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W.A.No.2501 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.A.No.2501 of 2021
and
C.M.P.No.16275 of 2021

1. The State Of Tamil Nadu,
Rep. by its Secretary To Government,
Labour and Employment Department,
Fort St.George, Chennai - 9.

2. The Special Commissioner and Commissioner,
Commissionerate of Employment And Training,
Guindy, Chennai – 32.

... Appellants

Vs.

R. Selvaraj

... Respondent

Prayer :- Writ Appeal filed under Clause 15 of Letters Patent, praying to allow the Writ Appeal and set aside the order dated 06.02.2020 passed in W.P.No.3930 of 2008.

For Appellants : Mr.P.Muthu Kumar,
Additional Advocate General,
assisted by
Mr.S.John J.Raja Singh,
Additional Government Pleader.



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For Respondent : Mr.R.Vijaya Kumar for
Mr.D.Suriya Narayanan.

J U D G E M E N T

(Judgement of the Court was delivered by S.M.Subramaniam J.)

The State is the appellant before us. The writ appeal has been filed to set aside the order dated 06.02.2020 passed in W.P.No.3930 of 2008.

2. The respondent was holding the post of District Employment Officer. Disciplinary proceedings were initiated under Rule 17(b) under the Tamil Nadu Civil Services (Discipline and Appeal) Rules. A charge memo was issued in proceeding dated 26.04.2004. The respondent denied the charges. Not satisfied with the explanation, an Inquiry Officer was appointed. The Inquiry Officer conducted an inquiry by affording opportunity to the delinquent officer and submitted his final report holding that the charges are not proved against the delinquent officer. The disciplinary authority declined to accept the findings of the Inquiry Officer in his report and issued a show cause notice furnishing reasons to deviate the findings of the Inquiry Officer. The respondent/delinquent officer had not chosen to submit his further



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explanation on the show cause notice issued by the disciplinary authority deviating the findings of the Inquiry Officer in his report. Thus, the disciplinary authority considered the materials available on record and imposed the punishment of stoppage of increment for 3 years with cumulative effect. The respondent preferred the writ petition.

3. The Writ Court made a finding that the disciplinary authority has given three grounds for deviating from the findings of the inquiry officer. Reading of the 3 grounds reveal that the disciplinary authority had not taken any legal evidence to defer with the findings of the Inquiry Officer. Without giving any specific details as to the perverse finding on vague statements, the explanation was called for. Though an order was passed, there was no finding as to the persons affected, the rules, regulations, and instructions violated.

4. The above findings of the Writ Court in our considered opinion amounts to re-appreciating the factual aspects considered by the disciplinary authority. We have independently gone through the punishment order issued in G.O.D.No.848 Labour And Employment Department dated 10.12.2007. The Government has categorically assigned reasons for deviating the findings



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of the Inquiry Officer. The three reasons given by the Government reads as

Under:

“(i) There is gross violation of the rules and procedures to be followed for sponsoring the candidates for employment from the AO's office, which was admitted in a light manner as if this act does not require any departmental action. Because of this act of AO, genuine candidates were denied of their opportunity for employment.

(ii) When the seniority of the candidates are very much available to be sent to the employer, the AO had deliberately showed favour to Thiru.A.K.Anandan by relying on the advertisement made in the newspaper. It is found that there was deliberate delay in sending the available persons and this fact was not considered by the Enquiry Officer.

(iii) It is found that the rules and instructions contained in the National Employment Service Manual have been grossly violated by the AO in this case;”

5. Admittedly, the delinquent officer has not submitted his further explanation on the show cause notices issued by the Government on



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04.04.2007 and on 01.06.2007. Even without submitting his explanation in response to the further show cause notice issued by the disciplinary authority, the first respondent has chosen to make a submission before the Writ Court that the factual aspects were not considered by the disciplinary authority. Such a stand taken by the respondent is untenable. In view of the fact that he has not even submitted his further explanation, the Writ Court ought not to have considered the said ground raised by the delinquent officer.

The disciplinary authority is empowered to deviate the findings of the Inquiry Officer in his report. The only requirement is that the reason for deviation must be recorded and such reasons must be communicated to the delinquent officer providing an opportunity to submit his further explanation on such findings. Once the requirement, as stated above is complied with, the rules of natural justice has been complied with.

6. The Writ Court, though made certain general findings that the factual aspects were not considered, there is no specific ground to form such an opinion. The Writ Court cannot sit as an appellate authority in disciplinary matters or re-appreciate the evidence considered by the disciplinary authority based on certain documents and evidences.



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Judicial review over disciplinary matters-

7. The Hon'ble Supreme Court, in the case of *The State Of Rajasthan vs Heem Singh*, in *Civil Appeal No.3340 of 2020 dated 29.10.2020*, described the standard of preponderance of probabilities which would be sufficient to punish an employee. The Apex Court considered the judicial review over disciplinary matters and the relevant paragraphs are extracted hereunder:

“30.Evidence of Sudhir Joshi (RPS Deputy Superintendent, Nathdwara) — He has stated in his evidence that the police's image has become tarnished due to the suspicions raised on Heem Singh's involvement in the murder of Bhanwar Singh. This is based on the following evidence:

“On preliminary investigation conducted by me absence of Constable No. 642 Shri Heern Singh on ... illegible ... and by conspiring with his companions committing murder of his uncle, due to which this act of constable the image of police among public has been blurred and ... by newspapers and belief on police became



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suspicious in public.”

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33. The disciplinary enquiry was convened on a serious charge of misconduct — that the respondent as a member of the police force had committed an act of murder while on leave. As the above extract indicates, even within the standard of a preponderance of probabilities, the degree depends on the subject-matter.”

8. In yet another case, the Apex Court reiterated that the Court, in the exercise of judicial review, must restrict its review to determine whether :

- (i) the rules of natural justice have been complied with,
- (ii) the findings of misconduct are based on some evidence,
- (iii) the statutory rules governing the conduct of the disciplinary inquiry have been observed,
- (iv) the findings of the disciplinary authority suffer from perversity,
- (v) the penalty is disproportionate to the proven misconduct.

9. In the present case, the rules of natural justice have been complied with, a charge memo issued, an explanation submitted by the delinquent officer, an inquiry conducted by affording opportunity and the disciplinary authority, while deviating the findings of the Inquiry Officer, recorded the



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reasons and issued a show cause notice to the delinquent officer. Therefore, there is no violation of the rules of natural justice.

10. The findings of the disciplinary authority are based on some evidence. The evidence relied on is considered by the disciplinary authority while deviating from the findings of the Inquiry Officer. The disciplinary authority has appreciated the documents independently and formed an opinion that the findings of the Inquiry Officer deserve to be deviated. Therefore, the misconduct established is undoubtedly based on some evidence which all are stated in the order of punishment issued by the Government.

11. The findings of the disciplinary authority do not suffer from any perversity. Finally, regarding proportionality, the proved charges relate to the sponsoring of candidates by the employment exchange for appointment to public posts. The punishment imposed is stoppage of increments for 3 years with cumulative effect. Thus, we do not find that the punishment imposed is disproportionate to the gravity of the proved charges. For all these reasons, we find that the writ Court order is running counter to the legal principles settled by the Apex Court of India and by this Court.



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12. Accordingly, the writ order in W.P.No.3930 of 2008, dated 06.02.2020 is set aside writ appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

(S.M.S.J.,)

(C.K.J.,)

26.06.2024

Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

(sha)

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