IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.38831 of 2004

M.Gandhi ... Petitioner

Vs

1. State rep. by
   the Special Commissioner and
   Commissioner for Revenue Administration,
   Chepauk, Chennai - 600 005.

2. The District Collector,
   Tuticorin District,
   Tuticorin.

3. The District Revenue Officer,
   Tuticorin District,
   Tuticorin.

4. The Revenue Divisional Officer,
   Tiruchendur,
   Tuticorin District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to pass an order of Writ of Certiorarified Mandamus, calling for the records, pertaining to the impugned order issued vide order No.Na.Ka.A.2/1747/97 dated 04.05.1999 issued by the Revenue Divisional Officer, Tiruchendur, the 4th respondent herein confirmed in Appeal vide order No. Service 5 (3)/49988/03, dated 03.01.2004 issued by the Special Commissioner and Commissioner for Revenue Administration, Chepauk, Chennai-600 005, and to quash the same and to direct the respondents 1 to 4 to reinstate the petitioner in service as Village Administrative Officer, Tiruchendur Taluk, Tuticorin District, with all concommittant service and monetary benefits.

For Petitioner : Mr.R.Muralidaran

For Respondents: Mr.S.Suresh kumar
Government Advocate

O R D E R

The petitioner herein who is dismissed from the post of Village Administrative Officer has filed the present writ petition challenging the impugned order dated 04.05.1999 in Na.Ka.A.2/1747/97 on the file of the Revenue Divisional Officer, Tiruchendur as well as the Appeal vide order No. Service 5(3)/ 49988/03 on the file of the Special Commissioner and Commissioner for Revenue Administration, Chepauk, Chennai-600 005 .

2. The brief facts of the case are as follows:

The petitioner herein was appointed as a Village Administrative Officer in the year 1984. The substance of the charges levelled against the petitioner is that he had failed to remit the Land Revenue for a period of 7 days to the Treasury and thereby temporarily misappropriated the same. The explanation given by the petitioner before the Enquiry Officer is that he had issued the Land Revenue receipts in advance to the farmers, to show substantial progress in collections. The Enquiry Officer had found the petitioner guilty of the charges and consequently the 4th respondent herein had passed the impugned order of dismissal from service. The petitioner's appeal against the dismissal order to the first respondent herein was also rejected through an order dated 03.01.2004 These orders are under challenge in the present writ petition.

3. The learned counsel for the petitioner submitted that the charges 1 to 3 against petitioner are baseless, since there was no misappropriation on the part of the petitioner herein. It is his submission that since the petitioner had admitted that he had belatedly deposited the Revenue collection amount, it cannot be termed as misappropriation. Even otherwise, he would submit that the punishment imposed by the respondents herein is not in consonance with the gravity of the charges.

4. The learned Government Advocate on the other hand submitted that the punishment of dismissal from service was proportionately made, since the charges against the petitioner is an act of misappropriation of Government Revenue. According to the learned Government Advocate, the petitioner herein ought not to have issued receipts prior to actual collections and therefore there was a presumption that he had misappropriated the Revenue collected from the farmers. It is also his submission that after the order of dismissal, the petitioner had belatedly approached the first respondent by way of appeal after two years. Though this appeal was filed belatedly, the same was

considered and rejected and hence the present writ petition is also liable to be dismissed on the ground of laches.

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

6. The facts of issuance of receipts and belated collection of taxes are not in dispute. As such, the short question that arises for consideration in the present writ petition is, as to whether the punishment of dismissal from service is proportionate to the gravity of the charges levelled.

7. It is not in dispute that the petitioner herein had collected the land tax from the Pattadars and deposited the sum before the Treasury after a delay of 7 days. Such a belated remittance has been termed to be a temporary misappropriation by the respondents herein. The explanation given by the petitioner to the charges is that he wanted to show a substantial progress in the collection work and, therefore he had issued the receipts of land tax in advance to the farmers who, in turn had belatedly made the payments after the receipt. Even otherwise, the delay was only for a period of 7 days, which is not inordinate.

8. When any person, with a dishonest intention receives and retains any money which he knows and believes to be belonging to the other person for the purpose of utilising the same for his personal use, it can be termed as act of misappropriation. In the instant case, even prior to the issue of charge sheet, the petitioner had belatedly remitted the land tax collected from the Pattadars before the Treasury. There was no intention on the part of the petitioner to retain the taxes collected, for his use. The petitioner has also given an explanation stating that the Pattadars had delayed the payment of land tax and that the receipts were given to them in advance, in order to show progress in the collection work. Though such an explanation cannot be totally justified, the question would be as to whether this could amount to an act of misappropriation. Admittedly, the respondents have also stated in the charges that there was a belated remittance. The substance of the explanation rendered by the petitioner appears to be that in the absence of progress in the collection of taxes may amount to dereliction of duty and therefore he had issued advance receipts and thereafter remitted the taxes belatedly. When he had expressed that he had no intention to misappropriate, such an explanation was not considered. As such, this Court is of the view that the misconduct alleged, may not amount to a misappropriation, on the facts of this case.

9. While that being so, the consequent question that arises for consideration is as to whether the punishment of dismissal from service would be in consonance with the gravity of the charges levelled against the petitioner?

10. The learned Government Advocate submits that the petitioner was aged about 57 years, when the writ petition came to be filed. When the original punishment of dismissal was passed on 04.05.1999, he had belatedly filed an appeal in the year 2002, after lapse of two years. At this stage, if the punishment is modified, serious prejudice would be caused to the respondents. As observed earlier, the charges levelled against the petitioner may not amount to the act of misappropriation. But, yet, it could attract other acts of misconduct. Nevertheless. such acts may not be construed as a grievous act of misconduct, which may warrant the punishment of dismissal from service. However, by modifying the punishment into one of " compulsory retirement", this Court is of the view that such modified punishment would be proportionate to the charges levelled against the petitioner.

11. Insofar as the consequential monetary benefits are concerned, it is seen that the petitioner had not vigilantly filed the appeal in time and this Court had taken into account the prejudice caused to the respondents in view of the delay. Such laches cannot be put against the respondents. Nevertheless, since the petitioner claims that he has been serving as a Village Administrative Officer for about 15 years, without any blemish, such service requires to be given due credit also. The learned counsel for the petitioner has also produced a good conduct certificate issued by the Revenue District Officer as well as the District Collector, Chidambaranar District, Thoothukudi, dated 13.05.1988 to the petitioner in support of his previous and unblemished service. However, in view of the laches, it would not be appropriate to order for the back wages to which the petitioner may be entitled, if the order of dismissal is set aside.

12. In the light of the above discussions, the order dated 04.05.1999 in Na.Ka.A.2/1747/97 on the file of the Revenue Divisional Officer, Tiruchendur, and the order dated 03.01.2004 in Appeal vide order No. Service 5(3)/49988/03 on the file of the Special Commissioner and Commissioner for Revenue Administration, Chepauk, Chennai-600 005 are set aside and the punishment of dismissal from service is modified into one of "compulsory retirement". Consequently, the first respondent herein is directed to disburse the DCRG benefits from the date of superannuation of the petitioner, along with his monthly

pension, as expeditiously as possible, in any event within a period of three months from the date of receipt of a copy of this order. The writ petition ordered accordingly. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Special Commissioner and
Commissioner for Revenue Administration,
Chepauk, Chennai - 600 005.

2. The District Collector,
Tuticorin District,
Tuticorin.

3. The District Revenue Officer,
Tuticorin District,
Tuticorin.

4. The Revenue Divisional Officer,
Tiruchendur,
Tuticorin District.

+1cc to the Government Pleader Sr.43159
+1cc to Mr.R.Muralidharan, Advoatye Sr.42644

W.P.No.38831 of 2004

ss[co]
srg 28/06/2019