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W.P. No.3724 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2024

Coram:

THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.P. No.3724 of 2020

1.K.Sekar (Deceased)
2.Chindamani
3.Aravindan
4.Krishnakumar
5.Ramayee
(P2-P5 substituted as LR's of deceased
sole petitioner vide order dated 13.07.2023
made in WMP.No.23380/2021 in
W.P.No.3724/2020 by JSNPJ)

... Petitioners

Vs.

- 1.The State of Tamil Nadu,
Rep by its Secretary,
Public Work Department,
Fort St.George, Chennai – 600 009.
- 2.The Engineer in Chief,
PWD (WRO) Chennai Region,
Chepauk,
Chennai – 600 005.
- 3.The Chief Engineer,
PWD (WRO) Chennai Region,
Chennai – 600 005.



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4.The Special Chief Engineer,
PWD,
O/o.The Superintending Engineer,
PWD (WRO) Vellar Canal Circle,
Cuddalore – 607 001.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the order passed by the 3rd respondent in Proceedings Order No.E2(2)/639/2017 dated 04.06.2019 and quash the same and consequently direct the respondents to reinstate the petitioner.

For Petitioners : Mr.W.M.Abdul Majeed

For Respondents : Mr.G.Nanmaran
Special Government Pleader

ORDER

The instant Writ Petition has been filed challenging the order of punishment of dismissal passed against the petitioner vide order dated 04.06.2019.

2. The learned counsel for the petitioners would vehemently submits that the 1st petitioner was appointed in the PWD Department as Irrigation Assistant by way of compassionate appointment dated 18.03.1997. He



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would further contend that, due to the penury situation of the family of the 1st petitioner, after the demise of his father, he was given a compassionate appointment. He would further contend that, without following due procedures and without even providing an adequate opportunity, and in violation of principles of natural justice, an order of punishment was passed against the petitioner. It is the contention of the petitioners that, though the 1st petitioner was appointed compassionately, he was not treated with compassion and that the alleged bogus certificate was not at all proved in the manner known to law, and he would further states that he do not know the veracity of those certificate, as it was obtained by his uncle. It is in this background, the learned counsel for the petitioners would contend that order of punishment of dismissal is shockingly disproportionate and liable to be set aside. To buttress the above contentions, the learned counsel for the petitioners relied the following decisions:-

- (i) Kashinath Dikshita Vs. Union of India (UOI)***
and Ors in Civil Appeal No.2571 of 1977 and
(ii) State of U.P and Ors Vs. Saroj Kumar Sinha
in Civil Appeal No.254 of 2008.



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3. Per contra, learned Government Advocate would contended that the official respondent has followed all due procedures, and that the petitioner was provided with adequate opportunity to defend himself. It is the further contention of the learned Government Advocate that on receipt of the petition from the petitioner's brother's son, and after an enquiry, misconduct of furnishing bogus certificate by the 1st petitioner had come to light. It was further contended that due opportunities were provided to the petitioner, and only based upon the material available before the Enquiring Authority, he submitted a positive report.

4. Considering the gravity of the charges, the disciplinary authority imposed proportionate punishment of dismissal. Therefore, under Article 226, this Court cannot sit as an appellate Court to go into the proportionality of the punishment. Hence, prays for dismissal of the writ petition.

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

6. The foremost submission put forth by the learned counsel for the petitioners is that, though he was served with a Charge Memorandum dated



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03.05.2017, the annexure which allegedly contains 250 pages, and the documents relied by the Management to sustain charge was not furnished.

But, to contradict such argument the learned Government Advocate has submitted a letter addressed by the 1st petitioner to the Enquiry Officer requesting him to furnish the above documents vide his letter dated 28.07.2017. On such request the documents requested by the petitioner was provided to him on 17.08.2017. In evidence thereof, the 1st petitioner himself has acknowledged the receipt of the said documents. Accordingly, the prime contentions of the learned counsel for the petitioners that the material documents not furnished, has been disproved.

7. Apart from that, it is the further contention of the learned counsel for the petitioners that no adequate opportunity was provided to him to defend the case. In this regard, the learned Government Advocate has submitted a type set of papers. Wherein, the 1st petitioner on 01.09.2017 has expressed his satisfaction, towards the provision of opportunity to defend the case effectively and to access to the documents, and towards the impartiality of the Enquiry officer. The petitioner has given written acknowledgement to that effect. Therefore, the contentions that the 1st petitioner was not provided



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with due opportunity to defend the charge, is also disproved by the respondents by producing the written acknowledgement given by the petitioner. It is thus, the very defence put forth by the 1st petitioner towards the alleged procedural lapses, have been evidently disproved by the respondent. As a concomitant, we can safely arrive at a conclusion, that the respondents had followed all due procedures and has provided adequate opportunity to the petitioner and also followed the principles of natural justice. In such a background, now the issue left to be decided is whether the findings of the enquiry officer in order.

8. Before, we delve in to the merits of the matter, it is relevant to discuss certain legal principles to understand the power of the Judicial Review. In this regard, it is relevant to refer the judgment of the Hon'ble Supreme Court in ***Central Industrial Security Force v. Abrar Ali*** reported in **(2017) 4 SCC 507**, wherein the Hon'ble Supreme Court in categorical term has enunciated that the High Court should not have entered into the arena of facts which tantamounts to re-appreciation of evidence. It was further held that the re-appreciation of evidence is not permissible in exercise of jurisdiction under Article 226 of The Constitution of India. In the above



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judgment, the Hon'ble Supreme Court has also relied upon the judgment of ***State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya*** [***State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya*** and ***Union of India v. P. Gunasekaran*** reported in (2015) 2 SCC 610. The relevant paragraphs are paragraphs 14 and 15 and the same read as under:-

“14. In State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya [State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya, (2011) 4 SCC 584 : (2011) 1 SCC (L&S) 721] , this Court held as follows : (SCC p. 587, para 7)

“7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide B.C. Chaturvedi v. Union of India [B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] , Union of India v. G. Ganayutham [Union of India v. G. Ganayutham, (1997) 7 SCC 463 : 1997 SCC (L&S) 1806]



, *Bank of India v. Degala Suryanarayana* [*Bank of India v. Degala Suryanarayana*, (1999) 5 SCC 762 : 1999 SCC (L&S) 1036] and *High Court of Judicature at Bombay v. Shashikant S. Patil* [*High Court of Judicature at Bombay v. Shashikant S. Patil*, (2000) 1 SCC 416 : 2000 SCC (L&S) 144] .)”

15. *In Union of India v. P. Gunasekaran* [*Union of India v. P. Gunasekaran*, (2015) 2 SCC 610 : (2015) 1 SCC (L&S) 554], this Court held as follows : (SCC pp. 616-17, paras 12-13)

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence.

The High Court can only see whether:

- (a) the enquiry is held by a 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 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;



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(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.*

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) *reappreciate the evidence;*

(ii) *interfere with the conclusions in the enquiry, in 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;*

(vii) *go into the proportionality of punishment unless it shocks its conscience."*

9. In yet another judgment in ***General Manager Vs. Giridhari Sahu and others*** reported in ***(2019) 10 SCC 695***, the Hon'ble Supreme Court has referred the Constitution Bench judgment of this Court in ***Yakoob v. K.S. Radhakrishnan*** reported in ***AIR 1964 SC 477***, and held in paragraph 23 as follows:-

"23. A Constitution Bench of this Court, in *Yakoob v. K.S. Radhakrishnan* [*Yakoob v. K.S. Radhakrishnan*, AIR 1964 SC



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477] , has spoken about the scope of writ of certiorari in the following terms: (AIR pp. 479-80, para 7)

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the court or tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate court. This limitation necessarily means that findings of fact reached by the inferior court or tribunal as a result of the appreciation of evidence cannot be reopened 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 the tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the tribunal cannot be challenged in proceedings for a



writ of certiorari on the ground that the relevant and material evidence adduced before the tribunal was insufficient or inadequate to sustain the impugned 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, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Ahmad Ishaque [Hari Vishnu Kamath v. Ahmad Ishaque, AIR 1955 SC 233] , Nagendra Nath Bora v. Commr. of Hills Division and Appeals [Nagendra Nath Bora v. Commr. of Hills Division and Appeals, AIR 1958 SC 398] and Kaushalya Devi v. Bachittar Singh [Kaushalya Devi v. Bachittar Singh, AIR 1960 SC 1168]).

(emphasis supplied)”

****[Emphasis supplied by this Court]***

10. Therefore, through the above precedent, it is abundantly clear that an error of law, which is apparent on the face of the record can be corrected by way of writ, but not an error of fact, howsoever grave it may appear to be. It was also made clear that while issuing a writ of Certiorari, the finding of fact recorded by the Tribunal cannot be challenged on the ground of adequacy or inadequacy of material evidence to sustain the finding. It was also held that 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



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jurisdiction and domain of the tribunal, and thus, the same cannot be agitated before a writ court.

11. While keeping the above legal principles in our mind, if we look at the facts involved in this case, the charge against the 1st petitioner is submission of false certificate on his educational qualification. It is the contention of the respondents that the 1st petitioner's educational qualification is 7th standard fail. Whereas, he has given certificate as if he discontinued 9th standard.

12. In this regard, learned Government Advocate relied upon the Government Notification dated 20.01.2019, wherein, by virtue of Article 309 of the Constitution of India, Rules have been framed, containing qualification and mode of recruitment for the post of Irrigation Assistant which was held by the 1st petitioner. While looking at the above rule, for the post of Irrigation Assistant, the candidates must have passed 8th standard, whereas, the 1st petitioner has passed only 6th standard and discontinued at 7th standard.

13. However, according to the above legal principles, it is abundantly clear that, while exercising the power of judicial review, this Court cannot re-appreciate the evidence, and should only look at whether is there some



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material available in support of the finding. In the Enquiry report, to prove the bogus nature of the petitioner's educational qualification, the enquiry Officer relied upon the certificate given by the School Authorities. In view of the same, the Enquiry Officer arrived at a positive finding. In such a background, there are some material against the 1st petitioner. Thus, the findings rendered by the Enquiry Officer, that the 1st petitioner had furnished bogus certificate, cannot be found faulted.

14. The submission of bogus certificate, is a grave misconduct. Therefore, if any lenient punishment is imposed then, it will be mock at the integrity and honesty of vast majority of the workmen. But in this case, learned counsel for the petitioners would invite the attention of this Court that the 1st petitioner was appointed on a compassionate ground therefore, though charges have been proved, he has to be dealt compassionately. In support of his contentions, he relied upon the judgement of the learned Single Judge of this Court in the case of ***K.Uthayalakshmi Vs. The Superintending Engineer, Tiruppur District & Another*** reported in ***2011 0 Supreme(Mad) 3269***, wherein, this Court while considering a similar set of facts, has arrived at a conclusion, that even if bogus certificate has been submitted, considering the family circumstances and considering the factum that the delinquent was



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appointed on a compassionate ground on account of penury situation of their family, it has to be viewed sympathetically.

15. The learned counsel for the petitioners has also relied upon the decision of the Division Bench of this Court held in *The State of Tamil Nadu, Rep by the Secretary, Public Works Department, Fort St.George, Chennai – 9 and others Vs. P.Palani W.A.No.2792 of 2023 vide order dated 10.11.2023*. In the above cited case, in a similar set of facts qua for furnishing bogus electoral certificate, and other educational certificate, the Government has taken a lenient view and conceded before the Court to reinstate the delinquent without salary from the date of disengagement, but, treated those period only for the continuity of service for terminal and other benefits. The relevant portion of the said order is as follows:-

“4.The learned Additional Advocate General appearing for the appellants would fairly submit that the respondent herein may be extended the benefit of G.O.Ms.No.134 and he may be reinstated into service with effect from 28.03.2018 i.e., the date on which he was terminated from service for furnishing bogus educational certificate inasmuch as similarly placed workers/employees had been extended the benefit of the said G.O. However, the learned Additional Advocate General would submit that for the period from 23.08.2018 i.e., date of termination until being reinstated, the Respondent herein is not entitled to claim the benefit of salary, but could be extended the benefit of continuity of service for the said period.



5. On the above submissions, the learned counsel appearing for the writ Respondent/writ petitioner would submit that the order of the learned Judge provided only for reinstatement, without salary from the date of disengagement, but the same shall be treated as continuity of service for terminal/other benefits.

6. In view of the submissions made by the learned counsel on either side, the order of the learned Judge is modified to that effect. Accordingly, we intend to reiterate that the respondent is not entitled for salary from the date of disengagement till the date of reinstatement, however, the same shall be treated as continuity of service for terminal/other benefits.”

16. Therefore, now the issue to be resolved is proportionality of the punishment. The writ Court, while exercising the power of judicial review cannot go in to the proportionality of the judgement, unless the same is shockingly disproportionate. No doubt, the submission of bogus certificate, in normal circumstances would be dealt seriously. But in contrast, we are dealing a delinquent who was appointed under compassionate ground. Therefore, as per the order of the learned Single Judge of this Court held in the case of ***K.Uthayalakshmi Vs. The Superintending Engineer, Tiruppur District & Another*** it must be, to some extent dealt compassionately. The object of appointing a person under compassionate ground is to support the family to overcome the penury condition. Therefore, considering the ratio of



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the Hon'ble Division Bench order in W.A.No.2792 of 2023, and the order of the learned Single Judge of this Court in the case of ***K.Uthayalakshmi*** Vs. ***The Superintending Engineer, Tiruppur District & Another***, this Court is of the view that there are scope to interfere in the order of punishment, to meet the ends of justice, as the appointment was made under compassionate ground and that now the delinquent also no more. It is in this background, the punishment imposed against the petitioner is shockingly disproportionate.

17. In view of what has been stated herein above, this Court is of the view that some interference by way of reduction of punishment would meet the ends of justice. Accordingly the punishment of termination from service, is ordered to be modified as compulsory retirement. However, it is made clear that the petitioner would be eligible for terminal or other benefits prospectively, more precisely only from the date of this order.

18. In the result, this Writ Petition is partly allowed as indicated herein above. No costs.

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Index : Yes
Speaking order



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Neutral Citation : Yes

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To

- 1.The State of Tamil Nadu,
Rep by its Secretary,
Public Work Department,
Fort St.George, Chennai – 600 009.
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