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W.P. No. 2462 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29 .09.2023

CORAM :

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.2462 of 2020
and
W.M.P.No.11808 of 2022

E.Sasidharan

... Petitioner

Vs.

1.The Principal Secretary/
Commissioner of Transportation
Chepauk, Chennai-600 005.

2.The Additional Chief Secretary to Government,
Home (Transport-IIA) Department.
Fort St George, Chennai-600 009.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records of the first respondent in connection with the impugned order passed by him in Proc.R.No.71268/VC2/2009 dated 03.07.2017, confirmed by the second respondent in GO 2(D) No.71 Home (Transport-IIA) Dept dated 04.03.2019 and GO 2(D) No.312, Home (Transport-IIA) Dept dated 05.11.2019 and quash the same and direct the respondents to superannuate the petitioner from service and grant him all consequential service and monetary benefits.

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For Petitioner : Mr.K.Venkatramani
Senior Advocate
for Mr.M.Vignesh Raj

For Respondents : Mrs.C.Meera Arumugam,
Additional Government Advocate

ORDER

This writ petition has been filed challenging the order passed by the first respondent in Proc.R.No.71268/VC2/2009 dated 03.07.2017, confirmed by the second respondent in GO 2(D) No.71 Home (Transport-IIA) Dept dated 04.03.2019 and GO 2(D) No.312, Home (Transport-IIA) Dept dated 05.11.2019 and quash the same and direct the respondents to superannuate the petitioner from service and grant him all consequential service and monetary benefits.

2. The case of the petitioner is that he entered into service as a directly recruited Junior Assistant through a selection conducted by the District Employment Officer, Nandhanam, Chennai 35 in the Fire Service Department on 12.11.1983. Based on the request of the petitioner, he was transferred to Transport Department by the orders of the Government and he joined duty on 30.01.1994 and he was promoted as Assistant on 16.04.2001



and as Superintendent on 05.02.2010. When the petitioner became due for promotion as Motor Vehicle Inspector (NT), due to the pendency of disciplinary proceedings, he was not promoted.

3. The petitioner served as Assistant attached to K.G.Chavadi check post which is attached to the Regional Transport Office, Coimbatore South for the period from 02.09.2009 to 04.02.2010. On 17.12.2009, a surprise check was conducted in the K.G.Chavadi (outgoing) check post by the District Inspection Cell Officers, Coimbatore along with the officials of Vigilance and Anti-Corruption Department.

4. The learned Senior Counsel appearing for the petitioner submitted that at that time, one Devadoss was working as Motor Vehicle Inspector (NT) and the petitioner was serving as Assistant and one Karthigeyan was serving as Office Assistant. During the surprise check, a sum of Rs.10,000/- was recovered from Devadoss and another sum of Rs.15,500/- was found on the right side table of Devadoss and one more alleged a sum of Rs.18,770/- in a folded news paper was found near the cash



box in front of Devadoss table. The explanation was sought from the Motor Vehicle Inspector (NT) Devadoss and not from the petitioner. But unfortunately the petitioner along with others were placed before the Tribunal for disciplinary proceedings in TDP case No.28/2010 dated 17.02.2011 by the orders of the Government where the petitioner was arrayed as accused No.2 and the charges are read as follows:

“While you (AO-1, Thiru. A. Devadoss where working as Motor vehicle Inspector (NT) you (AO-2) Thiru.E.Sasidharan where working as assistant and you (AO-3) Thiru.Karthigeyan where working as Officer Assistant, being public servants in the transport department, K.G.Chavadi (outgoing) Coimbatore on 17.21.2009 in the discharge of your official duty demanded gratification from the drivers which passed through the check post and you had failed to maintain absolute integrity as you could not satisfactorily account for the presence of rupees 44,270 in the check post premises.

Thereby you (AO-1, AO-2, AO-3) have failed to maintain absolute integrity and devotion to duty in government service and behaved in the manner and becoming of government servants and violated rule 20(1) of Tamilnadu Government Servants conduct Rules 1973”



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5. The learned Senior Counsel would further submit that the petitioner submitted his explanation denying the charges levelled against him. The Tribunal commenced its proceedings on 18.03.2011 and concluded the same on 27.04.2015. On the side of the prosecution, 9 witnesses were examined and 16 documents were marked and material object was also marked. After the oral enquiry was over, the petitioner submitted his written argument denying the charges. The witnesses P.W2, P.W3, P.W4 & P.W5 cited to speak about the fact, that they were engaged by the accused officer for doing official work at the check post, turned hostile and did not support the prosecution case. The evidence of P.W6, P.W7 and P.W8 who are the drivers, claim to have paid certain amount to the check post officials, did not implicate the petitioner with reference to the payment made. The P.W9 was the investigating officer, to speak about the alleged inspection and recovery. The Tribunal for disciplinary proceedings (TDP) without any basic evidence has held that the charges against the petitioner was proved and submitted a report on 27.04.2015 and furnished a copy of the report to the petitioner on 19.02.2016 and the petitioner submitted his further representation, dated 11.03.2016 to the Enquiry Officer. In the meanwhile, the petitioner had



become due for superannuation on 30.06.2016 and he was suspended and not allowed to retire from the service by the proceedings of the Transport Commissioner, Chepauk, Chennai-5, dated 28.06.2016 due to pending disciplinary proceedings.

6. The learned counsel would further submit that after a lapse of one year, the Transport Commissioner, Chepauk, Chennai-5 in his proceedings R.No.71268/VC2/2009 dated 03.07.2017 agreed with the findings of the Enquiry Officer report and also by ignoring the evidence available on record, imposed a punishment of compulsorily retirement from the service with 1/3rd cut in gratuity for the proven charges. The order copy was served on the petitioner on 09.08.2017 and he had preferred a statutory appeal through proper channel to the first respondent on 30.08.2017. Even though it was processed and sent to the first respondent, no orders were passed on time and the petitioner was constrained to approach this Court by way of W.P.No.27751 of 2017 and this Court by order dated 30.10.2017 directed the second respondent to pass orders on the statutory appeal within a period of three months from the date of receipt of a copy of the order and a



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order copy was received by the second respondent on 15.11.2017. The second respondent passed an order in G.O.(2D) No.71 Home (Transport-IIA) dated 04.03.2019 rejecting the statutory appeal preferred by the petitioner on untenable grounds and the second respondent has mainly relied on the views of Tamil Nadu Public Service Commission before rejecting the statutory appeal. The views of Tamil Nadu Public Service Commission, dated 24.10.2018 was furnished to the petitioner along with a copy of the order dated 04.03.2019, rejecting the statutory appeal preferred by the petitioner.

7. The learned Senior Counsel further submitted that after the rejection of statutory appeal filed by the petitioner, he preferred a review application before the second respondent, that none of the witnesses examined before the Tribunal for Disciplinary proceedings (TDP) has stated about the demand and acceptance of illegal gratification of the petitioner. The drivers examined on the side of the Department, to speak about the alleged demand and acceptance did not support the prosecution case, with reference to the allegation made against the petitioner in the charge memo. There was absolutely no evidence against the petitioner in respect of demand



and acceptance and as well as the possession of any amount, during the surprise inspection conducted by the District Inspection Cell Officers. There was a fatal error in the order passed by the second respondent and the second respondent being the Appellate authority did not follow Rule 23 of Tamil Nadu Civil Service (Discipline & Appeal) Rules, while disposing of the statutory appeal preferred by the petitioner in a manner known to law and the order passed by the second respondent rejecting the appeal was a non-speaking order, without any discussion on merits of the charges and hence the petitioner was constrained to file a review petition to the Government through proper channel on 15.05.2015 and the same was also not considered by the second respondent in a manner known to law and the second respondent has rejected the review filed by the petitioner and confirmed the punishment of compulsory retirement from service.

8. The learned senior counsel further submitted that the petitioner was not caught red handed with any cash at the time of surprise inspection conducted by the District Inspection Cell Officers. There was no evidence against the petitioner that he had demanded and accepted illegal gratification



and the petitioner was also not asked to explain how a sum of Rs.44,500/- was found in the Check Post and it is also an admitted fact that the cash was found in various places and not in the possession of the petitioner table or in his possession. The Motor Vehicle Inspector namely one Devadoss died during the pendency of the disciplinary proceedings.

9. The learned Senior Counsel appearing for the petitioner would further submit that the second respondent Appellate authority as well as the reviewing authority has passed equally a non-speaking order and the same was in violation of Rule 23 of Tamil Nadu Civil Service (Discipline & Appeal) Rules and none of the ingredients of the appellate order was satisfied by the second respondent while passing the order. Aggrieved by the order passed by the first and second respondents, the petitioner as come forward with this present writ petition.

10. It is further submitted that there has been inordinate, unexplained delay in the initiating and commencement of disciplinary proceedings. The alleged occurrence said to have taken place during the year 2009 for which



the petitioner was placed before the Tribunal for disciplinary proceedings, Coimbatore in February 2011 and the departmental enquiry was completed in 2015 and the report was submitted on 27.04.2015. After lapse of 2 years, the final order was passed and there was a delay in each and every stage of the disciplinary proceedings on account of which his promotion as Motor Vehicle Inspector (Non Technical) has been deferred and denied and finally the petitioner was suspended and not allowed to retire from service on 28.06.2016 and a punishment of compulsory retirement from the service with a cut in 1/3rd gratuity payable was imposed.

11. The learned senior counsel also submitted that there is total discrimination in awarding punishment of compulsory retirement to the petitioner and in the similar case of one Ranganathan, who was similarly placed like that of petitioner, the disciplinary authority has imposed a punishment of cut in pension at the rate of Rs.1,000/- per month for a period of one year in its proceedings No.73236/VB2/2010 dated 21.10.2011. Again in the case of one Kesavan, who was also similarly placed like that of the petitioner, the disciplinary authority has imposed a punishment of cut in



pension at the rate of Rs.1,000/- per month for a period of one year in its proceedings No.44671/VB2/2011 dated 04.08.2011. But in the case of the petitioner, there was no recovery and there was no evidence for demand and acceptance, he was imposed with a punishment of compulsory retirement along with cut in gratuity is certainly highly excessive, exorbitant and shockingly disproportionate to the alleged nature of the delinquency.

12. The learned Additional Government Pleader filed counter affidavit on behalf of the respondents and the relevant portion is extracted here under:

“5. With regard to the averments made in paragraph 5 and 6 of the affidavit, it is submitted that, after elaborate enquiry conducted by the Tribunal for Disciplinary proceedings against the three delinquent officials, the report was submitted to the Government. It is submitted that, the writ petitioner was arrayed as Accused Officer-2 out of the three Accused Officers in the above said disciplinary proceedings. It is submitted that, there are 9 prosecution witnesses were examined and 16 prosecution exhibits were marked in the Tribunal Proceedings. It is submitted that, there is no defence witnesses and exhibits were marked during the Tribunal proceedings. It is submitted



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that, the sum of Rs.44,770/- was seized during the surprise check at K.G.Chavadi (Outgoing) Transport Department Check Post. It is submitted that, many of the prosecution witnesses deposed that, they tendered bribe amount for making seal in the trip sheet of the vehicles. It is submitted that, the Tribunal for Disciplinary Proceedings, Coimbatore has held the charges as proved against the Accused Officers including the writ petitioner. It is submitted that, the findings of the Tribunal for Disciplinary Proceedings report was examined in detail by the Transport Commissioner and further representation was called for from the writ petitioner. It is submitted that, due to the pendency of disciplinary proceedings against the writ petitioner he was placed under suspension from the service by the Transport Commissioner's in proceedings R.No.71268/VC2/2009, dated 28.06.2016. It is submitted that, the writ petitioner has not proved his innocence during the Tribunal Proceedings and also at the time of submitting the further representation.

8. With regard to the averments made in paragraph 10 of the affidavit the petitioner has failed to substantiate how the order of review authority is a non-speaking order and the same is in violation of rule 23 of the TNCS (D&A) Rules in this paragraph. It is submitted that, the disciplinary authority has examined the entire records placed before him and he also considered the further representation of the writ petitioner in



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the light of circumstances of the case. It is submitted that, the writ petitioner has not placed any defence exhibit to prove is innocence before the Tribunal for Disciplinary Proceedings and also at the time of making further representation. The orders of 1st and 2nd respondents respectively were made after arriving preponderance of probability and it is a speaking order. Hence the Ground is unsustainable”.

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

14. The petitioner was working as Assistant in K.G.Chavadi (outgoing) Checkpost which is attached to the Regional Transport Office, Coimbatore South for the period from 02.09.2009 to 04.02.2010. On 17.12.2009, a surprise check was conducted in the Check Post by the District Collector, Coimbatore along with the officials of District Vigilance and Anti-Corruption Department and **a sum of Rs.10,000/- was recovered from one Devadoss, Motor Vehicle Inspector and another sum of Rs.15,500/- on the right side table of Devadoss and one more sum of Rs.18,770/- in a folded newspaper was found in a cash in front of Devadoss table and no amount was found or recovered from the petitioner possession nor in his room where he was sitting and working.** During the pendency of the



disciplinary proceedings the Motor Vehicle Inspector namely Devadoss

died. However, the petitioner was arrayed as accused No.2 in the charge memo dated 10.01.2001 and was placed before the Tribunal disciplinary proceedings in TDP case No.28/2010 dated 17.02.2011 by the order passed by the Government is extracted herein:

“While you (AO-1, Thiru. A. Devadoss where working as Motor vehicle Inspector (NT) you (AO-2) Thiru.E.Sasidharan where working as assistant and you (AO-3) Thiru.Karthigeyan where working as Officer Assistant, being public servants in the transport department, K.G.Chavadi (outgoing) Coimbatore on 17.21.2009 in the discharge of your officials duty demanded gratification from the drivers which passed through the check post and you had failed to maintained absolute integrity as you could not satisfactorily account for the presence of rupees 44,270 in the check post premises.

Thereby you (AO-1, AO-2, AO-3) have failed to maintain absolute integrity and devotion to duty in government service and behaved in the manner and becoming of government servants and violated rule 20(1) of Tamilnadu Government Servants conduct Rules 1973”



15. The petitioner attained the age of superannuation on 30.06.2016 and he was suspended and not allowed to retire from the service vide the proceedings of the Transport Commissioner, Chepauk, Chennai-5 dated 28.06.2016 due to pending of disciplinary proceedings. The punishment of compulsory retirement from service was awarded to the petitioner after delay of one year and the petitioner preferred statutory appeal on 30.08.2017 and the same was also rejected by the second respondent on 04.03.2019 mainly relying on the views of the Tamil Nadu Public Service Commission before rejecting the statutory appeal. The review application preferred by the petitioner against the order passed by the second respondent was also rejected. There is no evidence against the petitioner that the petitioner has demanded and accepted illegal gratification and it is the admitted fact that the cash was found in various places and not found in place of the petitioner table or in his possession. While being so, the findings of the Tribunal for disciplinary proceedings holding the charges proved against the petitioner followed by the disciplinary authority mainly the first respondent imposing the punishment of compulsory retirement from service is unsustainable. The



order passed by the second respondent dated 04.03.2019 accepted the views of the TNPSC which is reflected in paragraph 7 of the order as

“7.The Government have therefore, decided to accept the views of the Tamil Nadu Public Service Commission and to reject the appeal preferred by Thiru.E.Sasidharan, Superintendent (Compulsorily Retired) against the punishment of “Compulsory Retirement from service with one third cut in payable gratuity” imposed on him for the proven charge after examination.”

The order passed by the 2nd respondent dated 05.11.2019 in the review filed by the petitioner was also rejected.

16. From the above facts it is clear and evident that the petitioner was not caught red handed, no money was found in his possession or there is no allegation that he demanded the money from the lorry drivers in the K.G.Chavadi check post. The person namely Devadoss(A1), the Motor Vehicle Inspector(A1), a sum of Rs.44,200/- was recovered only from his room and table and not from the petitioner which is the admitted fact also by the respondents. But in the charge sheet it is mentioned, that the petitioner who was arrayed as AO-2



however, failed to maintain absolute integrity and devotion to duty in Government service and behaved in a manner unbecoming of Government servants and violated Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules, 1973.

17. The main contention of the learned senior counsel appearing for the petitioner is that similarly placed person like that of the petitioner, one Kesavan and G.Ranganathan, they were imposed disciplinary action with a punishment of cut in pension at the rate of Rs.1,000/- per month for a period of one year. But in case of the petitioner where no recovery and no evidence on demand and acceptance, he was imposed with a punishment of compulsory retirement along with cut in gratuity. There is some valid force in the contention of the learned senior counsel and the punishment is disproportionate to the alleged nature of delinquency.

18. This Court fails to understand that when there was no evidence against the petitioner that he demanded and accepted money



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nor any money was found in possession of the petitioner or he was caught red handed and how the Tribunal for disciplinary proceedings (TDP) came to the conclusion that the charges against the petitioner is proved. It is pertinent to note that no evidence was given by any person like P.W6, P.W7 & P.W8 who are the drivers, claim to have paid certain amount and did not implicated the petitioner. The petitioner refers to the evidence made and the witnesses, P.W2, P.W3, P.W4 & P.W5 has stated that they were engaged by the accused officer for doing official work at the check post, turned hostile and did not support the prosecution case, which is evident from the report of the Enquiry Officer dated 27.04.2015. The relevant portion of the Tribunal for disciplinary proceedings report dated 27.04.2015 is extracted hereunder for better appreciation:

"கு.சா.அ.1 அவ்வாறு சொல்லவில்லை என்றும் சொன்னதை மறுத்துரைத்து சாட்சியமளித்ததோடு அபராதம் மற்றும் வசூல் செய்யப்பட்ட தொகை கு.சா.அ.2 அமர்ந்திருந்த சசீதரன் வசூல் செய்யப்பட்ட அபராதத் தொகையான ரூ.13,515 என்றும், அபராதத் தொகை கு.சா.அ-2னால் தான் வசூல் செய்து ரசீது கொடுக்கப்படுகிறது என்று தெரிவித்ததன் அடிப்படையில் மேற்படி தொகை கைப்பற்றப்பட்டதாகவும், கு.சா.அ-1ன் மேஜைக்கு முன்னாள் உள்ள பணப்பெட்டிக்குமேல் 15.12.2009ம் தேதியிட்ட 'The Hindu' ஆங்கில நாளிதழ் பக்கவாட்டில் Stabiler அடித்து தனித்தனி



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அறைகளாக இருந்ததில் ரூ.18,770 பணம் இருந்தது என்றும், அந்த நாளிதழில் ஒவ்வொரு அறையிலும் எவ்வளவு பணம் இருந்தது என்றோ, ரூபாய் நோட்டுகளின் இனம் பற்றி எழுதப்படவில்லை என்றும், சாட்சியமளித்துள்ளார்.

அ.சா.5 திரு.ப்பி. மஜேறஸ்வரன் என்பவர் 26.09.2014 அன்று தீர்ப்பாயத்தில் ஆஜராகி வாக்குமூலம் அளிக்கையில் கம்பியூட்டர் சர்வீஸ் செய்யும் வேலை செய்து வருவதாகவும், 17.12.2009 அன்று மாலை 5.45 மணிக்கு போக்குவரத்து சோதனை சாவடி (வெளிச்செல்கை)ல் கோவை ஊ.த.க போலிசார் சோதனை மேற்கொண்டபோது அங்கிருந்ததாகவும், அந்த சோதனை சாவடியில் நிரந்தரமாக பணிக்கு செல்வதில்லை என்றும், பிரிண்டர் சர்வீஸ் செய்வதற்காக அன்றையதினம் சென்றிருந்ததாகவும், கனினி சம்பந்தமாக வேலைகள் இருந்தால் அந்த அலுவலகத்திலிருந்து அழைத்தால் மட்டுமே அங்கு செல்வது வழக்கம் என்றும், ஊ.த.க போலீசார் தன்னை விசாரணை செய்தார்கள் என்றும் சாட்சியமளித்துள்ளார்."

Despite the above facts, the petitioner was imposed with the major penalty of compulsory retirement from service which is no doubt disproportionate as contended by the learned Senior Counsel appearing for the petitioner.

19. All the money recovered are from the room or place which was in possession or occupants of Devadoss, Motor Vehicle Inspectore (NT)-A1 and not from the petitioner, which is evident from the enquiry proceeding.

20. In view of the above facts and circumstances of the case, this



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Court is of the considered view that the punishment of compulsory retirement imposed on the petitioner is disproportionate and the impugned order passed by the first respondent in proceedings R.No.71268/VC/2/2009 dated 03.07.2017 confirmed by the second respondent in G.O.(2D) No.71 Home (Transport IIA) Department dated 04.03.2019 and G.O.(2D) No.312 Home (Transport-IIA) Department dated 05.11.2019 is liable to be quashed and the same is quashed.

21. In the result, this Writ Petition is allowed and the respondents are directed to superannuate the petitioner from service and grant all consequential service and monetary benefits within a period of eight (8) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

29.09.2023

Index : Yes/No
Speaking Order : Yes/No
dpa/stn



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To:

1. The Principal Secretary/
Commissioner of Transportation
Chepauk, Chennai-600 005.
2. The Additional Chief Secretary to Government,
Home (Transport-IIA) Department.
Fort St George, Chennai-600 009.

J.SATHYA NARAYANA PRASAD,J.



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