



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.11.2019

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

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W.P.(MD)Nos.11659 and 11660 of 2010

R.Jeganathan : Petitioner in WP(MD)No.11659 of 2010
T.Aruldoss : Petitioner in WP(MD)No.11660 of 2010

vs.

- 1.The Director General of Registration,
Chennai -28.
- 2.The District Registrar (Audit),
Tiruchirappalli, Tiruchirappalli District.
- 3.The District Registrar,
District Registrar Office,
Thanjavur, Thanjavur District. : Respondents in both cases

PRAYER in W.P.(MD)No.11659 of 2010: Writ Petition filed under Article 226 of Constitution of India, praying to issue Writ of Certiorarified Mandamus, to call for the records from the first respondent in respect of the proceeding No.27151/Aa3/05-2, dated 28.05.2010 and quash the same and consequently, to direct the respondents to reinstate the petitioner in service along with back wages and benefits.

PRAYER in W.P.(MD)No.11660 of 2010: Writ Petition filed under Article 226 of Constitution of India, praying to issue Writ of Certiorarified Mandamus, to call for the records from the first respondent in respect of the proceeding No.27151/Aa3/05-3, dated 28.05.2010 and quash the same and consequently, to direct the respondents to reinstate the petitioner in service along with back wages and benefits.

For Petitioner : Mr.A.Rahul
For Respondents : Mr.V.Anand
Government Advocate
(in both cases)

COMMON ORDER

These Writ Petitions have been filed by Office Assistants, who were working in the Registration Department, challenging the order dismissing them from service.

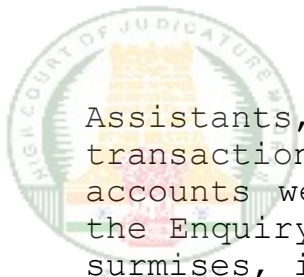


2.The petitioners in both Writ Petitions were working as Office Assistants in Budalur Sub Registrar Office in Thanjavur District. A criminal case was lodged as against the Sub Registrar of Budalur Sub Registrar Office for misappropriation of a huge sum of rupees seven lakhs and odd. From the FIR, it is seen that the Sub Registrar, who was in-charge of the Office, had not remitted the amount collected in the Sub Register's office to the Government account and created fabricated challan to balance the amount and that between 09.12.2004 to 29.03.2005, he has misappropriated a sum of Rs.7,65,288/-.

3.From the FIR and the Charge Sheet, it is seen that the Sub Registrar, by name, P.Panchanatham, with the assistance of another person, by name, Balachandar, has cheated the Government to the tune of more than Rs.7,00,000/-. Later, a charge memo was issued to the petitioners stating that the petitioners in these Writ Petitions have misappropriated a sum of Rs.3,32,000/- and Rs.3,97,400/- respectively. Since charges are specifically denied and the petitioners contended that they have never involved in the misappropriation done by the said Sub Registrar, enquiry was conducted. During the enquiry, no material is produced and no independent witness is examined. However, the Enquiry Officer found that the petitioners have aided the Sub Registrar to misappropriate a huge sum. Unfortunately, the Enquiry Officer has not even noticed the charge sheet, that was filed in relation to the criminal misappropriation. Though the Enquiry Officer found that the misappropriation is not proved, held that the petitioners could have prevented such misappropriation by the Sub Registrar, by name, P.Panchanatham. The findings of the Enquiry Officer was based on the signature in the register, wherein, accounts have been tallied.

4.The learned Counsel for the petitioners highlighted that the enquiry report would clearly exhibit that there is no material to support the conclusion. From the FIR and the charge sheet, it is seen that the Sub Registrar, by name, P.Panchanatham, has committed misappropriation. Though the petitioners were accused of misappropriation, subsequently, it is admitted that they have not misappropriated any amount. Further, the findings relating to their involvement in the delinquency committed by the Sub Registrar is perverse, particularly, when none of the petitioners had been implicated in the criminal complaint.

5.The learned Counsel for the petitioners relied upon a judgment of Honourable Supreme Court in the case of **Roop Singh Negi vs Punjab National Bank and another**, reported in (2009) 2 SCC 570, for the proposition that the Enquiry Officer has a duty to arrive at a finding upon taking into consideration the material produced by parties. In this case, admittedly, no witness was examined to prove the delinquency and it is admitted that the petitioners are not guilty of misappropriation. The petitioners are only Office



Assistants, who are not supposed to deal with any money transactions. Since the accounts have been manipulated and the accounts were maintained by Sub Registrar himself, the findings of the Enquiry Officer has no basis and hence, such a finding, based on surmises, is nothing but illegal.

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6.From the nature of allegation against the Sub Registrar and the *modus operandi* of the Sub Registrar, who misappropriated a huge sum, it is seen that the Sub Registrar has misappropriated the amount by short remittance and by creating forged challan to tally the amount. This can be inferred from the statement in the charge sheet filed against the Sub Registrar. Therefore, the register maintained by the Sub Registrar would not show any irregularity and whatever the amount that was collected in the Registration Office have been properly accounted in the books maintained by the Sub Registrar by fabricating challan. Based on the signature of the petitioners, it is improbable for anyone to conclude that the petitioners have also aided Sub Registrar or have acted in collusion with the Sub Registrar to enable him to misappropriate a huge sum. From the enquiry report, it is seen that the conclusion is not only erroneous, but not based on any materials. The facts assumed are contrary to admitted position and hence, the report is nothing but, perverse. It is only based on the enquiry report, the first respondent has passed the order, removing the petitioners from service.

7.In the said circumstances, this Court is of the view that the impugned order removing the petitioners from service is not warranted and the petitioners are not guilty of any irregularity or misappropriation. Therefore, these Writ Petitions are allowed and the impugned orders, passed by the first respondent, dated 28.05.2010 are set aside. It is reported that the petitioners have now attained the age of superannuation and retired from service in 2011 and that retirement benefits have not been settled. The respondents shall reinstate the petitioners in service notionally and grant all monetary benefits and retirement benefits to the petitioners forthwith. No costs.

Sd/-

Assistant Registrar (writs)

// True Copy //

Sub Assistant Registrar(CS)

cmr

To

1.The Director General of Registration,
Chennai -28.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The District Registrar (Audit),
Tiruchirappalli, Tiruchirappalli District.

3.The District Registrar,
District Registrar Office,
Thanjavur, Thanjavur District.

+1 CC to Mr.A.RAHUL, Advocate (SR-98358[F] dated 14/11/2019)

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