IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 21.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

WP.No.27781 of 2005

M.Nizamudeen ...Petitioner

Vs

1. The Special Commissioner and Commissioner of Treasuries and Accounts, Chennai - 15.

2. The Treasury Officer, Cuddalore. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the 1st respondent in Pro.Na.Ka.No.45425/2001/Q3-4, dated 20.04.2004, quash the same and issue directions to the respondents to reinstate the petitioner in service with all consequential service and monetary benefits.

For Petitioner : Mr.M.Ravi

For Respondents: Mr.S.Suresh Kumar, GA

O R D E R

The petitioner herein joined the service as Junior Assistant in the Treasuries and Account Department. After few promotions, while the petitioner was serving as an Additional Sub Treasury Officer, he had been served with a charge memo under Rule 17(a) of the Tamil Nadu Civil Services (Disciplinary & Appeal) Rules on 29.04.1993. The charges levelled against the petitioner is that one Pattammal, Junior Assistant, who was working in the Government Girls' High School, Nellikuppam and Parangipettai, had prepared and presented bogus bills in the Sub Treasury, Panruti and Chidambaram and thereby misappropriated a huge sum and caused loss to the Government. Since this could have been prevented if the bills had been properly scrutinised and signatures of the Drawing Officer was verified by the petitioner herein along with the specimen signatures in the register of the Drawing Officer concerned maintained in the Sub Treasury, the petitioner herein was held to be responsible for the loss and therefore, the charges. The petitioner herein submitted a reply to his charge memo stating that he had scrupulously followed the procedure in the circular for scrutinisation and therefore, there was no infirmity.

2. Since the misappropriation is referable to the year 1992, he was unable to recollect the incident and therefore, sought for perusal of the concerned bills and other documents, in order to give a detailed explanation to defend himself effectively. However, on 26.07.2001, a charge memo under Rule 17(b) came to be issued by the 1st respondent herein and thereafter, an enquiry was conducted. In view of the findings of the Enquiry Officer dated 09.05.2002, the impugned order of dismissal from services came to be passed on 20.04.2004, which order is under challenge in the present writ petition.

3. The learned Senior Counsel for the petitioner submitted that the enquiry itself is vitiated and in violation of the principles of natural justice. According to the learned Senior Counsel, the petitioner herein, in his explanation to the Show Cause Notice has requested to produce the paid vouchers and records in original to them, in order to give a detailed explanation. Since the entire charges were passed on certain documents and the allegation against the petitioner was that he had not properly verified the signatures, it is a must that the petitioner be given a copy in order to submit an effective explanation. However, the respondents herein had informed the petitioner that the original paid vouchers including the TNTC 70 Register have been handed over to the police authorities and therefore, had not supplied the original records. In view of their inaction to supply the required documents, the petitioner could not give effective explanation, which lead to the grave punishment of removal from services.

4. The learned Government Advocate, on the other hand countered the submissions and stated that all the original paid vouchers upto 9/92 have been sent to Accountant General along with monthly accounts and the original paid voucher for 10/92 had already been produced to the petitioner for perusal. Since the police authorities were enquiring into the matter against the person who had misappropriated the concerned original records pertaining to the Registers, they were not in a position to hand over the same to the petitioner. The learned Government

Advocate also submitted that the enquiry was conducted after giving due opportunity to the petitioner herein and as such, there is no infirmity in the findings of the Enquiry Officer.

5. I have given careful consideration to the submissions made by the respective counsels.

6. As rightly pointed out by the learned Senior Counsel for the petitioner, the reply to the Show Cause Notice given by the petitioner dated 30.04.1993, evidences that the petitioner wanted the original paid vouchers and records including the TNTC 70 Register connected with the case. The charges against the petitioner is that when the Head Mistress of the Government Girls' High School, Nellikuppam had submitted certain bills, the petitioner herein had not properly scrutinised the bills and verified the signatures, in view of which, the loss had occurred to the Government. When the charge against the petitioner is for not properly scrutinising the bills, I am unable to comprehend as to how the petitioner can give an effective explanation to the said charges without perusing the original vouchers, which pertains to the period of 9/92. The TNTC 70 Register would also be relevant for the purpose of giving an effective explanation.

7. The respondents herein have filed a counter affidavit in which, they have admitted that they were not in a position to give the original paid vouchers upto 9/92, since they have been sent to the Accountant General along with the monthly accounts. Likewise, the counter statement also states that the TNTC 70 Register was handed over to the police authorities by the Education Department and therefore, they were not handed over to the petitioner. While that being so, it can be deemed that the petitioner could not have given effective representation to the charges.

8. It is in this background that the enquiry has proceeded with and without due opportunity to the petitioner to establish his innocence, a grave punishment of removal from services has been made.

9. It is seen from the averments made in the counter affidavit that when the miscreant had misappropriated some money, the staff of the Treasuries and Account Department were held to be responsible for this incident and similar set of charges have been levelled against all of them. When similar set of charges were levelled against all the staff, one staff namely S.Venkatesan, who was also working as an Assistant Treasury Officer was dealt differently with a minimum punishment. The reason adduced by the respondents for such a discrimination is that, he was at the verge of retirement and therefore, his case was to the different punishment. As a matter of fact, the

respondents have also stated in the counter that since similarly placed Venkatesan was at the verge of retirement, they have to necessarily pass an order even prior to his retirement.

10. I am unable to comprehend as to how such a discrimination can be made in a case, when the facts and charges are one and the same for all the staff. As such, in view of this discrimination, the petitioner is also entitled to succeed in the present writ petition.

11. For all the foregoing reasons, the records of the 1st respondent in Pro.Na.Ka.No.45425/2001/Q3-4, dated 20.04.2004 is quashed. Consequently, the petitioner would be entitled for all the monetary and service benefits. Since the petitioner has reached the age of superannuation, the 1st respondent herein shall endeavour to disburse the monetary benefits to the petitioner, as expeditiously as possible, in any event, within a period of 8 weeks from the date of receipt of copy of this order.

12. Accordingly, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Special Commissioner and
   Commissioner of Treasuries
   and Accounts, Chennai - 15.

2. The Treasury Officer,
   Cuddalore.

+1 cc to M/s.M.Ravi, Advocate Sr.No.27366
+1 cc to The Government Pleader, Sr.No.27455

CSL/10.05.2019