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W.A.Nos.2103 & 2106 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.07.2024

PRONOUNCED ON : 19.08.2024

CORAM

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

W.A.Nos.2103 & 2106 of 2021

and

CMP.Nos.13339, 13350, 13351 of 2021 & 19543 & 19546 of 2022

WA.No.2103 of 2021

1. The Secretary to Government,
Home (SC) Department
Fort St. George,
Secretariat, Chennai-600 009.
2. The Additional Director of Police and
Director of Fire and Rescue Services,
Office of the Tamil Nadu Fire and Rescue Services Department,
Chennai-600 008.

... Appellants

Vs.

N.Namasivayam

... Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 30.08.2019 passed in W.P.No.25362 of 2013 and allow this writ appal.



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1. The Principal Secretary to Government,
Home (Police-XVII) Department,
Government of Tamil Nadu,
Fort St. George, Secretariat,
Chennai-600 009.
2. The Director Fire and Rescue Services Tamil Nadu,
Office of the Director Fire and Rescue Services Services,
No.1, Greams Road,
Chennai-600 008.

... Appellants

Vs.

1. N.Namasivayam
2. The Secretary,
Tamil Nadu Public Service Commission,
Greams Road,
Chennai-600 006.

... Respondents

Prayer: Writ Appeals filed under Clause 15 of Letters Patent praying to set aside the order dated 30.08.2019 passed in W.P.No.30766 of 2013 and allow the writ appeal.

For Appellants : Mr.Haja Nazirudeen
in both WAs Additional Advocate General
assisted by Mr.V.Nanmaran
Additional Government Pleader

For Respondents : Mr.S.Kanniah
in both WAs



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COMMON JUDGMENT

[Judgment of the Court was made by **C.KUMARAPPAN, J.**]

The respondents 1 and 2 before the writ Court are the appellants herein. The petitioner is the respondent in the Writ Appeal.

2. For the sake of convenience, the parties will be referred to according to their litigative status before the Writ Court.

3. Short facts which give rise to the instant writ appeals is that, the petitioner preferred a writ petition in WP.No.25362 of 2013 seeking a direction to pay the monetary and all other service benefits due to the petitioner, treating him that he was deemed to have been retired from the services as Deputy Director of Fire and Rescue Services with effect from 31.01.2008.

4. Apart from the above writ petition, the petitioner has also filed yet another writ petition in WP. No. 30766 of 2013 seeking to quash the G.O.Ms.No.748, Home (Police-XVII) Department dated 26.09.2013 by and



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in which the petitioner was terminated from the services for his proved misconduct.

5. The Writ Court, after having considered the submissions made by either side, and on the basis of the order passed in the batch of connected writ petitions between the same parties in the previous writ proceedings in WP.Nos.35217 of 2005, 5398 of 2006, 22850 & 25550 of 2008, 4211, 4212 and 6517 of 2009, has arrived at a conclusion that there are no occasions for the authority to proceed further against the petitioner and such order is nothing but, overreaching the order of the Writ Court and ultimately set aside the order of punishment.

6. According to the petitioner, when he was serving as a Deputy Director of Fire and Rescue Services, he was served with a charge Memorandum dated 05.01.2005. Thereafter, he was directed to submit an explanation. On submission of explanation, a domestic enquiry was conducted and one Mr.C.V.S.Rao was appointed as Enquiry Officer. The Enquiry Officer on completing the enquiry, has submitted his enquiry report holding that among 4 charges, only the count (ii) and (iii) of Charge No.1 and charge No.4 are proved and other charges not proved.



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7. However, the appointing authority has deviated from the finding of the Enquiry Officer and on furnishing the copy of the enquiry report has called for further explanation from the delinquent officer. Since he has not submitted any further explanation, a punishment of dismissal of service was imposed against the petitioner.

8. The learned counsel for the petitioner would vehemently contend that by virtue of earlier writ proceedings, the petitioner was deemed to have been retired from service and that all the previous disciplinary proceedings have been quashed. Therefore, contended that he is entitled for all terminal benefits. Apart from that, it is also the submission of the learned counsel for the petitioner that the order of dismissal is nothing but, an act contrary to the findings rendered in earlier round of litigation in W.A.Nos.999 and 1578 of 2010. The learned counsel for the petitioner would further submit that even the punishment imposed against the petitioner is disproportionate to the gravity of the charges. Hence, would contend that the order of the Writ Court is well merited and does not require any interference.

9. Per Contra, the learned Additional Advocate General Mr.Haja Nazirudeen assisted by Mr.Nanmaran, Additional Government Pleader would vehemently contend that as against the petitioner, they have issued three



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charge memorandums dated 26.08.1997, 18.02.2000 and on 05.01.2005. It is the submission of the learned Additional Advocate General that in earlier round of litigation in WA.Nos.999 & 1578 of 2010, the charges in respect of two charges qua 26.08.1997 and 18.02.2000 were quashed. Whereas, the impugned charge memorandum dated 05.01.2005 has been challenged by the petitioner in WP.Nos.4211 & 4212 of 2009. Though WP.Nos.4211 & 4212 of 2009 have been disposed of along with other writ petitions, where the other two charge proceedings dated 26.08.1997 and 18.02.2000 were under challenge, the Writ Court has dismissed all the writ petitions giving liberty to the Management to proceed against the writ petitioner in accordance with law.

10. However, the writ petitioner has preferred writ appeals in WA.Nos.999 and 1578 of 2010. Pertinently, the petitioner did not file any writ appeal against WP.Nos.4211 & 4212 of 2009, where the challenge of charge memorandum dated 05.01.2005 was dismissed. Therefore, according to the learned Additional Advocate General, the submissions made by the petitioner herein that, charge memorandum dated 05.01.2005 and the punishment imposed against the petitioner in pursuance of the charge memorandum is not valid, cannot be countenanced. It is also the submission



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of the learned Additional Advocate General that the punishment imposed against the petitioner is proportionate to the gravity of charges. It is also the submission of the learned Additional Advocate General that while exercising the power of judicial review, the writ Court cannot go into the proportionality of the punishment, unless the punishment is shockingly disproportionate. Therefore, the learned Additional Advocate General would submit that the order of the learned Single Judge is liable to be interfered with.

11. We have given our anxious consideration to either side submissions.

12. Before we delve into the disputed facts, it is pertinent to refer certain material details. As against the petitioner, three charge memorandums were issued on 26.08.1997, 18.02.2000 and on 05.01.2005. Against all of the charge memorandums qua dated 26.08.1997, 18.02.2000 and 05.01.2005, a batch of writ petitions in WP.Nos.15217 of 2005, 5390 of 2006, 22850 & 25550 of 2008 and 4211, 4212 and 6517 of 2009 were filed. The same were disposed of on 15.03.2010, through which all the writ petitions were dismissed. The resultant consequence is that the Writ Court has upheld all the three charge memorandums.

13. However, the petitioner preferred Writ Appeal in WA.Nos.999 &



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1578 of 2010 and the same was disposed on 24.01.2012. If we closely peruse the order of the Writ Appeal with forensic **inquest**, the same has been filed only against the order dated 15.03.2010 made in WP.Nos.35217 of 2005 and 25550 of 2008. Therefore, it is amply clear that though the writ petitions relating to all the three charges have been disposed of by common order, in respect of the 3rd charge memorandum dated 05.01.2005, which has been challenged and was dismissed in WP.No.4212 of 2009 and 4211 of 2009 has not been taken by way of writ appeal. Therefore, the 3rd charge memorandum still has force as against the petitioner and the respondents-disciplinary authority has got every right to proceed against the said charge memorandum. Here, the punishment of dismissal of service was ordered vide impugned G.O.Ms.No.748 dated 26.09.2013, which arisen only in pursuance of the charge memorandum dated 05.01.2005.

14. Now, with that background, if we look at the impugned order of the learned Single Judge, the learned Single Judge has proceeded under the premise that all the three charge memorandums have been quashed in the Writ Appellate Court in WA.Nos.999 & 1578 of 2010. Only in that context, the learned Single Judge has allowed the writ petition, thereby the order of



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dismissal was set aside.

15. To understand the issue lucidly and for ready reference, this Court deems it appropriate to extract the findings rendered by the learned Single Judge made in paragraphs 16 and 17:-

*“16. The order of learned Single Judge dismissing the Writ Petition No.5398 of 2006 and WP.Nos.4211 and 6517 of 2009 thus stands set aside. By the impugned order dated 26.09.2013, bearing G.O.Ms.No.748 Home (Police-XVII) Department, the respondent has set aside the findings of the enquiry officer regarding count 1, 4 of Charge-I, Charge-II and Charge-III, and has imposed the punishment of dismissal from service. The first respondent while passing impugned order accepted the recommendation of the Public Service Commission. The question which arises as to whether after the Division Bench has set aside the order of the learned Single Judge dismissing the Writ Petition Nos. 5398 of 2006, 4211 and 6517 of 2009, could the department have proceeded ahead with departmental proceedings?. It is further pertinent to note that in any event, the time limit fixed by this Court in WP.No.2252 of 2008 of three months had not been to adhere to. Time was not extended by this Court. The enquiry could not been continued further. **In any event, the judgment of the learned Single Judge in WP.No.5398 of 2006 and WP.No.4211 and 6517 of 2009, has been set aside. The result would be that the Writ Petition Nos.4211 and 6517 of 2009, with prayer to quash the impugned proceedings dated 18.02.2000 and***



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31.08.2005, of the 2nd respondent, stands allowed. As a result Writ Petitions stands allowed. There is thus no occasions for the authority to proceed further and pass G.O.Ms.No.748 Home (Police-XVII) Department dated 26.09.2013, imposing of punishment of dismissal of service.

*17. The fact that the Division Bench has set aside the judgment of the learned Single Judge would mean that the Division Bench of this Court has held that the aforesaid prayers in WP.No.35217 of 2015, the prayer in WP.No.2550 of 2008 and the prayer in **WP.No.4221 of 2009, stands allowed.** The impugned order dated 26.09.2013 is in fact over reaching the orders of this Court in W.A.No.999 and 1578 of 2010. The petitioner is deemed to be retired from 31.01.2008. The Writ Petition has to be allowed and the order dated 26.09.2013 in G.O.Ms.No.748 Home (Police-XVII) Department, needs to be set aside. No Costs. Consequently, the connected miscellaneous petitions are closed.”*

16. Now that we have found that the petitioner has not filed any writ appeal against the order passed in WP.No.4211 & 4212 of 2009. As such the 3rd charge memorandum dated 05.01.2005 was in force. Therefore, the disciplinary proceedings pursued by the Department on the basis of above charge, and ended in dismissal cannot be found faulted with.

17. If that being the case, now the next point to be considered is, whether the Disciplinary Authority has followed the due procedure in



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conducting the domestic enquiry. It is not in serious dispute about the due procedure followed by the respondent-Authority. However, it is the submission of the learned counsel for the petitioner that the punishment imposed against the petitioner is shockingly disproportionate to the gravity of the charge. In this regard, the learned counsel would submit that, according to enquiry report, charge in respect of Count (i) and Count (iv) of Charge-I, Charge-II, and Charge-III was not proved. However, the disciplinary authority has deviated from the said finding. The only proven charge is in respect of Count (ii) and Count (iii) of Charge-I. According to the petitioner, they are only minor in nature, which does not require any capital punishment.

18. It is also the contention of the learned counsel for the petitioner that the charge in respect of Count (i) and (iv) of Charge-I are nothing but the stay of the petitioner in the Hotel instead of the official residence allotted to him. The Charge-II, which was held to be not proved by the Enquiry Officer and deviated by the Appointing Authority is in respect of delay of 7 years in passing final order in a disciplinary proceedings against the subordinates. The Charge-II and III are also relates to delay in passing final orders. These charges, according to the learned counsel for the petitioner, do not warrant



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any capital punishment.

19. While perusing the G.O.Ms.No.748 dated 26.09.2013, the Disciplinary Authority has stated as to why they are deviating from the findings recorded by the Enquiry Officer, and also in categorical terms recorded that the petitioner did not submit any further explanation to the reason assigned for deviation. Therefore, it is the contention of the learned Additional Advocate General that when the Disciplinary Authority deviated from the findings of the Enquiry Officer, it is the duty of the petitioner to explain as to why the Disciplinary Authority should not deviate from the findings rendered by the Enquiry Officer. In this case, the petitioner has not availed such an opportunity.

20. It is well settled principle of law that while this Court exercising the power of judicial review cannot go into the veracity of the ultimate decision taken by the Disciplinary Authority, except whether the Disciplinary Authority has followed all the due procedures while taking such decision. In this regard, it is useful to refer the following precedents:-

(i) In ***B.C.Chaturvedi Vs. Union of India*** reported in (1995) 6 SCC 749, the Hon'ble Supreme Court has held as follows. The relevant paragraphs are paragraphs 12 & 18 and the same read as follows:-



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“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 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



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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.

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18. *A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. **The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the***



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disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

(Emphasis supplied by this Court)

(ii) In ***Deputy General Manager (Appellate Authority) Vs. Ajai Kumar Srivastava*** reported in (2021) 2 SCC 612, the Hon'ble Supreme Court held that if the decision is against the natural justice, then the same can be interfered. The relevant paragraphs are paragraphs 25 & 29 and the same read as follows:-

“25. It is thus settled that the power of judicial review, of the Constitutional Courts, is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The Court/Tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the Rules of natural justice or in violation of the statutory Rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority if based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority is perverse or suffers from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended



to the examination of correctness or reasonableness of a decision of authority as a matter of fact.

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29. *The Constitutional Court while exercising its jurisdiction of judicial review Under Article 226 or Article 136 of the Constitution would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of mala fides or perversity, i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.”*

21. Therefore, the principles emerging from the above precedents are as follows:-

(i) Power of Judicial review is not like an appeal. But such power is meant to ensure that the individual receives fair treatment and to ensure the compliance of natural justice.

(ii) The power of judicial review is not like a appellate remedy to substitute its own finding, unless the findings of the Disciplinary Authority and Appellate Authority is perverse and without evidence.

(iii) The High Court had no jurisdiction to review the penalty, unless it is shockingly disproportionate.

(iv) Since because there is a possibility to arrive at yet



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another finding, cannot be a reason to substitute the finding of the disciplinary Authority.

(v) The judicial review is meant only to ensure fairness in treatment and not to ensure fairness of conclusion.

(vi) While exercising the power of judicial review, so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.

22. Here in this case, admittedly the petitioner did not dispute and raise any objection in respect of the procedures followed by the Disciplinary Authority. However, it is their submission that by way of earlier writ proceedings, all the charge memorandums have been quashed and that the Writ Court has declared that he has been deemed to have been retired from service. Whereas, elsewhere in this order, we have demonstrated that the Writ Court has gone on the wrong premise that the charge memorandum dated 05.01.2005 was quashed, contrary to the factual position. Therefore, if we go by the above discussion, it is apparent that the 3rd charge memorandum dated 05.01.2005 holds good against the petitioner, and that the Disciplinary Authority has followed all due procedures.

23. Coming to the proportionality of the punishment, it is the



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submission of the learned counsel for the petitioner that it was only a mere stay in the private hotel and delay in passing final order. However, according to the Disciplinary Authority, wherever the petitioner has stayed, he has favoured the said hotel in getting the No Objection certificate contrary to Rules. Therefore, they contended that it is nothing but a quid pro quo, which argument is liable to be accepted. Therefore, the Disciplinary Authority has rightly construed such conduct and has imposed a capital punishment. Therefore, this Court could not find any infirmity in the order passed by the Disciplinary Authority vide G.O.Ms.No.748 dated 26.09.2013. Thus, the appellant made out a case for interference in the order of the writ Court.

24. In the result, these Writ Appeals are allowed. Consequently, the impugned writ order dated 30.08.2019 passed in W.P.No.25362 & 30766 of 2013 is set aside. No costs. Consequently, connected CMPs are also closed.

[S.M.S., J.] [C.K., J.]
19.08.2024

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Index : Yes

Speaking order : Yes

Neutral Citation : Yes



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To
The Secretary,
Tamil Nadu Public Service Commission,
Greens Road,
Chennai-600 006.



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S.M.SUBRAMANIAM, J.
and
C.KUMARAPPAN, J.

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Pre-delivery judgment in
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