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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 13.02.2017

DELIVERED ON: 01.03.2017

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

**W.P. [MD] .No.1041 of 2014
and
M.P. (MD) .No.1 of 2014**

Chokkalingam .. Petitioner

Vs.

1.The Principal District Judge,
Virudhunagar District,
at Srivilliputhur.

2.The Judicial Magistrate No.II/
Enquiry Officer, Srivilliputhur,
Virudhunagar District. .. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings in D.No.9480, dated 19.12.2013 and D.No.9485 dated 19.12.2013 passed by the 1st respondent and quash the same in respect of the petitioner and consequently direct the first respondent to promote the petitioner as Senior Bailiff from Junior Bailiff.

For Petitioner : Mr.C.Jeyaprakash

For respondents : Mr.N.Mohaideen Basha

O R D E R

[Order of the Court was made by **R.SUBBIAH, J.**]

This writ petition has been filed challenging the orders passed by the first respondent, dated 19.12.2013, reverting him from the post of Senior Bailiff to Junior Bailiff and transferring him to some other place respectively, and also for a consequential direction to the first respondent to post him as Senior Bailiff.



2.It is stated in the petition that the petitioner was appointed as Office Assistant in the District Munsif Court, Virudhunagar District on 17.08.1994 and he was promoted as Junior Bailiff on 23.12.1995 and thereafter, Senior Bailiff on 28.12.2005. While so, on 13.07.2011 one Karuppasamy has given a complaint against the petitioner before the first respondent stating that under the false promise of a getting job in the Tamil Nadu State Transport Corporation, the petitioner has received a sum of Rs.2,00,000/- and cheated him. Based on the said complaint, the first respondent issued a show cause notice to the petitioner, for which the petitioner has sent his reply. Not being satisfied with the reply submitted by the petitioner, the first respondent issued a charge memo on 26.02.2013, for which he has submitted his explanation on 11.06.2013. Again, not being satisfied with the said explanation, the first respondent appointed the second respondent as Enquiry Officer. Without providing sufficient opportunity, the Enquiry Officer submitted the enquiry report to the first respondent. After receipt of the enquiry receipt, on 19.12.2013 the first respondent has passed an order in D.No.9480 reverting him from the post of Senior Bailiff to the lower post of Junior Bailiff as punishment and also directed him to refund the amount due to the complainant. On the same day, the first respondent has also passed an order in D.No.9485 transferring him to Sub Court, Sivakasi as Junior Bailiff. Challenging the said orders, the petitioner has come up with this writ petition.

3. The only submission made by the learned counsel for the petitioner is that during the enquiry, no documentary evidence was produced to show that the petitioner had money transactions with the said Karuppasamy. Though there was no *prima facie* case in the complaint, the Enquiry Officer has submitted a report as if the allegation against the petitioner is proved. Hence, the impugned orders reverting him to the post of lower grade as punishment and the consequential order transferring him to some other place are liable to be set aside.

4. The learned counsel for the respondents submitted that though the petitioner herein has failed to appear before the enquiry officer for seven times, in order to drag the proceedings, only after providing sufficient opportunity, the Enquiry Officer has submitted his report. In the reply given by the petitioner viz., Ex.P15, he has stated that he had paid a sum of Rs.1,30,000/- to the complainant on his own and he has denied only the quantum of money transaction that he had with the complainant. Therefore, it is incorrect to say that without any evidence, the enquiry officer has come to the conclusion that the charges against the petitioner are proved, he was reverted to the lower post and thereafter, he was transferred to some other Court in the nearby place by



the first respondent. Thus, he sought for dismissal of the writ petition.

5. Keeping the submissions made on either side, we have carefully gone through the entire materials available on record.

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6. It is a settled law that the standard of proof required for the disciplinary proceedings is that of preponderance of probability and not proof beyond reasonable doubt as contemplated in the criminal cases. Further, if the enquiry has been conducted properly, then the question of adequacy or reliability of the evidence cannot be gone into by this Court, because the jurisdiction of the High Court under Article 226 of the Constitution of India, is a supervisory one and not an appellate one.

7. The only submission of the learned counsel for the petitioner is that there is no appropriate documentary evidence before the Enquiry Officer to show that there was money transaction between the petitioner and the complainant. It is seen that the petitioner himself admitted in Ex.P15 that he had given 15 sovereigns worth about Rs.1,30,000/- to the complainant viz., Mr.Karuppasamy. Further, he has stated in his further explanation that he has given 15 sovereigns gold jewels worth about Rs.1,30,000/- to the complainant on 03.08.2013 i.e., after the complaint. PWs.1 to 4 have adduced evidence against the petitioner. When that be so, the submission of the learned counsel for the petitioner is rejected. In fact, the petitioner, who has stated that he had money transaction only with Mr.Gurusamy, has not produced any oral or documentary evidence to substantiate the said statement during the course of enquiry. Hence, we do not find any infirmity or illegality in the order passed by the first respondent.

8. In the result, this writ petition fails and accordingly dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

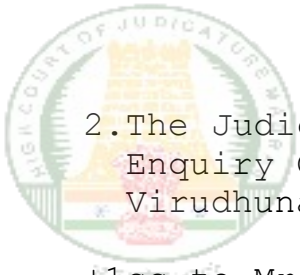
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Sub Assistant Registrar

To

1.The Principal District Judge,
Virudhunagar District,
at Srivilliputhur.



2.The Judicial Magistrate No.II/
Enquiry Officer, Srivilliputhur,
Virudhunagar District.

+1cc to Mr.C.JeyaPrakash,Advocate Sr.No. 11896

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AE/PM/10.03.2017/4P/4C

Order made in
W.P.[MD].No.1041 of 2014
Dated: 01.03.2017