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W.A.Nos.3596 of 2023 & 20 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2024

CORAM :

THE HON'BLE MR. JUSTICE R. MAHADEVAN

AND

THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

W.A.Nos.3596 of 2023 and 20 of 2024

and

C.M.P.No.29488 of 2023

1.Chancellor/Appellate Authority,
Bharathiar University, Coimbatore,
Rep. by the Deputy Secretary to Governor (Universities),
Raj Bhavan, Guindy,
Chennai - 600 022.

2.Vice-Chancellor/Disciplinary Authority,
Bharathiyar University,
Coimbatore - 641 046.

3.The Registrar,
Bharathiyar University,
Coimbatore - 641 046.

... Appellants in
W.A.No.3596 of 2023 &
Respondents in
W.A.No.20 of 2024

v.

Dr.L.Ramesh

... Appellant in
W.A.No.20 of 2024 /
Respondent in
W.A.No.3596 of 2023



W.A.Nos.3596 of 2023 & 20 of 2024

Prayer in W.A.No.3596 of 2023

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Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 27.07.2023 passed by the learned Judge made in W.P.No.31455 of 2022.

Prayer in W.A.No.20 of 2024

Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 27.07.2023 passed by the learned Judge in W.P.No.31455 of 2022 insofar as imposing the punishment of stoppage of increment for one year with cumulative effect.

For appellants in
W.A.No.3596 of 2023 &
respondent in
W.A.No.20 of 2024

Mr.P.Raja

For appellant in
W.A.No.20 of 2024 /
respondents in
W.A.No.3596 of 2023

Mr.K.Venkataramani
Senior Advocate
for Mr.K.Sridhar

COMMON JUDGMENT

(delivered by R. MAHADEVAN, J.)

Inasmuch as both these writ appeals emanate from a common order dated 27.07.2023 passed in W.P. No.31455 of 2022, they are considered and decided by this common judgment.



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2 Since both the petitioner and the respondents in the writ petition have preferred these two writ appeals challenging the order passed in the writ petition, instead of referring to the parties as per their rank in both the writ appeals and thereby, making the judgment prolix, for the sake of convenience, this Court proceeds to refer to the parties as per their rank in W.A. No.20 of 2024 filed by the writ petitioner.

3 The germane facts necessary for deciding these writ appeals could succinctly be stated thus:

3.1 While the appellant was serving as the Principal of the respondent University, he was a member of the Interview Committee also for filling up the post of Assistant Professors on a temporary basis and non-teaching staff on a consolidated pay, for three constituent colleges of the respondent University. Based on the report of the Interview Committee, totally, 33 candidates were selected by the respondent University *vide* proceedings dated 22.07.2016, a copy of which was served on him.



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3.2 While so, in the case of one Thennarasi who was selected as Assistant Professor, seemingly, the appellant could not inform her of her selection directly, and instead, informed her through her husband Karikalan, who was also working in the same college. Upon being approached by the said Karikalan seeking some time for his wife to join the selected post, the appellant, being helpless, had asked him to approach the third respondent.

3.3 Aggrieved, Karikalan lodged a complaint against the appellant alleging that he had not allowed his wife to join duty. Pursuant to the said complaint, a 3 member committee, which was constituted to inquire into the complaint, submitted its report, based on which, disciplinary action was initiated against the appellant by issuing a charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules with the charges that the appellant did not inform Thennarasi directly of her selection as Assistant Professor (consolidated pay) and he has also not informed the University authorities that she, who was selected, had not joined duty.



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3.4 In the inquiry conducted, the charges levelled against the appellant were held as proved, pursuant to which, the appellant was imposed the punishment of compulsory retirement from service *vide* order dated 30.04.2019 by the third respondent, the correctness of which, was assailed by the appellant in W.P.No.3252 of 2020 (first round of litigation).

3.5 The main plank of contention raised in the said writ petition was that when the appellant was not convicted in any criminal case, much less under the Prevention of Corruption Act, imposition of punishment on the said premise, does not have legs to stand.

3.6 The aforesaid contention found favour with the learned Judge and hence, the said writ petition was, *vide* order dated 09.10.2020, allowed to the limited extent of setting aside the penalty and the matter was remitted to the respondents with a direction to proceed against the appellant afresh from the stage of imposition of penalty by once again calling for his explanation and following due process of law. However, be it noted, in the said order, the learned Judge took cognizance of the fact that the charges levelled against the appellant were proved.



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3.7 Pursuant thereto, the appellant was once again inflicted with the punishment of compulsory retirement from service for the proven charges under Rule 17(b)(3), *ibid.*, *vide* order dated 20.01.2021 of the third respondent, which was confirmed in the appellant's appeal *vide* order dated 30.10.2022 passed by the first respondent.

3.8 Challenging his compulsory retirement from service, and also seeking reinstatement in service with full backwages and arrears of pay, the appellant preferred W.P. No.31455 of 2022 (second round of litigation) contending *inter alia* that:

a when neither the Tamil Nadu Civil Services (Discipline & Appeal) Rules nor the Tamil Nadu Government Servants Conduct Rules, 1973, are applicable for him and when he is governed only by Bharathiar University Statutes and Bharathiar University Employees Conduct Rules, the impugned punishment ought not to have been imposed under the Tamil Nadu Civil Services (Discipline & Appeal) Rules and hence, the inquiry and the punishment imposed are vitiated; and

b the impugned punishment was not the one prescribed for the charges framed against the appellant.



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3.9 The learned Judge, considering that the first round of writ petition preferred by the appellant has attained finality, inasmuch as it was not appealed against by any of the parties, was of the view that the only point to be decided was whether a punishment not prescribed in the statutory rules can be imposed on the basis of the findings of the Enquiry Officer.

3.10 On going through the relevant rules, the learned Judge, *vide* order dated 27.07.2023, found that the punishment of compulsory retirement was nowhere prescribed therein. The learned Judge further found that given the proved charges, at the most, the appellant could be punished for dereliction of duty and the case of the appellant was not one of serious misconduct requiring imposition of punishment of compulsory retirement from service. Finding so, the learned Judge set aside the punishment imposed on the appellant and substituted the same with one of stoppage of increment for one year with cumulative effect. Besides, reinstatement of the appellant in service with backwages, continuity of service and all other attendant benefits was also ordered.



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3.11 While the award of the aforesaid punishment alone is put to challenge in the writ appeal being W.A. No.20 of 2024 preferred by the appellant, the respondent University has preferred W.A.No.3596 of 2023 challenging the order of the learned Judge in its entirety.

4 The learned Senior Counsel appearing for the appellant submitted that the learned Judge, having observed that the charges are not so serious warranting a major penalty, ought to have allowed the writ petition.

5 *Per contra*, the stand taken by the learned Standing Counsel for the respondent University is that the finding of the learned Judge that the charges are not so serious warranting the punishment of compulsory retirement from service is erroneous in the light of the order passed in the first round of writ petition, wherein, it was categorically found that the allegations are serious in nature. He developed the said stand by contending that when the said order passed in the first round of writ petition has attained its finality, once again, it cannot be held in the second round of writ petition that the charges are not so serious. He further contended that the learned



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Judge ought not to have gone into the quantum of punishment and reduced the same from a major penalty to a minor one and that deciding the quantum of punishment lies within the domain of the disciplinary authority and the appellate authority.

6 Heard both sides and perused the materials available on record.

7 The summation of facts, as above, is not in dispute. While the respondent University, as per Statute 10 of Chapter XVIII made under Section 44 of the Bharathiar University Act 1981, possesses the statutory power to impose penalties, including compulsory retirement, on its teaching staff, the fundamental principles of natural justice demand that the punishment imposed must be proportionate and commensurate to the gravity of the delinquency or misconduct proved. The departmental and disciplinary authorities cannot exercise their discretionary powers in an arbitrary manner.

8 It is evident from the records that the appellant's action did not involve any grave misconduct, moral turpitude or cause substantial prejudice to the administration of the University. The



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charges proved against him were relatively minor in nature, concerning procedural lapses and did not warrant the extreme punishment of compulsory retirement inflicted on the appellant by the disciplinary authority as affirmed by the appellate authority. Taking note of the same, the learned Judge has modified the punishment into one of stoppage of increment for one year with cumulative effect. For better appreciation, the relevant passage of the order impugned herein reads as follows:

"24. In the case on hand, there is no provision in the Statute to impose major penalty of compulsory retirement, such a punishment imposed on the petitioner without having power is perverse and illegal and the same certainly calls for interference at the hands of this court. It is not a fit case to remand the matter again to the 3rd respondent, as already stated, it is second round of litigation. In such view of the matter, this court does not want to remand the matter back to the 3rd respondent.

25. In order to test whether major penalty prescribed under the Statute is warranted, for a limited purpose, this court has decided to appreciate the charges and evidence let in by the prosecuting party. Dr.B.Thennarasi in her evidence stated that she came to know about her selection only through her husband, who was also working in the same university as Assistant Professor, on 26.07.2016. Whereas the evidence of the husband of Dr.B.Thennarasi is otherwise. This material contradiction would only probabalize the defence put forth by the petitioner. However the 1st charge is that the petitioner did not inform the candidate directly about her selection. The 2nd charge is that he had not informed to the University authorities that Dr.B.Thennarasi who was selected as Assistant Professor on consolidated pay had not joined duty at Bharathiar University Arts and Science College, Gudalur. It is also seen from her evidence that she had joined duty on 17.02.2017. Yet, the proved charges do not warrant any of the major penalties prescribed under the heading 'Kind of Penalties' under the Statute. At the most the petitioner could be punished for dereliction of duty. The charges are not for any serious misconduct. Therefore, this court is of the view that the punishment of compulsory retirement imposed against the petitioner by way of impugned order as a result of disciplinary proceedings is liable to be set aside and instead he is



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imposed with the punishment of stoppage of increment for one year with cumulative effect. The petitioner is entitled for reinstatement in service with continuity of service, back wages and all other attendant benefits.

In the result, the writ petition is partly allowed. The impugned order of punishment passed by the 3rd respondent as confirmed by the 1st respondent is set aside. The respondents are directed to reinstate the petitioner in service with continuity of service, back wages and all other attendant benefits. The said exercise shall be completed within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected WMPs are closed."

(emphasis supplied)

9 However, both sides before us, predicate their arguments, as above, on the observation made by the learned Judge that the charges are not so serious. To be noted, by observing so, what the learned Judge means is, considering the nature of charges, at the most, the appellant could be found guilty only of dereliction of duty and nothing beyond that, much less any serious misconduct warranting punishment of compulsory retirement from service. In the opinion of this Court, by no stretch of imagination, can the appellant take such an observation to his advantage and contend that the writ petition ought to have been allowed. Nowhere in the order, has the learned Judge given a clean chit to the appellant. At the same time, the respondent University also cannot be heard to contend that the learned Judge ought not to have reduced the quantum of punishment. Why this Court observes so is, the learned Judge has not chosen to do



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so mechanically. While venturing into the exercise of reducing the major punishment to a minor punishment, the learned Judge has adverted to the judgments of the Supreme Court in **Union of India v Ex.Constable Ram Karan (2022) 1 SCC 373** and **Union of India v Gunasekaran (2015) 2 SCC 610**, wherein, though it was held unequivocally that scope of judicial review on the quantum of punishment is limited, it was also held in no uncertain terms that in exceptional cases, the High Court is not powerless to substitute its own view *qua* quantum of punishment in order that the life of the litigation is shortened. In other words, as per the aforesaid two judgments, in exceptional cases, where the punishment imposed is so disproportionate to the charges that it shocks the conscience of the Court, the Court can very well re-consider the penalty imposed, of course, by giving cogent reasons therefor. On the strength of the aforesaid two judgments of the Supreme Court, the learned Judge has adopted a balanced and pragmatic approach and modified the excessive punishment of compulsory retirement into one of stoppage of increment for one year with cumulative effect, which is well within the scope of judicial review in service matters as per the settled legal position. While so, the learned Judge has not re-appreciated or re-evaluated the evidence or findings of the departmental inquiry afresh.



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Therefore, the order so passed by the learned Judge is well-merited and does not call for interference by this court.

10 In fine, both the appeals are dismissed. There is no order as to costs. Consequently connected miscellaneous petition is closed.

[R.M.D, J.] [M.S.Q, J.]
23.04.2024

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Index: Yes / No.

Speaking order/ Non-speaking order

Neutral Citation: Yes / No.

To

1.The Deputy Secretary to Governor (Universities),
Chancellor/Appellate Authority,
Bharathiar University, Coimbatore,
Raj Bhavan, Guindy,
Chennai - 600 022.

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R. MAHADEVAN, J.
and
MOHAMMED SHAFFIQ, J.

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Common order in
W.A.No.3596 of 2023 &
and
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23.04.2024