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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2024

CORAM

THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.P.No.15483 of 2020

D.R.Varadarajan ...Petitioner

Vs.

The Government of Tamil Nadu
rep. by its Secretary,
Animal Husbandry, Dairying & Fisheries (FS-III) Department,
Fort St. George,
Chennai - 9. ...Respondent

Prayer**:** Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the respondent in G.O.Ms.No.(D).No.82, Animal Husbandry, Dairying and Fisheries (FS-3) Department, dated 24.02.2020 and quash the same.

For Petitioner : Mr.V.Ravichandran

For Respondent : Mr.A.M.Ayyadurai,
Government Advocate

ORDER

The instant Writ Petition has been filed challenging the order of punishment dated 24.02.2020.

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2.The learned counsel for the petitioner would vehemently contend that, according to the charge memorandum dated 20.06.2014, the petitioner was charged for recommending 102 ineligible fishermen to get the Government grant flowing from G.O.Ms.No.76, Animal Husbandry, Dairying & Fisheries (FS3) Department, dated 30.05.2008, however, there are no records to show that the petitioner has recommended such 102 persons. However**,** the Enquiry Officer without any materials has given a positive report, and mulcted the petitioner with responsibility, for the loss of Rs.2,04,000/- to the Government. It is the further submission of the learned counsel for the petitioner that, without following due procedure and without even furnishing the documents, an erroneous Enquiry Report was filed by the Enquiry Officer, which was mechanically accepted by the Disciplinary Authority, and that without even discussing the defence of the petitioner, the punishment of withholding of increment for a period of three months without cumulative effect was imposed against the petitioner. It is the further submission of the learned counsel for the petitioner that, he did not commit any delinquency and that, having been retired, the punishment would be a stigma in his long unblemished career of Government service. Therefore, he prayed to set aside the order of punishment.

3.*Per contra*, the learned Government Advocate would vehemently

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contend that, the charge is not only for the recommendation of the ineligible beneficiaries, but also for not following the procedures as contemplated in G.O.Ms.No.76, dated 30.05.2008, thus contended that the finding of the Enquiry Officer is perfectly in order. Therefore, prayed to dismiss this petition as there are no grounds to interfere with the impugned order. Hence, he prayed for dismissal of the Writ Petition.

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

5.As rightly submitted by the learned counsel for the petitioner, in the Enquiry Report, there is a reference that the petitioner's request for furnishing the alleged recommendation letter, said to have been given by the petitioner, was not furnished to him. However, on careful reading of the charge memorandum, we could find two limbs. The first limb is not following the procedure as contemplated under G.O.Ms.No.76, and the second limb is recommending 102 ineligible members, as a consequence causing loss to the Government to the tune of Rs.2,04,000/-.

6.While looking at the Enquiry Report, as rightly contended by the learned counsel for the petitioner, there are no records to show the alleged recommendation of ineligible persons. However, while considering another

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limb of the charge *qua* non adherence to the procedure, as contemplated under GOs, the Enquiry Officer relied upon so many Registers maintained in the Department and found material against the petitioner. Therefore, it is obvious that, there is some material against the petitioner, to arrive at a positive conclusion. It is pertinent to mention that, while exercising the power of judicial review, this Court cannot go into the sufficiency of the material or interfere with order unless it is perverse. Further, while exercising the power of judicial review, this Court even cannot reappreciate the evidence, and can't take an alternative view.

7.In this regard, it is useful to refer to the Judgment of the Hon'ble Supreme Court of India in ***B.C.Chaturvedi Vs. Union of India*** reported in ***(1995) 6 SCC 749.*** The relevant paragraphs are paragraphs 12 & 18 and the same read 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 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*

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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 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.***

13. .....

14. .....

15. .....

16. .....

17. .....

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*

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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 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)

8.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*

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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.

26. .....

27. .....

28. .....

***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 malafides 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."*

Through the above judgments, the following principles are emerging:-

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

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(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.

9.Accordingly, when there are some material to support the charge for not following the procedures as contemplated under G.O.Ms.No.76, dated 30.05.2008, this Court could not find any perversity or infirmity in the Enquiry Report. Coming into the proportionality of punishment, the Disciplinary Authority has taken into consideration of all the aspects and imposed appropriate proportionate punishment of withholding of the increment for a period of three years, which according to me not disproportionate. In view of what has been stated herein above, there are no grounds to interfere even the punishment. Accordingly, this Court could not find any merits in this Writ Petition.

In the result, this Writ Petition stands dismissed. No costs.

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Index :Yes/No
Speaking order :Yes/No
Neutral citation :Yes/No
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To

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C. KUMARAPPAN, J.

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