IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2024

CORAM

THE HONOURABLE MR. JUSTICE C. KUMARAPPAN

W.P.No.22265 of 2012

1.P.Marquis (Died),
2.Thavamani
3.Kasthuribai
4.M.Thenaruvi
5.M.Gowdhami
3.M.Gowthaman ...Petitioners

-Vs-

1.The Government Of Tamilnadu
Rep. By Its Secretary,
Commercial Taxes And Registration (E1) Department,
Fort St. George, Chennai-600 009

2.The Tamil Nadu Public Service
Commission, Rep By Its Secretary,
Chennai-600 002

3.The Special Commissioner and
Commissioner Of Commercial Taxes,
Ezhilagam, Chepauk, Chennai-5

4.The Commissioner for Disciplinary Proceedings,
Ezhilagam, Chepauk, Chennai-600 005

5.The Commissioner for Disciplinary Proceedings,
Kuralagam, Chennai-600 108.

...Respondents

(P2 to P6 substituted as Lrs of deceased sole petitioner vide order dated 22.11.2022 made in WMP.24690/2019 in WP.No.22265/2012 by JNBJ)

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, calling for the records relating to the order passed by the first Respondent in G.O.(2D) No.132 dated 29.06.2012 and quash the same and further direct the respondent to grant all benefits and back wages to the Petitioner and pass such further or other orders.

For Petitioner : M/s.S.Parthasarathy

For Respondents : M/s.K.Vasantha Mala,
Govt. Advocate (Tax) [for R.1, R3 and R4]

: Mr.B.Bharanidharan,
Standing counsel for TNPSC [For R2]

O R D E R

The instant writ petition has been filed challenging the order of punishment imposing removal from services, vide G.O.(2D).No. 132 dated 29.06.2012.

2. The learned counsel for the petitioners vehemently contended that the enquiry report does not reflect any material so as to implicate the delinquent with the alleged charges. Further, the learned counsel for the petitioners contended that the charges have not at all been proved and that the Disciplinary Authority has simply relied upon the statements of the witnesses without even verifying the veracity of the statement with reference to their records, and has erroneously given a positive finding.

3. The learned counsel for the petitioners further contended that, when the earlier dismissal of the delinquent employee vide order in G.O.(2D).No.188 dated 19.12.2007, was challenged before this Court by way of filing a Writ Petition in W.P.No.8065 of 2008, wherein this Court vide order dated 16.12.2011, set aside the order of punishment alone and remitted back the matter with a specific direction to the 1st respondent to consider whether the punishment imposed against the delinquent is adequate or excessive, and also directed the 1st respondent to consider the age of the delinquent employee while imposing punishment. However, it is the contention of the learned counsel for the petitioners that in spite of such specific direction, without considering the direction of this Court again passed impugned order dated 29.06.2012. Therefore, the learned counsel for the petitioner pray to set aside the impugned order by allowing the writ petition. To buttress his contentions, the learned counsel for the petitioners has relied upon the following judgements:-

(i) ***W.A.(MD)No.58 of 2011 - The Principal Secretary to the Government of Tamil Nadu and others Vs. J.Joseph***

(ii) ***2007 (25) CTCOL 501 - V.C.Rajamanickam Vs. State of Tamil***

Nadu Rep. by the Chief Secretary to Government, Public (Special A) Department, Chennai and Another.

4. Per contra, the learned Government Advocate (Tax) appearing for respondents 1, 3 and 4 would vehemently contend that, the directions given by this Court in W.P.No.8065 of 2008 have been duly complied with, and sufficient reasons were given while imposing the impugned punishment of removal from service. The learned Government Advocate further contended that the Writ Court while exercising the power of Judicial Review cannot go into the factual aspect by re-appreciating the evidence, unless the findings of the authorities are perverse. Whereas the impugned order contain justifiable reason for the ultimate conclusion. Therefore, there are no reasons to interfere with the order passed by the disciplinary authority. Hence, she prayed for the dismissal of the instant Writ Petition.

5. I have given my anxious consideration to either side submissions.

6. The first and foremost submission made by the learned counsel for the petitioner is that the disciplinary authority has simply relied upon the evidence of the witnesses and erroneously arrived at a positive conclusion. However, while considering the impugned order, the disciplinary authority has taken into account of the objections raised by the delinquent employee, the statements made by the witnesses, and then only after analyzing all the materials such as documents and oral evidence, has arrived at the ultimate conclusion regarding punishment.

7. It is pertinent to mention here that eight charge memorandum were issued against the delinquent employee with a separate case number for each charge memos. In all the cases, witnesses from both sides were examined and documents were marked, and after examining all the witnesses and after perusing the documents, the impugned order was passed. Therefore, the harmonious reading of the impugned orders which were passed by the Disciplinary Authority clearly manifest the application of mind by providing reasons for the each findings.

8. At this juncture, the learned counsel for the petitioner would rely upon the Judgement of this Court in ***W.A.(MD)No.58 of 2011 - The Principal Secretary to the Government of Tamil Nadu and others Vs.J.Joseph*** and ***V.C.Rajamanickam Vs. State of Tamil Nadu*** (cited supra) and would contend that, though the Writ Court cannot go into the findings recorded by the Disciplinary Authority, that does not mean that under no circumstances this Court cannot interfere with the order passed by the Disciplinary Authority. It is the contention of the learned counsel for the petitioners that while exercising power of the Judicial Review, whenever the Writ Court finds that there are no evidence and that the reasoning given by the Disciplinary Authority is perverse, the Writ Court can very well interfere with the order of the Disciplinary Authority. Absolutely, this Court do not have any grievance about the proposition relied by the learned counsel for the petitioners. But the impugned order contains reasons and the authority arrived at such conclusion after analyzing the available documents and oral evidence, where this petitioner could not show any perversity.

9. The yet another submission made by the learned counsel for the petitioners is that, in spite of the specific directions of this Court to consider whether the punishment imposed is adequate or excessive, and also to consider the age of the delinquent employee, the disciplinary authority did not consider the same. Whereas, the learned Government Advocate would invite the attention of this Court to Paragraph No.6 of the impugned order, wherein it has been stated that the punishment of removal from service is commensurate with the gravity of charges.

10. It is relevant to mention here that while exercising the power of judicial review unless when the punishment is shockingly disproportionate, this Court can not interfere with the punishment imposed by the Disciplinary Authority. Here the charges proved against the delinquent employee, are grave in nature and almost all the charges involve corrupt practice of the petitioner qua receiving of illegal gratification. Therefore, the punishment imposed upon the delinquent employee seems to be commensurate with the gravity of the charges and no disproportionality could be seen.

11. In view of the above, this Court do not find any infirmity or illegality in the order passed by the 1st respondent in G.O.(2D) No.132 dated 29.06.2012. Accordingly, the Writ Petition stands dismissed. No costs.

(shr) **12.09.2024**

Index : Yes/No

Speaking / Non Speaking Order

Neutral Citation : Yes/No

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C.KUMARAPPAN, J.

(shr)

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