2011 from the first respondent. On the basis of which, the impugned order dated 12.12.2011 was passed by the Governing Council of the said Polytechnic. Under such circumstances, the Hon'ble Single Judge proceeded to quash the impugned order and further proceeded to set aside the punishment imposed, thereby modifying the impugned order. We are of the view that, such an exercise by the Hon'ble Single Judge is not sustainable for the following reasons:

“1. Without keeping in mind the authority of the Constitutional Court under Article 226, the Hon'ble Single Judge acted as an Appellate Authority against the disciplinary proceedings of the Rukmani Shanmugam Polytechnic College.

2. The power of judicial review discharged by the High Court under Article 226 is distinct from the Appellate power exercised by a Departmental Appellate Authority. Judicial review seeks to ensure

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fairness in treatment and not fairness of conclusion. In this case, the Hon'ble Single Judge in a hurry has proceeded to set aside the punishment imposed claiming that the principles of natural justice is violated and that the impugned order is not a reasoned order but a cryptic one.

3. Judicial review is not an appeal from a decision, but a review of the matter 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 law.

4. When an enquiry is conducted on charges of misconduct by a public servant, the Court is concerned to determine whether the enquiry was held by a Competent Officer or whether rules of natural justice are complied with. Here in this case, we acknowledge that the departmental inquiry was conducted by a retired District and Sessions Judge, a competent officer.

5. When the findings or conclusions are based on some evidence and the authority entrusted with the power to hold enquiry has



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jurisdiction, power and authority to reach a finding of fact or conclusion, then the scope of Judicial Review is minimal.

6. Neither the technical rules of Evidence Act nor proof of facts or evidence as defined therein command, 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 and the Courts in the name of judicial review shall not interfere. Hence after proper appreciation of facts, evidence and various records, when a competent authority comes to a conclusion that the charges are proved, we are of the view that the Hon'ble Single Judge ought not to have interfered and modified the punishment into one of relief.”

6. Proposition of Law:

The Hon'ble Single Judge has observed that the Enquiry Officer has not taken into account the statement given by the de-facto complainant, namely, Karruppusamy, as far as Charge No.1 is concerned and hence the same is liable to be set aside. But the enquiry report would reveal that

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the Inquiry Officer has marked as many documents and letters pertaining to Karruppusamy as Exhibits A2, 3, 4, 6, 8, 9 and Exhibit B3 and has elaborately dealt with each and every document. In furtherance to those exhibits, the Inquiry Officer has fairly appreciated the admission made by the first respondent with respect to the preparation of salary bill of Karruppusamy for the entire month of November 2005 and the receipt of the same and his related statement that he had disbursed the said amount of Rs.1,750/- to the coolies engaged to remove thorns within the premises of the polytechnic, on the oral instructions of the Correspondent. The Enquiry Officer considering the admission made by the first respondent regarding the withdrawal of Rs.1,750/- also specifically drew adverse inference against the first respondent about the factum of having disbursed the said amount to coolies who were engaged in removing thorns, for the concrete reason that the said statement is not supported by any evidence. Hence the observation of the Hon'ble Single Judge that the Enquiry Officer has not taken into account the statement given by Karruppusamy does not gain significance. The charge No.1 is with respect to preparation of the salary bill of Karuppasamy for the

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month of November 2005 and the withdrawal of the said salary amount of Rs.1,750/- by the first respondent and the first respondent himself has admitted the same. So the contents of the letter written by Karruppasamy to the Commissioner on 17.08.2006, which has no reference to the preparation of his salary bill for the month of November 2005 by the first respondent and the subsequent withdrawal of the same by the first respondent, has no relevance to the context of charge No.1. Under such circumstances, the Hon'ble Single Judge ought not to have sat over the enquiry report, when the disciplinary authority after consideration of the writ petitioner's explanation to the said enquiry report had accepted the enquiry report and had held that the delinquent was guilty of the charges framed against him.

6.1. The Hon'ble Supreme Court in a judgment reported in ***MANU/SC/0222/1963 (State of Andhra Pradesh Vs. Sree Rama Rao)*** in paragraph No.12 has held as follows:

“12. In our Judgment the proceedings before the departmental authorities were regular and were not vitiated on account of any breach of the rules of natural justice. The



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conclusions of the departmental officers were fully borne out by the evidence before them and the High Court had no jurisdiction to set aside the order either on the ground that the "approach to the evidence was not consistent with the approach in a criminal case," nor on the ground that the High Court would have on that evidence come to a different conclusion. The respondent had also ample opportunity of examining his witnesses after he was informed of the charge against him. The conclusion recorded by the punishing authority was therefore not open to be canvassed, nor was the liability of the respondent to be punished by removal from service open to question before the High Court."

6.2. The Hon'ble Supreme Court in a judgment reported in **MANU/SC/0475/1975 (State of Andhra Pradesh and Ors. vs. Chitra Venkata Rao)** in paragraph Nos.23 & 24 has held as follows:

"23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an Appellate Court. The findings of fact reached by an inferior court or Tribunal as a result of the appreciation



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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, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a Tribunal, a writ can be issued if it is share that in recording the said finding, the Tribunal had erroneously refused to admit admissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and 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 See Syed yakovb. v. K.S. Radhakrishnan and Ors. 1963 5 S.C.R. 64.

24. The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was not justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the



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ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court, to justify the conclusion that there is no evidence which would justify the finding of the Tribunal that the respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, re-assessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do.”

6.3. The Hon’ble Supreme Court in a judgment reported in **1995 (6) SCC 749 (B.C.Chaturvedi Vs. Union of India and Ors.)** in paragraph No.12 has held as follows:

“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



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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 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. 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 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 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



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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 co-extensive 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.”

6.4. The Hon'ble Supreme Court in a judgment reported in **MANU/SC/0834/1997 (Union of India (UOI) and Ors. vs. G. Ganayutham (Dead) by Lrs.)** in paragraph Nos.31 & 32 has held as follows:

“31. In such a situation, unless the Court/ Tribunal opines in its secondary role, that the administrator was, on the material before him, irrational according to Wednesbury or CCSU norms, the punishment cannot be quashed. Even



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then, the matter has to be remitted back to the appropriate authority for reconsideration. It is only in very rare cases as pointed out in B. C. Chaturvedi's case AIR 1995 SCW 4374 that the Court might, - to shorten litigation - think of substituting its own view as to the Quantum of punishment in the place of the punishment awarded by the competent authority. (In B. C. Chaturvedi and other cases referred to therein it has however been made clear that the power of this Court under Article 136 is different). For the reasons given above, the case cited for the respondent, namely. State of Maharashtra v. M. H. Mazumdar MANU/SC/0485/1988 : (1988)IILLJ62SC cannot be of any help.

32. For the aforesaid reasons, we set aside the order of the Tribunal which has interfered with the quantum of punishment and which has also substituted its own view of the punishment. The punishment awarded by the departmental authorities is restored.”

6.5. The Hon'ble Supreme Court in a judgment reported in **(2006) 2 SCC 373 (Andhra Pradesh v. Mohd Nasrullah Khan)** in paragraph No. 11 has held as follows:



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“11. By now it is a well-established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an appellate authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by reappreciating the evidence as an appellate authority.”

6.6. The Hon'ble Single Judge ought not to have interfered with the well reasoned investigation and appreciation of facts and evidence with respect to charge No.2 by the Enquiry Officer, that the same is vitiated for violation of principles of natural justice. The Hon'ble Supreme Court in a judgment reported in **2020 (9) SCC 471 (Pravin Kumar Chaturvedi vs Union of India and Others)** in paragraph Nos.24 to 26 has held as follows:



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“ANALYSIS

24. At the outset, it may be noted that the appellant has chosen to raise some new grounds before this Court, despite those issues involving questions of fact. Nevertheless, a few pertinent questions of service jurisprudence do arise in this appeal, which we deem appropriate to answer.”

I. Scope of Judicial Review in Service Matters

25. Learned counsel for the appellant spent considerable time taking us through the various evidences-on-record with the intention of highlighting lacunas and contradictions. We feel that such an exercise was in vain, as the threshold of interference in the present proceedings is quite high. The power of judicial review discharged by Constitutional Courts under Article 226 or 32, or when sitting in appeal under Article 136, is distinct from the appellate power exercised by a departmental appellate authority. It would be gainsaid that judicial review is an evaluation of the decision-making process, and not the merits of the decision itself. Judicial Review seeks to ensure fairness in treatment and not fairness of conclusion. It ought to be used to correct manifest errors of law or procedure, which might result in significant injustice; or in case of bias



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or gross unreasonableness of outcome.

26. These principles are succinctly elucidated by a three Judge Bench of this Court in *BC Chaturvedi v. Union of India*⁴ in the following extract:

“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. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to



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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.”

6.7. The Hon'ble Single Judge ought not to have held that the impugned order dated 12.12.2011 is not a reasoned order, but a cryptic



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one. When the impugned order itself is a self explanatory document which elaborates the rejection of the explanation of the first respondent based on the reasoning contained in the enquiry report. We are fully convinced that, considering the nature of the charges, the Governing Council of the Rukmini Shanmugam Polytechnic decided to impose punishment on the delinquent as per the Tamil Nadu Pension Rules, 1978.

6.8. With the efflux of time, there has been a change of perception as regards the applicability of the principles of natural justice. An inquiry report in a disciplinary proceeding is required to be furnished to the delinquent / employee. So that he can make an adequate representation explaining his own stand. That is what precisely has been laid down in the case of *Managing Director, ECIL, Hyderabad and Ors. Vs. Karunakar and Ors. reported in AIR 1994 SC 1074*. We have culled out the relevant passage as below: -



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“29. Hence it has to be held that when the enquiry officer is not the Disciplinary Authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the Disciplinary Authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the Disciplinary Authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.”

“

30. (iv) In the view that we have taken, viz., that the right to make representation to the disciplinary authority against the findings recorded in the enquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in Mohd. Ramzan case should apply to employees in all establishments whether Government or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceeding or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject.



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Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the enquiry officer before the disciplinary authority records its findings on the charges levelled against him.”

[v] The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on



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all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an “unnatural expansion of natural justice” which in itself is antithetical to justice.”

7. Here in this case, we are of the considered view that the disciplinary authority, that is, the Governing Council, that is the first Appellant, only after furnishing a copy of the enquiry report to the delinquent and after receiving his comments and on appreciating his comments and the conclusions in the report, passed the impugned order of imposition of punishment on the delinquent, which does not warrant interference of this Court in the name of Judicial Review. Moreover, the Hon'ble Single Judge has not recorded reasons to say as to how the



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punishment imposed on the respondent was shockingly or grossly disproportionate to the gravity of charges proved against the respondent.

8. The Hon'ble Supreme Court in a judgment reported in **MANU/SC/0067/2003 (Director General R.P.F. and Ors. vs. Ch. Sai Babu)** in paragraph No.6 has held as follows:

“6. As is evident from the order of the learned Single Judge there has been no consideration of the facts and circumstances of the case including as to the nature of charges held proved against the respondent to say that penalty of removal from service imposed on the respondent was extreme. Merely because it was felt that the punishment imposed was extreme was not enough to disturb or modify the punishment imposed on a delinquent officer. The learned Single Judge has not recorded reasons to say as to how the punishment imposed on the respondent was shockingly or grossly disproportionate to the gravity of charges held proved against the respondent. It is not that in every case of imposing a punishment of removal or dismissal from service a high court can modify such punishment merely saying that it is shockingly disproportionate.



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Normally, the punishment imposed by disciplinary authority should not be disturbed by high court or tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of and discipline required to be maintained, and the department/establishment in which the concerned delinquent person works.”

9. The Hon'ble Supreme Court in a judgment reported in **MANU/SC/1068/2014 (Union of India (UOI) vs. P. Gunasekaran)** in paragraph No.18 has held as follows:

“18. The disciplinary authority, on scanning the inquiry report and having accepted it, after discussing the available and admissible evidence on the charge, and the Central Administrative Tribunal having endorsed the view of the disciplinary authority, it was not at all open to the High Court to re-appreciate the evidence in exercise of its jurisdiction



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Under Article 226/227 of the Constitution of India.”

10. The Hon'ble Supreme Court in a judgment reported in ***MANU/SC/1461/2015 (Prem Nath Bali vs. Registrar, High Court of Delhi and Ors.)*** in paragraph Nos.24 to 26 as held as follows :

“24. It is a settled principle of law that once the charges leveled 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.

25. 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.



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26. *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 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.”*

11. The Hon'ble Supreme Court in a judgment reported in **MANU/SC/0799/2020 (The State of Rajasthan and Ors. vs. Heem Singh)** in paragraph No.33 has held as follows:

“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



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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 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



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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.”

12. In view of the above discussions, we hereby set aside the impugned order passed by the Hon'ble Single Judge in W.P(MD)No. 2737 of 2013 dated 21.07.2022 and the said writ petition stands dismissed. Consequently, we uphold the legality of the impugned order passed by the first Appellant on 12.12.2011. In the result, this Writ Appeal stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

(R.S.M.J.,)

(L.V.G.J.,)

24.04.2023

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R.SUBRAMANIAN, J.
and
L.VICTORIA GOWRI, J.

BTR

Judgment made in

W.A(MD)No.54 of 2023
and
C.M.P(MD)Nos.2207 & 1437 of 2023

24.04.2023