BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.03.2020**

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)NO.2433 OF 2013
and
M.P(MD)No.1 of 2014

P.Murugesan :Petitioner

.vs.

1.The Commissioner,
Treasuries and Accounts Department,
Panagal Building,
Second Floor,
Anna Salai,
Chennai-15.

2.The Secretary to the Government,
Finance Department,
Treasuries and Accounts,
Secretariat,
St.George Fort,
Chennai-9. : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order of dismissal passed by the second respondent made in G.O.Ms.No.144, dated 30.4.2012 and quash the same and consequently to pass an order directing the respondents to disburse all emoluments and retirement benefits to the Petitioner.

For Petitioner :Mr.S.Chandrasekaran

For Respondents :Mr.C.Ramar,
Addl.Govt.Pleader

O R D E R
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This Writ Petition is filed seeking issuance of a Writ of Certiorarified Mandamus to quash the order of dismissal passed by the second respondent made in G.O.Ms.No.144, dated 30.4.2012 and consequently to pass an order directing the respondents to disburse all emoluments and retirement benefits to the Petitioner.

2.The case of the Petitioner is that he has joined service as Typist on 19.09.1996 and subsequently promoted and served as Assistant Accounts Officer(NMP),Section at Collectorate, Namakkal, Namakkal District till 22.4.1999 and completed 32 years of service in the said Department. Further the Petitioner has submitted that he was charged on accusation of conducting Chit by receiving amounts from his colleagues and also from General Public and a Criminal case was registered against him in Crime No.5 of 1999 on the file of City Crime Branch Police, Trichy. Subsequently, the case was transferred to the file of Economic Offences Wing-II, Trichy in C.C.No.92 of 2004 before the TNPID Court,. Chennai and now in C.C.No.19 of 2008, on the file of TNPID Court, Madurai. While he was in service, he was placed under suspension as per the proceedings of the Commissioner of Treasuries and Accounts, Chennai vide Proceedings No.A3/7237/99, dated 11.6.1999 with retrospective effect from 22.4.1999 based on the complaint made by one Mrs.Prema Subramanian and had initiated prosecution under Section 138 of the Negotiable Instruments Act for dishonor of cheques in C.C.No.301 of 1999, on the file of Judicial Magistrate No.II, Trichy which was subsequently transferred to the file of Judicial Magistrate No.V, Trichy in C.C.No.349 of 2006. He was convicted and imposed with imprisonment for two years rigorous imprisonment which was suspended on preferring an appeal before the District and Sessions Judge cum PCR Court, Trichy in Criminal Appeal No.12 of 2007 and during the trial, the learned Judge has upheld the conviction and the Petitioner had undergone imprisonment from 19.3.2008 to 3.4.2008 for a period of 16 days. Thereafter the Petitioner had preferred a revision in Crl.R.C.No.370 of 2008, in which the Petitioner was enlarged on bail. The said criminal revision is still pending for disposal before this Court. Appropriate disciplinary proceedings were initiated under Rule 17(b) of the Tamil Nadu Civil Services(Discipline and Appeal)Rules and pursuant to which a charge memo in Na.Ka.No.7237/1999/Q3, dated 10.2.2003 was issued, for which, the Petitioner has also submitted a detailed explanation on 12.3.2003. The enquiry was conducted by one Mr.Poomalai, Treasury Officer, Trichy. During enquiry, the Petitioner has pleaded innocence and the Petitioner has been entangled by the conspired act of his colleague namely A.Venkataraman, who has been arrayed as accused No.2 and he is still absconding and not traceable. During the enquiry proceedings, the Petitioner has not been given sufficient opportunity to cross examine the oral witnesses examined on the side of the respondents. Further the witnesses produced by the respondents are only interested witnesses and gone to the extent of refusing to depose during the Petitioner's cross examination. On 2.5.2005, the Petitioner has requested the first respondent to suspend the enquiry proceedings till the final adjudication in the criminal cases. The first respondent has rejected the same by his letter, dated 24.6.2005 and the enquiry proceedings is still pending. In the meanwhile, the Petitioner has attained the age of superannuation on 30.6.2006 and the petitioner has not been permitted to retire from service. The first respondent has initiated departmental disciplinary proceedings against the Petitioner on the alleged charge of suppression of pendency of criminal cases. During the suspension period, the Petitioner has been issued with a charge memo on 15.7.2010 seeking explanation on the proposal of the Government to impose penalty of dismissal from service, for which, the Petitioner has also submitted an explanation to drop the said proposal vide letter dated 18.09.2010. While so, without considering his representations, the second respondent passed the order of dismissal from service by issuing G.O.Ms.No.144, dated 30.4.2012, which was served on the Petitioner on 4.7.2012. The Respondents have not considered the pendency of the revision and other criminal proceedings and mechanically passed the order of dismissal from service and hence the Petitioner has prayed for quashing the same. It is also now brought to the knowledge of this Court that the Criminal Revision filed by the Petitioner was dismissed by this Court on 9.6.2014.

3.A detailed counter affidavit has been filed denying all the allegations made in the affidavit filed in support of the writ Petition and submitted that as per section 8(1)(a) of the Tamil Nadu Government Servants Conduct Rules ''no Government servant shall except with the previous sanction of the Government can engage himself directly or indirectly in any trade or business or undertake any employment.'' That being the case, the Petitioner being the Assistant Accounts Officer in Treasuries Department, had conducted a private chit and cheated the general public by swindling the money. It is seen from the counter that the Petitioner has cheated a huge amount of money and he was placed under suspension by the first respondent by his proceedings, dated 11.6.1999 from the date of his arrest ie, from 22.4.1999. In suppression of the above, the second respondent by G.O(D)No.248, Finance Department dated 25.6.2003 issued orders placing the Petitioner under suspension with effect from 22.4.1999, I.e., from the date of detention. Further in the counter, the first respondent has repeated the averments about the pendency of criminal proceeding and conviction imposed on the Petitioner and denying all the averments made in the affidavit and concluded that the Petitioner has been paid with subsistence allowance till the date of dismissal from service and the order of dismissal from service was also inflicted on him based on the conviction in the criminal case and as such the dismissal order made in G.O.Ms.No.144, dated 30.4.2012 is sustainable in law and prayed for dismissal of the Writ Petition.

4.From the above, it is clear that the disciplinary proceedings was initiated against the Petitioner under Rule 17(b) of the Tamil Nadu Civil Services(Discipline and Appeal)Rules and after giving him an opportunity of hearing and following the principles of natural justice, enquiry was conducted and the enquiry report was also served on him and the enquiry report is pending before the second respondent for finalization of the Government. The Petitioner was not permitted to retire from service on 30.6.2006, as disciplinary proceedings was pending and criminal cases are also pending. Further a case was also registered against him and the same ended in conviction, convicting the Petitioner with two years rigorous imprisonment and directing him to pay compensation of Rs.12 lakhs to the complainant and the appeal filed against the said conviction was also dismissed. Further the Criminal Revision filed by the Petitioner was also dismissed by this Court on 19.6.2014 and the punishment imposed on the Petitioner has been confirmed. That being the case, as per the provisions of the Tamil Nadu Government Servants Conduct Rules and the TNCS(D&A)Rules, the Government has issued a show-cause notice on 15.7.2010 seeking explanation from the Petitioner as to why a punishment of dismissal from service should not be inflicted on him. Considering all the above facts and the explanation submitted by the Petitioner finally an order of dismissal was passed by issuing the Government order impugned herein dated 30.4.2012. That being the case, the Petitioner cannot now seek for disbursement of retirement benefits to him. As per the the Government Letter No.126, Personnel and Administrative Reforms Department dated 26.4.1995, ''where an employee is convicted in a criminal case and preferred an appeal to the appellate court, Disciplinary proceedings may be initiated under Rule 17(c)(i)(1) and final orders can be passed''. Accordingly,the Petitioner's case was proceeded with and disciplinary action was taken against him and his case was considered properly and the final order is passed. No Government has permitted the Petitioner to run the chit business and thereby cheating the public money to the tune of Rs.15 lakhs. Since the Petitioner has been convicted in a criminal case and the same was confirmed in appeal,there is no question of considering his case both on law and on facts and awarding him or disbursing him the terminal benefits. It is clear that as per the orders passed by the Criminal Court, two years rigorous imprisonment and payment of Rs.12 lakhs as compensation to the complainant vide order dated 9.1.2007 passed by the learned Judicial Magistrate No.V, Trichirappalli, has been confirmed by the Sessions Judge and the Criminal Revision filed against the same before this Court was also dismissed by this Court confirming the said order. Therefore the Petitioner cannot now come and claim any relief for disbursement of terminal benefits. Further several criminal proceedings are also pending against the Petitioner.

5.As the Government/Second respondent has independently examined all the materials on record and proceeded with the disciplinary proceedings and action has been taken against the Petitioner by dismissing him from service and had issued G.O.Ms.No.144 ,dated 30.4.2012 in this regard, which is a wellreasoned order and hence, this Court is not inclined to interfere with the same. Accordingly, the Petitioner is not entitled for the relief sought for by him in the present Writ Petition to quash the above said Government order and the consequential relief of disbursement of terminal benefits to him.

6.For all the above reasonings, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

vsn

To

1.The Commissioner,
Treasuries and Accounts Department,
Panagal Building,
Second Floor,
Anna Salai,
Chennai-15.

2.The Secretary to the Government,
Finance Department,
Treasuries and Accounts,
Secretariat,
St.George Fort,
Chennai-9.

+1 CC to M/s.S.CHANDRASEKARAN, Advocate (SR-11382[F] dated 12/03/2020)

+1 CC to M/s.SPL.GP (SR-11553[F] dated 13/03/2020)

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