IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.08.2020

CORAM:

THE HON'BLE MR. JUSTICE V.PARTHIBAN

WP No.10808 of 2020
and WMP No.13123 of 2020

R.Krishnamurthy .. Petitioner

Vs

The Commissioner,
Treasuries and Accounts,
Amma Buildings, Chennai - 600 035 .. Respondent

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the respondent made in Proc.Rc.No.40309/Q2/2006 dated 18.03.2020, quash the same and direct the respondent to pay the subsistence allowance as admissible to the petitioner under the rules.

For Petitioner : Mr.M.Devaraj

For Respondent : Mr.K.M.Ramesh,
Government Advocate.

O R D E R

The writ petition has been preferred against the order dated 18.03.2020 passed by the respondent, dismissing him from service on the ground that the petitioner was convicted by the Criminal Court for offence under Section 7 of the Prevention of Corruption Act and was awarded a sentence to undergo rigorous imprisonment for one year and to pay fine of Rs.5,000/- and further that for offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, he was sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs.10,000/-.

2. The order of conviction was handed out by the criminal court on 27.08.2019. As a consequence of conviction and sentences imposed on the petitioner, the impugned order was passed by the respondent, dismissing him from service under the provisions of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The writ petition is filed challenging the order of dismissal from service, without exhausting the appellate remedy available under the service rules.

3. When the non exhaustion of the appellate remedy was pointed out to the counsel, who appeared for the petitioner, the learned counsel would submit that no reason was spelt out by the disciplinary authority while imposing the harsh penalty of dismissal from service. According to him, it is incumbent on the disciplinary authority to furnish reasons for imposing the penalty and therefore, the order is passed without application of mind and also without complying with the established principles of natural justice and hence, the writ petition.

4. This Court is unable to appreciate the said submissions made on behalf of the petitioner for the reason that when an employee of the Government was convicted by a criminal Court of competence, particularly, under the Prevention of Corruption Act, the authority had no discretion except to impose penalty on the government servant under the service regulations. No further reasons need to be stated in the order of punishment. In this case, it appears that on more than one count, the petitioner was convicted and he was sentenced to undergo rigorous imprisonment for 1 and 2 years, respectively, and in view of such serious allegations ending in conviction, the impugned punishment cannot be challenged on the above submissions or grounds, at this stage.

5. However, it is always open to the petitioner to prefer an appeal against the order of dismissal, to the competent appellate authority and it is entirely within the power of the appellate authority to consider the appeal and pass appropriate orders thereof. The appellate authority can always consider the facts which led to conviction in terms of the service regulations and it is also within his purview to decide the quantum of penalty to be imposed on the petitioner. Certainly, it is not open to the petitioner to invoke the extraordinary jurisdiction of this Court, under Article 226 of the Constitution of India, directly without availing the effective alternative remedy, in terms of the service rules.

6. In view of the same, the writ petition stands as dismissed as not being maintainable and also being pre-mature. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Commissioner,
Treasuries and Accounts,
Amma Buildings, Chennai - 600 035.

+1 cc to Mr.M.Devaraj, Advocate Sr.No.26905 .

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