



W.P.No.15834 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2024

CORAM

THE HONOURABLE Mrs. JUSTICE R.KALAIMATHI

W.P.No.15834 of 2009

and M.P.No.1 of 2009

Mohammed Nazeer

...Petitioner

vs.

1.The Additional Director General of Police,
(Law and order)
Chennai.

2. The Deputy Inspector General of Police
Villupuram Range,
Villupuram.

3. The Additional Superintendent of Police (Crimes)/
Enquiry Officer,
Villupuram

4. The Superintendent of Police,
Villupuram District,
Villupuram.

5. A.Amalraj

(R5 impleaded as per order dated 10.11.2010 in M.P.No.1 of 2010)

... Respondents



W.P.No.15834 of 2009

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus, calling for the records in C.No.B2/5000/08 dated 16.06.2008 passed by the 2nd respondent and the consequential in vide Rc.No.020028/AP1(2)/2009 dated 19.03.2009 passed by the 1st respondent and quash the same as illegal, arbitrary and against the law and direct 4th respondent to release the increment due to the petitioner.

For Petitioner : No Appearance

For Respondents : Mr.S.Rajesh

Government Advocate for R1 to R4

: Mr.U.Karunakaran for R5

ORDER

There is no representation for the petitioner for several hearings.

2. Heard Mr.S.Rajesh, learned Government Advocate appearing for the respondents 1 to 4 and Mr.U.Karunakaran, learned counsel for the 5th respondent.

3. The order passed in C.No.B2/5000/08 dated 16.06.2008 passed by the 2nd respondent and the order passed in RC.No.020028/AP1(2)/2009 dated 19.03.2009 passed by the 1st



W.P.No.15834 of 2009

respondent are under challenge.

WEB COPY

4. The facts led to the filing of this writ petition is set out hereunder:-

The petitioner Mohammed Nazeer son of Mohammed Ismail was enlisted directly as Sub-Inspector of Police on 28.09.1987. He completed 20 years service and promoted to the post of Inspector and posted to Dhindivanam Kanjanur Police Station and thereafter, he was transferred to Sholavaram Police Station, Ponneri Sub-Division, Thiruvallur District. While, he was working as Inspector of Police at Thiyyagadhurgam Police Station, he registered a case in Crime Nos.112/08, 114/08 and 115/08 for the offences committed under Section 379 IPC against Howrang Baha and John Basha. Later, they gave a false complaint against the petitioner for demand of illegal gratification from them to the Superintendent of Police, Villupuram who in turn conducted a preliminary enquiry through Deputy Superintendent of Police. Based on the preliminary enquiry, a charge under Rule 3(b) of TNPSS (Disciplinary and Appeal) Rules, 1955 was framed against the petitioner by the 2nd respondent and appointed the 3rd respondent as an Enquiry Officer. Upon enquiry, the Deputy Inspector General of Police gave a finding by way of stoppage of increment for a period of two years based on the enquiry report given by the Additional Superintended of Police (Crimes) by



W.P.No.15834 of 2009

proceedings dated 16.06.2008. An appeal preferred before the Additional Director General of Police has confirmed the order of the 2nd respondent in the proceedings dated 19.03.2009. Hence, this writ petition.

5. Mr.S. Rajesh, learned Government Advocate appearing for the respondent no.1 to 4 would vehemently argue that charge memo pertains to threatened Howrang Baha and John Basha, demand and acceptance of Rs.20,000/- and Rs.15,000/- as illegal gratification for not to foist case against them in Crime Nos.112/08, 114/08 and 115/08 for the offences committed under Section 379 IPC. He would further contend that after a proper enquiry conducted by the enquiry officer, the orders came to be passed namely postponement of increment for two years and it shall operate to postpone future increments for a period of two years and he sought for dismissal of the writ petition.

6. Mr.U.Karunagaran, learned counsel for the 5th respondent would specifically argue that, based on the report of the enquiry officer namely the Additional Superintendent of Police (Crimes), an order was duly passed by the Additional Director General of Police (Law and Order), Chennai.



W.P.No.15834 of 2009

WEB COPY

7. The prime contention of the petitioner is that the order of the 1st respondent dated 19.03.2009 is against the weightage of the evidence and he has simply concurred with the findings of the disciplinary authority.

8. Therefore, the moot point is that whether the orders in question have been passed in line with the principles of natural justice. In essence, the order must be commensurate with the gravity of the offence. If he is exclusively harassed or victimized, it is open to judicial review.

9. On a careful perusal of the findings of the disciplinary authority, it appears that after following the principles of natural justice, the findings were given by drawing minute.

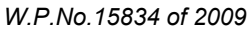
10. As regards the scope of the judicial review, it is relevant to refer to the observations made by the Hon'ble Supreme Court in one of its decisions reported in 1995 (6) SCC 749 (*B.C.Chaturvedi vs. Union of India*), has held as under:-

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of



WEB COPY

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 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 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



“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



WEB COPY

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 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 reappreciate 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



W.P.No.15834 of 2009

guide is the exercise of robust common sense without which the judges' craft is in vain."

WEB COPY

12. As early as in 1993, the Hon'ble Supreme Court in *AIR 1963 SC 1723 (State of Andhra Pradesh Vs. S.Sree Rama Rao)*, a Three Judge Bench of the Honourable Supreme Court has held as under:-

"...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 evidence is not a matter which can be permitted to be canvassed before the High Court in a writ petition."

13. The settled law is that, it is the domain of the Appointing Authority/Disciplinary Authority to decide as to the punishment to be imposed on the delinquent, provided the punishment is proportionate to the delinquency. If the punishment is disproportionate or shocking the conscience of the Court, then the Court shall interfere with the same in exercise of powers conferred under Article 226 of the Constitution of India.

14. While awarding the punishment, considering the nature and gravity of the charges, for which the entire service records of the



W.P.No.15834 of 2009

Petitioner has to be looked into.

WEB COPY

15. In the given circumstances, whether the punishment imposed is proportionate to the delinquency or not. In the impugned order dated 16.06.2008 is to be seen, charges under Section 3(b) of TNPSS (Discipline and Appeal) Rules, 1955 was framed against the petitioner is extracted hereunder:

“விழுப்புரம் மாவட்டம், தியாகதுருகம் காவல் ஆய்வாளராக பணிபுரிந்த நீர் தியாகதுருகம் காவல் நிலையம் குற்ற எண்.112/08, 114/08 மற்றும் 115/08 பிரிவு 379 இ.த.ச. வழக்குகளில் திருட்டுப்பொருள் வாங்கிய தியாகதுருகத்தைச் சேர்ந்த இரும்பு வியாபாரிகளான ஹெளரங் பாட்டிஷா த/பெ ஷேடிக் அப்துல்லா மற்றும் ஜான் பாட்டிஷா த/பெ.இஸ்மாயில் என்பவர்கள் மீது பொய் வழக்கு போடப்போவதாக மிரட்டி முறையே ரூ.20,000 மற்றும் ரூ.15,000 பெற்ற ஒழுங்கீனமான குற்றத்தை புரிந்துள்ளீர்.”

16. The Inspector being the Station House Officer, he was charged for demand and acceptance of illegal gratification from Howrang Basha and John Basha for not to foist case against them in Crime Nos.112/08, 114/08 and 115/08 under Section 379 I.P.C. For the said charge, after enquiry, an order of punishment was awarded to the effect that postponement of increment for two years and it shall operate to postpone



W.P.No.15834 of 2009

future increments for a period of two years. Considering the nature of the charges, the petitioner who was officiating the Inspector of Police, punishment awarded can never be considered as disproportionate to the charges.

17. Based on the aforesaid submissions and discussions, the petitioner has failed to make out the case. And consequently, this writ petition stands dismissed. There is no order as to costs. Consequently, connected miscellaneous petition stands closed.

02.08.2024
(2/3)

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
mac

To

1.The Director General of Police,
(Law and order)
Chennai.

2. The Deputy Inspector General of Police
Villupuram Range,



W.P.No.15834 of 2009

Villupuram.

3. The Additional Superintendent of Police (Crimes)/
Enquiry Officer,
Villupuram

4. The Superintendent of Police
Villupuram District,
Villupuram

R.KALAIMATHI, J.

mac

W.P.No.15834 of 2009
and M.P.No.1 of 2009



WEB COPY



W.P.No.15834 of 2009

02.08.2024

(2/3)