



W.P.No.17034 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2024

CORAM

THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

W.P.No.17034 of 2020

and

W.M.P. Nos. 21115 and 21116 of 2020

R.Balraj

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
School Education Department,
Secretariat,
Chennai – 600 009.
2. The Commissioner of School Education,
O/o. The Commissioner of School Education Department,
DPI Compound,
College Road,
Chennai – 6.
3. The Director of School Education,
O/o. The School Education Department,
DPI Compound, College Road,
Chennai – 6.
4. The Joint Director of School Education (Vocational),
O/o. The Joint Director of School (Vocational),
DPI Compound, College Road,
Chennai - 600 606.



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5. The Chief Educational Officer,
O/o. The Chief Educational Office,
The Nilgiris District.

6. The Chief Educational Officer,
O/o. The Chief Educational Office,
Coimbatore District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the third respondent in his proceedings ந.க.எண்.21716/C4/E1/2019 dated 04.11.2019 confirming the order passed by the fourth respondent in his proceedings ந.க.எண்.224/V2/E3/2012 dated 11.04.2018 and quash the same.

For Petitioner : Mr. B.Vishnu Chelliya
for M/s. Ajmal Associates

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

ORDER

The instant Writ Petition has been filed challenging the impugned order dated 04.11.2019, passed by the third respondent, confirming the order dated 11.04.2018, passed by the fourth respondent, thereby imposing the punishment of withholding of increment for two years without cumulative effect.



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2. The learned counsel for the petitioner would submit that the petitioner was initially appointed as Vocational Instructor, on 23.09.1994, at Government Higher Secondary School, Kilkotagiri, the Nilgiris District, and that he retired on superannuation on 29.02.2020. Meanwhile, during his tenure as Vocational Instructor at Government Higher Secondary School, Kilkotagiri, he was proceeded with departmentally on the charge of misbehaving with a girl student. It is the further contention of the learned counsel for the petitioner that the enquiry was not conducted in accordance with law, and that the petitioner was not provided with opportunity to cross-examine the Management witnesses. The learned counsel further submitted that even in the criminal case arising on similar and identical charges, the petitioner was acquitted from all charges. Therefore, the finding of the Enquiry Officer and the punishment imposed against him must be set aside.

3. Per contra, the learned Government Advocate would vehemently contend that a proper domestic enquiry was conducted against the petitioner, and he was provided with adequate opportunity to defend himself by following the principles of natural justice. Eventually, the Enquiry Officer found that the charges levelled against the petitioner was proved, and that



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based upon the Enquiry Report, the disciplinary authority passed the impugned punishment, and that there are no grounds to interfere with the order of punishment. On the above submissions, prayed for dismissal of this petition.

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

5. The main plank of the petitioner contention is that, he was not at all provided with an opportunity to effectively cross-examine the witnesses. However, such defences were never raised either before the Enquiry Officer, or before the appellate authority, though his appeal representation contains so many other defences. He had further grievance that, the enquiry completed on a single day. The mere completion of the enquiry on a single day, by itself, cannot be a ground to find fault with the Enquiry Officer, that too, in a case arising out of misbehaving with a minor child and student of the petitioner. In such view of the matter, this Court could not find any substance in the submissions made by the learned counsel for the petitioner.

6. It is a well-established principle of law that, while adjudicating



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matters under judicial review, this Court has only a limited scope for interference on the order of the authorities concerned.

7. In this regard, it is useful to refer 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 Hon'ble Supreme Court has held as follows. 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 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



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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.

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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 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*



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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 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 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



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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 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 Original Authority and Appellate Authority is perverse and without evidence.

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

(iv) The mere possibility to arrive at yet 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 original authority, the same has to be sustained.

In view of the above settled legal position, the Writ Court has to only see



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whether is there some evidence available against the petitioner in support of the findings.

9. While looking at the Enquiry Officer's report, one of the victims had spoken against the petitioner and her evidence explains the nature of misbehavior meted out by her from the petitioner. Accordingly, the finding of the Enquiry Officer cannot be found faulted with. It is a well-settled principle of law that, while exercising the power of judicial review, this Court cannot re-appreciate the evidence adduced before the enquiring authority, unless there is an error apparent on the face of the record or when the enquiry report is perverse. But, I could not find any perversity in the enquiry report.

10. At this juncture, the learned counsel for the petitioner invited the attention of this Court about the acquittal order passed in S.C. No. 13 of 2016 through which on an identical charge, the petitioner was prosecuted before the trial Court. However, the position of law in respect of an acquittal by the criminal Court has been settled in the cases of ***G.M.Tank vs. State of Gujarat and Others*** reported in (2006) 5 SCC 446 and ***Ram Lal vs. State of Rajasthan and Others*** reported in (2024) SCC 175. According to the above



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precedents, though the findings of the criminal proceedings are relevant while adjudicating upon the disciplinary proceedings, such order of the criminal Court should be based upon the merits, and there should have been an honourable acquittal in favour of the delinquent.

11. In the case in hand, while perusing the order of the criminal Court, it is observed that the order of acquittal is based upon the hostile evidence of the victims who resiled from their previous statements. To put it differently, the acquittal is based upon the evidence of the witnesses, who turned hostile during cross examination. As such, the acquittal order relied by the petitioner will be of no help for him. In such view of the matter, this Court could not find any ground to rely upon the acquittal order of the criminal Court.

12. Coming to the proportionality of the sentence, this Court does not find any disproportionality in awarding the punishment of withholding of increment for two years without cumulative effect. In view of what has been stated hereinabove, this Court does not find any merit in the instant Writ Petition.



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13. In the result, this Writ Petition is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

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Index : Yes/No

Speaking order /Non Speaking Order

Neutral Citation : Yes/No

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C.KUMARAPPAN, J.

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