
(2014) 11 MAD CK 0136

In the Madras High Court

Case No : Writ Petition No. 7247 of 2014 and M.P. No. 2 of 2014

A. Bragatheeswari

APPELLANT

Vs

The Registrar General

RESPONDENT

Date of Decision : 21-11-2014

Acts Referred:

Citation : (2015) 2 LW 181 : (2015) WritLR 226

Hon'ble Judges : R. Sudhakar, J;R. Karuppih, J

Bench : Division Bench

Judgement

R. Karuppih, J.

1. The writ petition has been filed challenging the dismissal order passed by the second respondent/Disciplinary Authority, which was confirmed by the first respondent/Appellate Authority.

2. Brief facts, in a nutshell, are that the petitioner was selected as Steno-Typist by the Tamil Nadu Public Service Commission on 28.05.1990. While she was working as a Steno-Typist in the office of the Additional District Munsif, Karur, a memo dated 16.07.2008 was served to the petitioner based on the complaint sent by the Additional District Munsif, Karur, in which explanation was called for from the petitioner. The petitioner has not submitted her explanation within time and sought for extension of time for giving explanation. In the meantime, the petitioner was suspended from service on 31.07.2008. Thereafter, a memo dated 04.08.2008 has been served to the petitioner calling upon her explanation regarding her misconduct. The petitioner sent her explanation on 13.08.2008 to the second respondent/Disciplinary Authority. Being not satisfied with the explanation given by the petitioner, the Disciplinary Authority/second respondent had framed the following charges against the petitioner in the proceedings, dated 26.09.2008 in A.NO.252 of 2008:

CHARGE-I

You, Tmt.A.Brahatheewari, Steno typist of the Additional District Munsif's Court, Karur, in the course of discharging your official duties, the Additional District Munsif, Karur has completed dictation of a brief judgment in O.S.No. 416/2005 at 6-00 P.M., on 30.07.2008 and has directed you to transcribe the said judgment by 10-00 A.M., on the next day for being pronounced on 31.07.2008; but you deliberately refused to transcribe the said brief judgment in O.s.No. 416/2005 and wanted further time to transcribe the said judgment and thereby committed the act of serious misconduct and violated the statutory Rule 20 of the Tamil Nadu Government Servants' Conduct Rules, 1973.

Charge-II

That you, Tmt.A.Brahatheeswari, Steno-typist of the Additional District Munsif's Court, Karur in the course of discharging your official duties, when Additional District Munsif, Karur directed you to transcribe the brief judgment in O.S.No. 416/2005 for being pronounced on the next day viz., on 31.07.2008, you insisted that 15 days time be necessarily given to you for transcription and thereby you have committed on act of serious misconduct and violated the statutory Rule 20 of the Tamil Nadu Government Servants' Conduct Rules, 1973.

CHARGE-III

That you Tmt.A.Brahatheeswari, Steno typist, Additional District Munsif's Court, Karur in the course of discharging you official duties, inspite of direction of the Additional District Munsif, Karur to incorporate the list of Exhibits and witnesses examined in I.A.No. 612/2008 in O.S.No. 96/2008 and also in I.A.No. 567/2008 in O.S.No. 422/2008 in the order/judgment by verifying the case records, you have deliberately typed there in that "Trial sheet not available in the case bundle. Hence, Trial sheet not attached and thereby committed the act of serious misconduct and grossly violated the statutory Rule 20 of the Tamil Nadu Government Servants' Conduct Rules 1973.

CHARGE-IV

You, Tmt.A.Brahatheeswari, Steno typist of the Additional District Munsif's Court, Karur in the course of discharging your official duties, you have refused to transcribe the brief judgment in O.S.No. 416/2005 for being pronounced on 31.07.2008, and after receipt of the suspension order on 31.07.2008 and after actually pronouncing the judgment written by hand in O.S.No. 416/2005 by the Additional District Munsif, Karur. You have submitted the judgment at 6.30 P.M. on 31.07.2008 to the Additional District Munsif, Karur and thereby you have committed the act of serious misconduct and grossly violated the statutory Rule 20 of the Tamil Nadu Government Servants' Conduct Rules 1973.

3. The second respondent/Disciplinary Authority has appointed the Subordinate Judge, Kulithalai, as Enquiry Officer on 31.10.2008. The Enquiry Officer called for explanation for the above said charges along with necessary questionnaire form as per the Rules and the petitioner submitted her explanation along with

questionnaire form. The petitioner has stated in the explanation and also informed to the Enquiry Officer that no oral or documentary evidence is required to be adduced and her statement alone may be accepted as her evidence.

4. Subsequently, on 12.01.2009, the petitioner gave a representation requesting for a fresh enquiry and accordingly, fresh enquiry was ordered on 22.01.2009. The Enquiry Officer examined two witnesses as PW1-Thiru.N.K.Rafee, Additional District Munsif, Karur(formerly) and PW2, Thiru.Sureshkumar, Principal District Munsif, Karur and also two documents were marked as Ex.P1-complaint given by the Additional District Munsif, Karur and Ex.P2-Order of suspension given by the Principal District Munsif, Karur.

5. The petitioner has given explanation to the above said charges wherein regarding the first charge, the petitioner has stated that the Additional District Munsif, Karur had completed dictation at 06.00 p.m., on 30.07.2008 and directed to transcribe the said judgment by 10.00 a.m., on the next day and since time is very short, the petitioner requested time to transcribe the judgment and the petitioner has not refused to do her duty. Therefore, there is no fault on her part. In respect of the second charge, the petitioner has given explanation that the petitioner explained her difficulty in typing the judgment within one day and she requested the Judicial Officer to give some reasonable time for typing the judgment, because of her health condition and family commitments and there is no intention to escape from her duty. In respect of the third charge, the petitioner had given her explanation that the trial sheet/exhibit list has to be prepared by the Bench Clerk. However, he has not done the job properly and therefore, the petitioner made a complaint about the same to the Judicial Officer. However, the Judicial Officer has not directed the Bench Clerk to do his duty. Under those circumstances, the petitioner typed so in the judgment in order to bring the above attitude of the Bench Clerk to the knowledge of the Judicial Officer and therefore, there is no negligence on the part of the petitioner as alleged in the above said charge. Regarding fourth charge against the petitioner, the petitioner's explanation is that the typewriter machine was taken away from her without her permission in the morning itself and she was not supplied with the machine till the evening and therefore, the petitioner can prepare the judgment only after getting the typewriter machine.

6. The Enquiry Officer has considered the charges framed against the petitioner, explanations given by the petitioner, the oral evidence of PW1 and PW2, who were examined to prove the charges, and finally came to the conclusion that the charges Nos. 1 to 3 framed against the petitioner have been proved, but the fourth charge framed against the petitioner has not been proved. With regard to the fourth charge, the enquiry officer has held that the typewriter machine was taken away from the petitioner without her permission in the morning itself and the petitioner was not supplied till the evening and only after getting typewriter machine she can prepare the judgment and therefore, the petitioner has not refused to transcribe the judgment as stated in the fourth charge and finally

gave a finding that the above said fourth charge has not been proved.

7. On perusal of the report of the Enquiry Officer, it is evident that as the petitioner has not at all given any acceptable explanation to the above said charges Nos. 1 to 3, but has given unconnected details and also blamed the Judicial Officers and other Officers, the Enquiry Officer came to the conclusion that the explanations given by the petitioner cannot be accepted and finally held that the above said three charges have been proved. The Enquiry Officer submitted the above said enquiry report to the second respondent/Disciplinary Authority on 10.08.2009.

8. The second respondent/Disciplinary Authority has served enquiry report to the petitioner and called for her explanation. On receipt of the enquiry report, the petitioner has submitted her explanation to the second respondent. The second respondent / Disciplinary Authority has discussed in detail about the charges, explanation of the petitioner and the report filed by the Enquiry Officer and finally held that the Enquiry Officer has correctly considered all the relevant factors and being satisfied with the report of the enquiry officer, the Disciplinary Authority has given concurrent finding that all the charges Nos. 1 to 3 have been proved.

9. With regard to the punishment, the second respondent/Disciplinary Authority has passed an order as under:

""it is fit to dismiss the petitioner from service by imposing major punishment as contemplated under Section 17(b) of the Tamil Nadu Government Servants' Conduct Rules, 1973.

Accordingly, the petitioner was dismissed from service with effect from 15.02.2010. Though the provision has been wrongly quoted by the Disciplinary Authority, it is not disputed that the Disciplinary Authority is empowered to impose such punishment under the provisions of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1973.

10. Aggrieved over the above said dismissal order passed by the second respondent/Disciplinary Authority in A.No. 252 of 2008, dated 15.02.2010, the petitioner has preferred an appeal before the first respondent/Appellate Authority.

11. The first respondent/Appellate Authority has considered the report filed by the Enquiry Officer and the order passed by the second respondent/Disciplinary Authority and finally, dismissed the appeal filed by the petitioner in R.O.C.No. 383/2010/C1 dated 14.08.2013.

12. Aggrieved over the above said order passed by the first respondent/Appellate Authority, confirming the order passed by the second respondent/Disciplinary Authority, this writ petition has been filed by the petitioner.

13. Heard Mrs.Rita Chandrasekaran for Ms.A.M.Bhakkiavathy, the learned counsel appearing for the petitioner and Mr.Ayyadurai, learned counsel appearing

for the respondents.

14. The learned counsel appearing for the petitioner mainly contended that the second respondent/Disciplinary Authority has passed an order of dismissal, without considering the petitioner's explanation and the first respondent/Appellate Authority has also not properly considered the petitioner's explanation as well as the materials available on record and wrongly confirmed the order of dismissal from service and therefore, the above said findings of both the Authorities are arbitrary, illegal and punishment imposed is also disproportionate to the charges levelled against the petitioner. The learned counsel further submitted that before passing the order of dismissal, necessary opportunity was not given to the petitioner regarding the punishment. According to the petitioner, if the 2nd respondent has given an opportunity to the petitioner to give her explanation about the punishment, then the petitioner would have given her explanation stating that the charges are not grave in nature and accordingly, major penalty cannot be imposed on the petitioner, but, that opportunity was not given to the petitioner. Further, the learned counsel appearing for the petitioner pointed out that the petitioner is a cancer patient and she is taking treatment and also having two children and therefore, the major punishment of dismissal from service is disproportionate and therefore, prayed to reduce the punishment and re-instate the petitioner in service with all attendant and monetary benefits.

15. The learned counsel appearing for the respondents submitted that the Enquiry Officer appointed by the second respondent/Disciplinary Authority regarding charges framed against the petitioner, filed a detailed report, after giving ample opportunity to the petitioner. Further, the Enquiry Officer, had correctly considered the evidence of PW1 and PW2 and also perused the documents and finally gave a correct finding that the charge Nos. 1 to 3 framed against the petitioner have been proved and the fourth charge alone has not been proved. The learned counsel further submitted that the second respondent/Disciplinary Authority also considered the report of the Enquiry Officer and also oral and documentary evidence adduced to prove the charges before the Enquiry Officer and also took note of the past conduct of the petitioner in the court proceedings and finally, accepted the report of the Enquiry Officer and came to the conclusion that the charges Nos. 1 to 3 have been proved. Further the second respondent has correctly imposed the proper punishment of dismissal from service and it is not disproportionate as contended by the learned counsel appearing for the petitioner. The learned counsel for the respondents also pointed out that in the appeal filed by the petitioner, the first respondent / Appellate Authority also properly considered both sides contentions regarding all the three charges against the petitioner and discussed in detail about the findings of both Authorities below and found that there is no illegality in the above said findings and therefore, there is no need to interfere with the findings of the second respondent/Disciplinary Authority. With regard to the punishment, the learned counsel appearing for the respondents pointed out that the punishment of dismissal from service imposed by the second respondent/

Disciplinary Authority and confirmed by the Appellate Authority is not disproportionate punishment as contended by the petitioner and there is no need to reduce the punishment.

16. As already discussed, totally four charges have been framed against the petitioner. But, the Enquiry Officer filed his detailed enquiry report, in which he had deleted the fourth charge alone, since it was not proved but held that all the other three charge Nos. 1 to 3 have been proved.

17. A careful reading of the enquiry report filed by the Enquiry Officer revealed that the Enquiry Officer had discussed in detail about the charges levelled against the petitioner, the explanation given by the petitioner and also considered the oral and documentary evidence adduced to prove the charges and then held that the charge Nos. 1 to 3 have been proved and charge No. 4 alone has not been proved. The Enquiry Officer also took note of the previous conduct of the petitioner. The relevant portions reported in the paragraph Nos. 50 to 53, are extracted as follows:-

50. So her behaviour before the officer in uttering the words and leaving the chamber without permission cannot be justified on any ground. The next question which arises for consideration is whether the misbehaviour was deliberate and intentional.

51. Whether it is intentional or not we have to refer the situation. That is why I have mentioned earlier the behavioural pattern of the delinquent officer. The situation caused to her to misbehave. This misbehaviour was due to her personal behavioural pattern. So it is not intentional. Whether it was deliberate is the question to be answered. The happenings clearly shows that it was deliberate. Though it was not intentional it has been deliberately done. She would have immediately after cool down might have approached the officer and made apology. After the order of suspension only she met the officer and asked them to revoke the order of the suspension. According to her she visited officer to make apology. But according to P.W.1 there was no apology from the delinquent officer. What ever may be the happenings the behaviour was deliberate and cannot be justified on any ground. So from the analyses made by me, it is clear that the delinquent officer has made some challenges, and misbehaved with the officer. There was no politeness at all during the happenings. The evidence of P.W.1 has to be accepted, to conclude that the delinquent officer refused to transcribe the judgment on the next day and demanded 15 days time to prepare the judgment.

52. When we go through the explanation and written arguments we can easily observe her misconception about the duty of a government servant. She wants to work to her own rule, rule even for a small movement. That sort of attitude is not acceptable. What she is required is counselling with regard to behavioural pattern and intensive training in the office management. Though there was no intension on her part to disobey the directions, her behavioural pattern causes

much difficulties. No dishonest motive was also attributed against her.

53. So, I conclude that charges No. 1,2 and 3 stand proved. Charge No. 4 stands not proved.""

18. The findings of the Enquiry Officer revealed that the Enquiry Officer thoroughly analysed all the charges, explanation and conduct of the petitioner before judicial Officers and correctly rendered the above said findings. Therefore, the above said findings are not perverse findings. The petitioner has not pointed out any illegality in the enquiry proceedings. Therefore, the enquiry officer has given correct finding regarding the charges against the petitioner.

19. The second respondent/Disciplinary Authority has also discussed in detail about the charges framed against the petitioner, explanation given by the petitioner, oral and documentary evidence, conduct of the petitioner before other Judicial Officers and finally, held that there was a deliberate misconduct on the part of the petitioner and if not given adequate punishment for the above said misconduct, the working of the institution and system will be affected. For better appreciation, the relevant portion of the order in paragraph Nos. 27,28 and 29 passed by the second respondent/Disciplinary Authority is extracted hereunder:-

""27. There are various types of misconducts. The reading of Tamil Nadu Government Servants' Conduct Rules, 1973 clearly explains the nature of misconducts when there is a specific rule and provision, the insubordination of the same is intolerable. It is important to maintain discipline for the effective and satisfactory functioning of the Department. The conduct and character of Tmt.A.Brakatheeswari is not co-operating with the Judicial Officers and dictating terms to them that she would work only between 10.30 a.m. to 5.45 p.m., is a clear insubordination. When the oral orders of the Judicial Officers are refused to be obeyed, it clearly amounts to misconducts. Similarly if a staff threatens his superior officer by any language it amounts to serious misconduct. In this case, Tmt.A.Brakatheeswari while submitting her explanation to the enquiry had made insinuation and attributed motives in the discharge of their duties, which amounts to grave misconduct. Further more the perusal of the service register would show that Tmt.A.Brakatheeswari used to avail leave habitually. A stenographer has been employed in the court to assist the Judicial officers. It is further expected, from them that they have to work regularly and punctually, otherwise the smooth and successful dispensation of Justice will derail. Thus, Tmt.A.Brakatheeswari has committed gross negligence not on a solitary occasion but quite often.

28. Considering the nature and circumstances of the above disciplinary proceedings, confidential reports received from the Judicial Officers under whom she had served earlier. The Inquiry report and explanation offered by Tmt.A.Brakatheeswari. I come to the conclusion that the inquiry report is independent and proves the charges levelled against the stenographer. I have duly considered the entire inquiry report. I have taken into consideration, the

past and present conduct of Tmt.A.Brakatheeswari. The charges, the explanation to the charges, the Inquiry Officer's report and the explanation to finding by Tmt.A.Brakatheeswari are duly and carefully considered. The nature of the duties of Stenographer and responsibilities of stenographer are taken into consideration, I am satisfied that the inquiry report can be accepted. Thus, the inquiry report is accepted I have no hesitation to decide that if Tmt.A.Brakatheeswari, is posted to any Court, the Judicial Officer concerned will not be able to extract any work from her or be able to discharge the dispensation of justice peacefully and punctually.

29. In view of the above discussion, I am of the view that continuance of Tmt.A.Brakatheeswari in the Judicial Department will pollute a vitiate and cordial atmosphere that exists between the Judicial Officers and staff. Further more the very function of a court will be crippled. Therefore, I deem it fit to dismiss her from service by imposing major punishment as contemplated under Section 17(b) of Tamil Nadu Government Servants' Conduct Rules, 1973. Accordingly, she is dismissed from service with effect from Afternoon of 15.02.2010.""

20. The first respondent/Appellate Authority has analysed in detail about the report filed by the Enquiry officer and the findings of the Disciplinary Authority and also considered the conduct of the petitioner on earlier occasion before other Judicial Officers and finally, dismissed the appeal filed by the petitioner.

21. As rightly pointed out by the learned counsel appearing for the respondents, all the Authorities below, only after considering the nature of the charges alleged against the petitioner and the explanations given by the petitioner, finally held that the above said explanations cannot be accepted since the petitioner deliberately refused to do the work assigned by the Judicial Officer without any acceptable reasons. Except the oral averments of the petitioner in the explanations, no other materials to prove that the petitioner was unable to work due to health condition and family commitments were adduced. If the petitioner is really unable to work as directed by the Judicial Officer, the petitioner should have applied for necessary leave with sufficient and acceptable reasons. But, the petitioner deliberately disobeyed and refused to do the work assigned by the Judicial Officer. As rightly discussed by all the Authorities below, after considering the attitude, behaviour and happenings as stated in the charges, we are of the view that the above said conduct amounts to misconduct as prescribed in the Rules and the above said misconduct is proved as correctly held by all the Authorities below. Therefore, all the authorities have correctly held that the above said conduct of the petitioner amounts to misconduct in terms of Rules and is liable for punishment.

22. The further contention of the petitioner is that the enquiry officer has not given sufficient opportunity to produce the documents and the Disciplinary Authority also has not given sufficient opportunity before imposing major punishment of dismissal from service and therefore, the above said orders of the Disciplinary Authority and the Appellate Authority are not valid in law.

23. On perusal of the entire file, it is revealed that the petitioner had submitted her explanation with reply to questionnaire form, in which, it is stated as no oral evidence or documentary and therefore, an order has been passed on that basis. But, subsequently, the petitioner wanted a detailed enquiry to be conducted. Thereafter, detailed enquiry was conducted, oral and documentary evidence was adduced and the same was considered properly and a finding was rendered by the Enquiry Officer, which was confirmed by the Disciplinary Authority and the Appellate Authority. Further, the second respondent has also duly furnished the enquiry report to the petitioner and the petitioner also given reply to the above said enquiry report. The petitioner did not plead any prejudice. Therefore, the plea of the petitioner that sufficient opportunity was not given to her, does not have any merits.

24. The next question for consideration is as to whether the punishment of dismissal from service imposed on the petitioner is too harsh or any other punishment can be imposed?

25. The learned counsel appearing for the petitioner mainly contended before us that the petitioner was working as Steno-typist from 28.05.1990 onwards and the petitioner having put in a long number of years of service will be totally deprived of pensionary benefits, if the punishment of dismissal from service is imposed, and not only the petitioner but her entire family will be put to undue hardship. In support of the above said contention, the learned counsel appearing for the petitioner relied upon the decisions reported in State of M.P. and Others Vs. Hazarilal, and Divl. Forest Officer, Kothagudem and Others Vs. Madhusudhan Rao, and prayed to reduce the punishment of dismissal from service and impose lesser punishment.

26. Per contra, the learned counsel appearing for the respondents submitted that the respondents have considered the nature of charges levelled against the petitioner and also took note of conduct as stated in the charges and found that the petitioner was unfit to continue in the Judicial service and therefore, the above punishment of dismissal from service imposed on the petitioner cannot be interfered with.

27. The learned counsel appearing for the respondents relied upon a decision reported in Panchmahal Vadodara Gramin Bank and Others Vs. D.M. Parmar, and contended that when there is sufficient evidence and material in support of the findings establishing the charges levelled against the petitioner, the punishment of dismissal was not shockingly or strikingly disproportionate to gravity of charges proved.

28. In the above said decision, the charges levelled against the employee relate to his lack of integrity, honesty and probity, apart from negligence and indifference in discharge of duties. However, in the case on hand, the charge against the petitioner is deliberate misbehaviour, which even as per the report of the Enquiry Officer is unintentional, and as such the above decision is

distinguishable on facts.

29. On the other hand, the decisions relied on by the petitioner are to the effect that if the Court feels that the punishment of dismissal is disproportionate, then the Appellate Authority can reduce the punishment of dismissal from service to lesser punishment.

30. The core question that now remains to be considered is whether the punishment of dismissal from service imposed on the petitioner is proportionate to the gravity of the charges levelled against her.

31. The gravamen of the allegations levelled against the petitioner is that she refused to transcribe the judgment dictated to her by the learned Additional District Munsif, Karur, within the stipulated time. The said charge has been proved. The respondents after considering the oral and documentary evidence imposed the major punishment of dismissal from service with effect from 15.2.2010, as contemplated under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1973.

32. It is trite law that the scope of interference with punishment awarded by the Disciplinary Authority is very limited and unless the punishment appears to be shockingly disproportionate, the Court cannot interfere with the same. At this juncture, it would be apposite to refer to a decision of the Supreme Court in Deputy Commissioner, KVS and Others Vs. J. Hussain, , wherein after referring to a catena of decisions, it was held as under:

8. The order of the appellate authority while having a relook at the case would, obviously, examine as to whether the punishment imposed by the disciplinary authority is reasonable or not. If the appellate authority is of the opinion that the case warrants lesser penalty, it can reduce the penalty so imposed by the disciplinary authority. Such a power which vests with the appellate authority departmentally is ordinarily not available to the court or a tribunal. The court while undertaking judicial review of the matter is not supposed to substitute its own opinion on reappraisal of facts. (See The Administrator, Union Territory of Dadra and Nagar Haveli Vs. Gulabhia M. Lad, In exercise of power of judicial review, however, the court can interfere with the punishment imposed when it is found to be totally irrational or is outrageous in defiance of logic. This limited scope of judicial review is permissible and interference is available only when the punishment is shockingly disproportionate, suggesting lack of good faith. Otherwise, merely because in the opinion of the court lesser punishment would have been more appropriate, cannot be a ground to interfere with the discretion of the departmental authorities.

9. When the punishment is found to be outrageously disproportionate to the nature of charge, principle of proportionality comes into play. It is, however, to be borne in mind that this principle would be attracted, which is in tune with the doctrine of *Wednesbury (Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223)* rule of reasonableness, only when in the facts and

circumstances of the case, penalty imposed is so disproportionate to the nature of charge that it shocks the conscience of the court and the court is forced to believe that it is totally unreasonable and arbitrary. This principle of proportionality was propounded by Lord Diplock in *Council of Civil Service Unions v. Minister for the Civil Service*, (1984) 3 All ER 935 (HL) in the following words:

"Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads of the grounds upon which administrative action is subject to control by judicial review. The first ground I would call illegality, the second irrationality and the third procedural impropriety. This is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of proportionality."

10. An imprimatur to the aforesaid principle was accorded by this Court as well in *Ranjit Thakur Vs. Union of India (UOI) and Others*, . Speaking for the Court, Venkatachaliah, J. (as he then was) emphasising that "all powers have legal limits" invoked the aforesaid doctrine in the following words: (SCC p. 620, para 25)

"25. The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review."

11. To be fair to the High Court, we may mention that it was conscious of the narrowed scope of the doctrine of proportionality as a tool of judicial review and has stated so while giving lucid description of this principle in the impugned judgment. However, we are of the view that it is the application of this principle on the facts of this case where the High Court has committed an error while holding that the punishment was shocking and arbitrary. Moreover, while interfering therewith, the High Court has itself prescribed the punishment which, according to it, "would meet the ends of justice", little realising that the Court cannot act as a disciplinary authority and impose a particular penalty. Even in those cases where it is found that the punishment is disproportionate to the nature of charge, the Court can only refer the matter back to the disciplinary authority to take appropriate view by imposing lesser punishment, rather than directing itself the exact nature of penalty in a given case.

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15. In all cases dealing with the penalty of removal, dismissal or compulsory retirements, hardship would result. That would not mean that in a given case punishment of removal can be discarded by the Court. That cannot be a ground for the Court to interdict the penalty. This is specifically held by this Court in *Hombe Gowda Edn. Trust and Another Vs. State of Karnataka and Others*, , in the following words: (SCC p. 437, para 20)

"20. A person, when dismissed from service, is put to a great hardship but that would not mean that a grave misconduct should go unpunished. Although the doctrine of proportionality may be applicable in such matters, but a punishment of dismissal from service for such a misconduct cannot be said to be unheard of. Maintenance of discipline of an institution is equally important. Keeping the aforementioned principles in view, we may hereinafter notice a few recent decisions of this Court."

(emphasis supplied)

33. In the case on hand, the conduct of the petitioner, no doubt, amounts to deliberate misconduct. But, even in the words of the Enquiry Officer, it is unintentional and the said finding is not refuted by the respondents. Moreover, the charges against the petitioner are not relating to corruption or any monetary loss to the Government, etc., but only relating to misconduct in judicial proceedings, that too unintentional.

34. In a case like the present one, where the misconduct of the delinquent was that she refused to transcribe the judgment within the stipulated time and the Enquiry Officer, in his report, has rendered a finding that "What she is required is counselling with regard to behavioural pattern and intensive training in the office management. Though there was no intention on her part to disobey the directions, her behavioural pattern causes much difficulties. No dishonest motive was also attributed against her", the order of dismissal cannot be held to be justified and in our considered opinion, it is shockingly disproportionate to the nature of charge. An employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances before imposing punishment.

35. A perusal of the documents filed in support of the writ petition, more particularly the Discharge Summary issued by Sri Ramakrishna Institute of Oncology and Research, Sri Ramakrishna Hospital, Coimbatore, it is evident that the petitioner has been diagnosed with Carcinoma Left Breast (Cancer) and is under constant medical care. Even though the reports furnished by the petitioner relate to the year 2013, it cannot be gainsaid that Cancer is a disease which increases in the course of life span drastically, if not diagnosed at the earliest. The trauma and mental suffering experienced by patients suffering from Cancer, as per the report dated 28.8.2014 of National Cancer Institute, to the extent relevant is extracted hereunder:

... Sadness and grief are normal reactions to the crises faced during cancer. All

people will experience these reactions periodically. Because sadness is common, it is important to distinguish between normal degrees of sadness and depressive disorders. A critical part of cancer care is the recognition of the levels of depression present and determination of the appropriate level of intervention, ranging from brief counseling or support groups to medication and/or psychotherapy. For example, relaxation and counseling interventions have been shown to reduce psychological symptoms in women with a new diagnosis of gynecological cancer. Some people may have more difficulty adjusting to the diagnosis of cancer than others and will vary in their responses to the diagnosis. Major depression is not simply sadness or a blue mood. Major depression affects approximately 25% of patients and has recognizable symptoms that can and should be diagnosed and treated because they have an impact on quality of life. Depression is also an underdiagnosed disorder in the general population. Symptoms evident at the time of a cancer diagnosis may represent a preexisting condition and warrant separate evaluation and treatment. Depression and anxiety disorders are common among patients receiving palliative care and contribute to a greatly diminished quality of life in these patients.

(emphasis supplied)

It cannot, therefore, be ruled out that the suffering of the petitioner on account of undiagnosed disorder in a sense could have also been a cause for such depression and anxiety, which caused such change in behavioural pattern of the petitioner.

36. Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1973 envisages various penalties - both minor and major, which are: (i) Censure; (ii) Fine; (iii) Withholding of increments or promotion; (iv) Reduction to a lower rank in the seniority list or to a lower post; (v) Recovery from pay; (vi) Compulsory retirement; (vii) Removal from service; (viii) Dismissal from service; and (ix) suspension. The penalties mentioned in clauses (i) to (iii), (v) and (ix) are deemed as minor penalties and the penalties mentioned in item Nos. (iv), (vi) to (viii) are deemed as major penalties. Considering the conspectus of facts and the nature of the allegations, in our firm view, imposition of a lesser major punishment would be appropriate.

37. In such view of the matter, the orders passed by the respondents are set aside and the matter is remanded to the second respondent for consideration of the case of the petitioner in the light of the findings rendered by us above. The second respondent is directed to pass fresh order of punishment within four weeks from the date of receipt of a copy of this order.

This writ petition is ordered in the above terms. No costs. Consequently, connected miscellaneous petition is closed.