



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.09.2019

CORAM:

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THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**

W.P(MD)No.5253 of 2010

and

M.P(MD)No.1 of 2010

K.Kalaimaran

: Petitioner

Vs.

1.The Commissioner of Municipal
Administration, Chepauk,
Chennai - 600 005.

2.The Commissioner,
Dindigul Municipality,
Dindigul.

: Respondents

Prayer: Petition is filed under Article 226 of the Constitution of India, Writ of certiorarified mandamus, to call for the records pertaining to the impugned order passed by the first respondent dated 20.06.2007 bearing sha. Mu.No.52185/2004/H-2 by conforming the order passed by the second respondent, dated 28.07.2004 bearing Na.Ka.No.10470/2002/C1 and quash the same and direct the respondents to reinstate the petitioner with all consequential and monitory benefits.

For Petitioner	: Mr.G.Muruggan
For R1	: Mr.R.Murugan, Additional Government Pleader
For R2	: Mr.J.Lawrance

ORDER

This writ petition has been filed by the petitioner for issuing a writ of certiorarified mandamus, to quash the proceedings of the first respondent dated 20.06.2007 confirming the order passed by the second respondent dated 28.07.2004 and to direct the respondents to reinstate the petitioner with all consequential and monitory benefits.



2.The brief facts that are necessary for the disposal of the writ petition are as follows:

The petitioner was appointed as Revenue Assistant on compassionate ground on 15.07.2000. While the petitioner was working as a Revenue Assistant in the second respondent office, he was placed under suspension on 29.11.2002. It is admitted that a criminal case was also registered in Crime No.1 of 2003 on 02.01.2003, for the alleged offence punishable under Sections 409, 477(a), 420 of IPC. A charge memo was issued to the petitioner on 30.05.2003, alleging that the petitioner collected a sum of Rs.7,74,052/-, from members of public having water connection towards water charges, but not remitted the same in the municipality account. The fact that the petitioner collected the amount by using Municipality Bill Books and misappropriated the same, is not in dispute. Though several charges were framed in connection with a single act of misappropriation, it is seen that all the charges are regarding responsibilities and the conduct of the petitioner as per the service rules.

3. Pursuant to the charges, the petitioner has submitted a letter, admitting the misappropriation of fund by stating that it was on account of the dire need of petitioner. He has stated that the amount misappropriated by the petitioner was spent for his children. Though he was paid a sum of Rs.2 lakhs, he wanted some lenience from the respondent corporation on account of his family circumstances. Though the petitioner relied upon his explanation dated 18.08.2003, in response to the charges, which is also filed along with documents and denied the charges in the said representation, after enquiry, it appears that the petitioner has admitted his guilt.

4. It is in the said circumstances, the petitioner was removed from service by impugned order, dated 28.07.2004, passed by the second respondent. The said order was also confirmed by the first respondent on further appeal before the first respondent. The impugned order of the first respondent dated 20.06.2007 contains reasons. It is thereafter, the present writ petition is filed by the petitioner, challenging the order of first respondent confirming the order of second respondent, dismissing the petitioner from service.

5.The learned counsel appearing for the petitioner relied upon the affidavit filed in support of the writ petition and his representations and pointed out that the petitioner was not given sufficient opportunity at the time of enquiry. It is his case that the petitioner was not provided with the documents, which were relied upon by the enquiry officer. The learned counsel for the petitioner further stated that the enquiry conducted by the enquiry officer was improper, as the petitioner was not given an opportunity to cross examine the witnesses. It is further stated by the



corporation, were also involved in the misappropriation as alleged by the respondent and that the misappropriation was on account of instructions given to him by those officials. It is also stated that the petitioner was threatened by the other officials, who are responsible for the said misappropriation.

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6. In short, it is seen that the petitioner has stated some new facts as if he was prevented from canvassing at the time of participating in the enquiry. The petitioner originally denied charges and participated in the enquiry. In his explanation denying charges he did not involve his superiors. The conduct of petitioner in giving different stories would only make this Court to hold that the petitioner would never speak truth.

7. Similarly, the contention of the petitioner before the Commissioner, in response to show cause notice gives the picture that the petitioner has admitted misappropriation but gave an explanation by giving various reasons.

8. Having regard to the sequence of events and facts admitted, this Court is of the view that the respondents 1 and 2 have applied their mind while considering all the objections raised by the petitioner. The findings of the authorities are well founded and supported by materials and reasons. There is no perversity or irregularity in the order impugned in the writ petition which could be demonstrated by the petitioner's counsel.

9. The learned counsel for the petitioner after filing this writ petition, made a request that he may be permitted to move before the Government by way of further revision. Since the writ petition is now disposed of on merits, such liberty cannot be given. The counter affidavit filed by respondent would confirm the position that the petitioner has remitted Rs.2 lakhs and agreed to pay balance.

10. It is also stated by the learned counsel for the petitioner that the petitioner was acquitted by the criminal Court. Even though, the criminal case was prosecuted on the same set of facts alleging misappropriation of funds by the petitioner, as far as the present case is concerned, this Court is fully convinced that the petitioner is guilty of the charges alleged against him and the findings are unassailable that the petitioner has committed a serious act of misappropriation. It is well settled that for making the petitioner liable for punishment for criminal offences it is necessary that the case against the petitioner should be proved beyond doubt. However, in the departmental proceeding, the charges have been proved by petitioner's own admission.

11. In view of the said position, this Court cannot show any lenience, merely because the petitioner was acquitted in the



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12. As a result, this Writ Petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar

To

1.The Commissioner of Municipal
Administration, Chepauk,
Chennai - 600 005.

2.The Commissioner,
Dindigul Municipality, Dindigul.

+1 CC to M/s.J.LAWRANCE, Advocate (SR-86050[F] dated 10/09/2019)

+1 CC to M/s.GP (SR-86147[F] dated 10/09/2019)

W.P (MD) No. 5253 of 2010
and
M.P (MD) No. 1 of 2010
09.09.2019

DAS
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