

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2020

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

W.P.No.13563 of 2007
(O.A.No.2984 of 2003)

R.Parvathi

...Petitioner

Versus

1. The District Collector,
Tuticorin District,
Tuticorin.

2. The Personal Assistant (General),
to the District Collector,
Office of the Collectorate,
Tuticorin District, Tuticorin.

...Respondents

PRAYER: PRAYER: Originally this petition has been filed as Original Application No.2984 of 2003 before the TamilNadu Administrative Tribunal at Chennai and after abolition of TNAT, petition has been transferred and numbered as W.P.No.13563 of 2007.

Writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the 2nd respondent relating to the order passed by him in Na.Ka.A4/102407/92, dated 12.05.2003, and quash the same and further direct the respondents herein to reinstate the applicant into service with all service and attendant benefits.

For Petitioner : Mr.S.Nedunchezhiyan
for G.Sankaran

For Respondents : Mr.P.Chinnadurai
Additional Government Pleader

O R D E R

This Writ Petition has been filed challenging the order passed by the second respondent in Na.Ka.A4/102407/92, dated 12.05.2003 and seeks to quash the same and further to direct the respondents herein to reinstate the applicant into service with all service and attendant benefits.

2. The case of the petitioner is that he joined duty as Office Assistant in the year 1981 and thereafter, he was

promoted as Record Clerk in the year 1987. Subsequently, in the year 1991, he was promoted as Junior Assistant. While so, he was placed under suspension on the ground that a case was registered under sections 409, 420, 465 and 468 IPC alleging that there was misappropriation of amount to the tune of Rs.33,815/-. Subsequently, the second respondent issued a notice placing the petitioner under suspension and issued a show cause notice to him. The petitioner submitted his explanation. Since the enquiry officer was not satisfied with the same, he was removed from service. Challenging the said order, he has filed Original Application before the Tamilnadu Administrative Tribunal, Chennai in O.A.No.2984 of 2003. Subsequently, due to abolition of the Administrative Tribunal, the matter has been transferred to this Court and renumbered as W.P.No.13563 of 2007.

3. The learned counsel for the petitioner would submit that he has completed 20 years of unblemished service. Though, he was convicted on 30.09.2002, he was released on the basis of probationary officer report and also he had repaid the misappropriated amount. Thereafter, he has given explanation, but the disciplinary authority has not considered the same and passed the order of dismissal from service. This punishment is disproportionate to the offence. Therefore, it is to be set aside and the respondent may be directed to reinstate the petitioner with all back wages. Since the petitioner attained superannuation during the pendency of the Writ Petition, he seeks to provide all notional benefit and monetary benefits.

4. The learned Additional Government Pleader would submit that while the petitioner was in service, he misappropriated funds to the tune of Rs.33,815/-. Subsequently a criminal case was registered against him for the offence under sections 409, 420, 465 and 468 IPC in Crime No.395/92. Thereafter a final report was filed and the case was taken on file in C.C.No.83/95 before the Judicial Magistrate, Villathikulam. The learned Magistrate after trial, convicted the petitioner for the said offence. However based on the P.O report, the sentence was reduced. However conviction was not set aside and by exercising power under Rule 17(c)(i)(1) and 14(a)(ii) of the Tamilnadu Civil Services (D & A) Rules, 1970 the second respondent passed the order and dismissed the petitioner from service. The conviction rendered by the magistrate is final and there is no further Appeal. Therefore, since he was convicted in the criminal Court as per rule 17(c)(i)(1) and 14(a)(ii) of the Tamilnadu Civil Services (D & A) Rules, 1970, the convicted person is not entitled for continuing the public service. Therefore, a show cause notice was issued. Since conviction rendered by the the learned Magistrate becomes final, the order of removal from service is confirmed. Therefore, there is no merit in the case and this writ petition is liable to be

dismissed.

5. Admittedly the petitioner was working as a Junior Assistant in the office of Tahsildar, Villathikulam. While he was in service, a case was registered under sections 409, 420, 465 and 468 IPC alleging that there was misappropriation of amount to the tune of Rs.33,815/-. After investigation, a charge sheet was laid before Judicial Magistrate, Vilathikulam and the same was taken on file in C.C.No.83/95. After trial, the learned Magistrate found that the prosecution has proved its case beyond reasonable doubt and convicted the petitioner for the above said offences. However, he was released on bail after getting report from the probationary officer. Since, the conviction was not set aside the respondent issued show cause notice on 07.04.2003 in Doc.No.A4/102407/92 and subsequently he passed an order dated 12.05.2003 in Na.Ka.A4/102407/92 dismissing the petitioner from service. Since the petitioner was dismissed from service based on the conviction rendered in the criminal case that conviction becomes final. Thereafter, no appeal has been filed by the petitioner. Since the conviction rendered by the criminal court is final, there is no infirmity in the order passed by the respondent dismissing the petitioner from service.

6. Under these circumstances, there is no merit in the Writ Petition and the Writ Petition is liable to be dismissed. Accordingly, this Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The District Collector,
Tuticorin District,
Tuticorin.
2. The Personal Assistant (General),
to the District Collector,
Office of the Collectorate,
Tuticorin District, Tuticorin.

+1cc to the Government Pleader, S.R.No.36937

W.P.No.13563 of 2007

EV(CO)
RV(04/01/2021)