



W.P.Nos.34249 of 2014 & 28468 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2022

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.34249 of 2014
and
W.P.No.28468 of 2015
and
Rev.Appl.No.97 of 2019
and
W.M.P.No.31283 of 2016

W.P.No.34249 of 2014

K.Ravichandran

..Petitioner

vs

1. State of Tamil Nadu
Rep. by its Secretary to Government,
Public Work Department,
Fort St.George,
Chennai.
2. The Chief Engineer,
Public Works Department, WRD,
Chennai Region,
Chennai - 600 005.
3. The Superintending Engineer,
Public Work Department, WRD,
Vellar Basin Circle
Cuddalore District.



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4. The Executive Engineer,
Public Works Department, WRD,
Vellalar Basin Division,
Virudhachalam.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying this Court to issue a Writ of Certiorari to call for the records of the
2nd respondent in proceedings order No.E1(5)/19418/2010 dated
14.11.2014 and quash the proceedings dated 14.11.2014.

For Petitioner : Mr.J.Selvarajan

For Respondents : Mr.P.Kumarasen,
Additional Advocate General,
assisted by Mr.P.Ganesan,
Govt.Advocate

W.P.No.28468 of 2015

K.Ravichandran

..Petitioner

VS

1. State of Tamil Nadu
Rep. by its Secretary to Government,
Public Work Department,
Fprt St.George,
Chennai.

2. The Chief Engineer,
Public Works Department, WRD,
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Chennai - 600 005.



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3. The Superintending Engineer,
Public Work Department, WRD,
Vellar Basin Circle
Cuddalore District.

4. The Executive Engineer,
Public Works Department, WRD,
Vellalar Basin Division,
Virudhachalam.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying this Court to issue a Writ of Certiorari to call for the records of the
3rd respondent in proceedings No.48C/Aa.A/2010 dated 28.08.2015 and
quash the proceedings dated 28.08.2015.

For Petitioner : Mr.J.Selvarajan

For Respondents : Mr.P.Kumarasen,
Additional Advocate General,
assisted by Mr.P.Ganesan,
Govt.Advocate

Rev.Application No.97 of 2019

1. State of Tamil Nadu
Rep. by its Secretary to Government,
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Chennai.

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Public Works Department, WRD,
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3. The Superintending Engineer,
Public Work Department, WRD,
Vellar Basin Circle
Cuddalore District.

4. The Executive Engineer,
Public Works Department, WRD,
Vellalar Basin Division,
Virudhachalam.

Appellants.

Vs

K.Ravichandran

..Respondent

Review Application filed under Order 47 Rule 1 of C.P.C. read with
114 of C.P.C. to review the order dated 13.07.2018 in W.M.P.No.27058 of
2016 in W.P.No.28468 of 2015.P.C.

For Appellants : Mr.P.Kumarasen,
Additional Advocate General,
assisted by Mr.P.Ganesan,
Govt.Advocate

For Respondent : Mr.J.Selvarajan

COMMON ORDER

W.P.No.34249 of 2014 has been filed challenging the dismissal order
dated 14.11.2014 passed in the appeal filed by the petitioner. W.P.No.28468
of 2015 has been filed challenging the order of recovery dated 28.08.2015,



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recovering a sum of Rs.38,37,735/- from the salary of the petitioner and from the pension payable to the petitioner. Review Application No.97 of 2019 has been filed to review the order dated 13.07.2018 in W.M.P.No.27058 of 2016 in W.P.No.28468 of 2016, in which, this Court vide order dated 10.09.2015 had granted interim stay of the impugned order of recovery on condition that the 3rd respondent, without prejudice to the rights of the contentions of the petitioner in the writ petition, shall recover a sum of Rs.1000/- per month till the disposal of the writ petition and in the event the petitioner succeeds in the writ petition, the above said amount recovered from his salary shall be refunded to him and subsequently, the said order was made absolute by order dated 13.07.2018.

2. The brief facts of the case are as follows:

i) The petitioner joined the Public Works Department as Junior Assistant on 28.07.1994 and promoted as Overseer on 20.11.2006 and his next avenue of promotion is the post of Assistant Engineer. The duty assigned to him is to look after the maintenance of Pelanthurai Main Channel which connected 22 lakes in Cuddalore District and to look after the irrigation structures in 12,000 acres Aiyacut area of the above channel. In the Srimushnam section of the Vellar basin division, the sale of sand in



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PWD quarries is accounted. In addition to the aforesaid work, the petitioner has to remit the amount collected from the sale of sand to the credit of the 4th respondent Account at the State Bank of India, Virudhachalam.

ii) There are no adequate staff at Srimushnam PWD office and there are 25 NMR workers to assist the department and they used to deposit the cash into the Government Accounts and it is the practice followed for years together. The petitioner used to send the cash for remittance through two NMR workers, viz., Venkatesan and Perumal. During October, 2010, on enquiry by the petitioner with the State Bank of India, Virudhachalam, Sub-Treasury, it was noticed that the remittance, for which the petitioner has submitted the challans to the sub division office, were not credited to the 4th respondent account. The petitioner wrote to the bank as well as the 4th respondent on 15.10.2010 about the non-accounting of public money.

iii) It appears that the said two NMR workers had created bogus vouchers, forged the stamps and manipulated the vouchers and challans. But without verification, the Executive Engineer lodged a false complaint to the Superintendent of Police, Cuddalore on 24.10.2010 against the petitioner and hence, a FIR was registered against him for the alleged offence punishable under sections 405, 406 and 420 IPC in Crime No.25 of 2010.



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Thereafter, the petitioner was granted anticipatory bail in the aforesaid crime number. The 3rd respondent, vide order dated 03.11.2010, placed the petitioner under suspension until further order, by invoking Section 17(e) of Tamil Nadu Civil Service (Discipline & Appeal) Rules. Subsequently, the 4th respondent refused to revoke the suspension by order dated 09.06.2011 and therefore, the petitioner filed W.P.No.24095 of 2011 and this Court by order dated 15.11.2011 set aside the order of the 4th respondent and directed the 3rd respondent to consider the petitioner's case for revoking the suspension order. However, the 3rd respondent refused to revoke the order of suspension vide order dated 16.12.2011. Finally, the prolonged suspension was revoked on 12.02.2013 after the direction of this Court in W.P.No.32734/2012.

iv) Thereafter, the Inspector of Police, District Crime Branch, Cuddalore found that the complaint by the 4th respondent against the petitioner is false and the petitioner has no role in the misappropriation of money and therefore, he informed the same to Judicial Magistrate No.II, Virudhachalam and dropped the petitioner's name from Crime No.25 of 2010 and included the real accused Venkatesan in the said crime number and informed the same to the 3rd respondent also.



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v) In the meantime, a charge memo dated 2.4.2012 was served on the petitioner alleging that he had misappropriated Government money for his personal gain and has caused loss to the Government and the petitioner also submitted his reply to the charge memo. Finally, the enquiry officer, by his report dated 18.03.2013, held that the charges levelled against the petitioner are proved and the said report was communicated to the petitioner along with the show cause notice by the 3rd respondent on 14.06.2013. Challenging the same, the petitioner filed W.P.No.20347 of 2013 before this Court and this Court by order dated 26.07.2013, disposed of the same by directing the petitioner to submit his explanation. Though the 3rd respondent vide order dated 08.10.2013 held that the petitioner has not misappropriated any amount, but imposed punishment of stoppage of increment for three years with cumulative effect on the ground that the petitioner was negligent in detecting the fraud committed by N.M.R.worker, Venkatesan. The petitioner filed an appeal against the punishment before the 2nd respondent on 18.11.2013, but the 2nd respondent dismissed the same vide order dated 01.04.2014 on the ground that the department is yet to take steps to recover the misappropriated amount and therefore, the appeal cannot be entertained. The petitioner challenged the dismissal of appeal



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before this Court in W.P.No.24153 of 2014 and this Court allowed the petition on 5.9.2014 directing the 2nd respondent to decide the appeal on merits. The 2nd respondent, by impugned order dated 14.11.2014, dismissed the appeal filed by the petitioner on the ground that the petitioner is not watchful in safeguarding the government money and he is responsible for the loss caused to Government. No department proceedings was initiated against the N.M.R. workers who had misappropriated the government money. Further, when the misappropriation took place, the 4th respondent, as Divisional Officer, Virudhachalam, had never reported that the amount deposited by the Srimushnam section in the Bank has not been remitted in his account. Hence, the petitioner has filed these writ petitions challenging the dismissal order dated 14.11.2014 passed in the appeal and also challenging the subsequent order of recovery dated 28.08.2015, recovering a sum of Rs.38,37,735/- from his salary and from the pension payable to him.

3. Review Application has been filed by the respondents/Government in the writ petition to review the order dated 13.07.2018 in W.M.P.No.27058 of 2016 in W.P.No.28468 of 2015. This Court vide order dated 10.09.2015 had granted interim stay of the impugned order of recovery on condition



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that the 3rd respondent, without prejudice to the rights of the contentions of the petitioner in the writ petition, shall recover a sum of Rs.1000/- per month till the disposal of the writ petition and in the event the petitioner succeeds in the writ petition, the above said amount recovered from his salary shall be refunded to him and the said order was made absolute by order dated 13.07.2018 in W.M.P.No.27058 of 2016 in W.P.No.28468 of 2015. The review has been filed stating that the petitioner has caused heavy loss which is public money and in case, if the writ petitioner did not succeed in the writ petitions, the Government can have no chance to recover the loss sustained by the Government and even from the pensionary benefits of the writ petitioner. Hence, it is necessary to review the order passed by this Court in the above W.M.P.

4. Heard the learned counsel for the petitioner and the learned Additional Advocate General appearing for the respondents.

5. i) Learned counsel for the petitioner would submit that it was one of the duties of the petitioner to remit the amount collected from sale of sand to the credit of the 4th respondent Account at the State Bank of India, Virudhachalam. The 4th respondent, as the Divisional Officer, every month has to re-conciliate the said accounts submitted by the Sub-division office



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with the District Treasury at Cuddalore. He would further submit that at Srimushnam PWD office, there are 25 NMR workers to assist the department and they used to deposit the cash into the Government Account and it is permitted by the department and it is also the practice followed by the Department for years together. Two NMRs namely Venkatesan and Perumal have been entrusted to deposit the cash in the State Bank of India, Virudhachalam branch and they have created bogus vouchers, forged the stamps and manipulated the vouchers and challans so that it appears to be genuinely deposited into the government account.

ii) Learned counsel for the petitioner would further submit that during October 2010, on enquiry by petitioner with the State Bank of India, Virudhachalam Branch, it was found that the remittance, for which, the petitioner has submitted the challans to the sub division office were not brought to the credit of the 3rd respondent's accounts. On 15.10.2010, the petitioner wrote to the bank as well as to the 4th respondent about the non-accounting of public money. The petition also made a complaint to the Superintendent of Police, Cuddalore District on 23.10.2010 for necessary criminal action against the said two NMRs. However, no complaint was registered against the said two NMRs. The petitioner also moved this Court



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seeking for registration of criminal complaint against the said NMRs in CrI.O.P.No.27275/2010 and this Court, vide order dated 25.11.2010, issued necessary direction to the Police to register the complaint. In the meanwhile, the 4th respondent to save himself had lodged a criminal complaint against the petitioner on 24.10.2010 and thus, F.I.R. was registered in Crime No.25/2010 against the petitioner and the petitioner was placed under suspension by order of the 3rd respondent dated 03.11.2010. The petitioner was served with charge memo dated 02.04.2012 alleging that the petitioner has misappropriated government money for his personal benefits and caused loss to the government. The petitioner also submitted his explanation.

iii) Learned counsel would further submit that the Inspector of Police District Crime Branch, Cuddalore District, has investigated the case and found that the complaint made by the 4th respondent as against the petitioner is false and the petitioner has no role or involvement in the misappropriation of money and therefore, he had informed the Judicial Magistrate No.II, Virudhachalam that he dropped the petitioner from the case in Crime No.25/2010 and thereafter, the suspension of the petitioner was revoked by the 2nd respondent on 12.02.2013. The police further found that the two NMRs viz., Venkatesan and Perumal only had created



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bogus voucher, forged the stamps and manipulated the vouchers and challans so that it appears to be genuinely deposited into the government account and also filed a final report before the Court.

iv) Learned counsel would further submit that the respondents have conducted the domestic enquiry by appointing an enquiry officer and after due enquiry, the enquiry officer filed a report dated 18.03.2013 holding that the charges levelled against the petitioner are proved and the 3rd respondent vide impugned order dated 08.10.2013 has imposed a punishment of stoppage of increment for 3 years with cumulative effect and the petitioner filed statutory appeal to the 2nd respondent against the order of punishment and the 2nd respondent vide order dated 01.04.2014 refused to hear the appeal. The petitioner made representations to the 1st and 2nd respondents to take action against the officials who were responsible of loss to the government money. The petitioner also moved a writ petition in W.P.No.24153/2014 against the refusal order for entertaining the appeal and this Court allowed the said writ petition by order dated 5.9.014 wherein the 2nd respondent was directed to hear the appeal on merits. In spite of the same, the 2nd respondent dismissed the said appeal on 14.11.2014 against which, the petitioner filed W.P.No.34249/2014. The 3rd respondent passed



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another impugned order dated 28.08.2015 to recover a sum of Rs.38,37,735/- from the petitioner by deducting a sum of Rs.11,043/- from his monthly salary and also from his pension. Therefore, he would pray to allow the writ petitions by setting aside the impugned orders.

v) Learned counsel for the petitioner would further contend that it is not the case of the respondent that the petitioner has misappropriated the money and because of his negligent and failure in monitoring the said two NMRs who prepared bogus challans and caused loss to the government a sum of Rs.38,37,735/- and therefore, the punishment awarded to the petitioner is disproportionate to the charges and the findings and moreover , criminal charges were framed against the two NMRs and the petitioner is one of the witnesses and that being so, the argument of the government that the petitioner has misappropriated the said amount is against their own records and the respondents having given punishment of stoppage of increment for 3 years with cumulative effect which is major penalty and they cannot pass the order of recovery as against the petitioner as it was found that the said amount was misappropriated by the said two NMRs. Therefore, the action of the respondents are absolutely double jeopardy. Hence, the learned counsel would pray to allow the writ petitions by setting



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aside the impugned orders.

6. i) On the contrary, the learned Additional Advocate General would state that the petitioner being the Overseer in Srimushnam Irrigation Section, is responsible for the sale of sand in the approved quarries within his territorial jurisdiction and accounting the same in accordance with the above rules, orders and directions issued by the Government. The petitioner should not have entrusted the work of remittance of Government money into the treasury with NMR labourer since the NMR labourers are not regular Government servants to be entrusted with any money transaction and thus, the petitioner has violated the rules. Learned Additional Advocate General would further submit that that as per Article 2 of the Tamil Nadu Financial Code volume I (TNFC-Vol.I), every Government servant who is entrusted with the duty of collecting any revenue to the Government should assess the demands carefully and collect the revenues promptly. He should maintain proper accounts of the collections for all the Government financial transactions within which he is concerned and render accurately and promptly all such accounts and returns relating to them. The fact that the Government servant has been misled or deceived by a subordinate will in no way mitigate his personal responsibility since every Government servant



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should be familiar with the financial rules laid down by the Government and exercise a specially strict and close control over his subordinates in regard to the use of the public funds and the maintenance of proper accounts.

ii) Learned Additional Advocate General would further submit that while the loss sustained by the Government is Rs.38,37,735/- even assuming that the recovery is made from 9/2015 to 12/2025 in 124 monthly installments, the recovery could be made for Rs.13,69,332/- only, leaving a substantial balance of Rs.24,68,403/-. Since the petitioner is due to retire on 30.04.2026, it is doubtful whether the entire balance of Rs.24,68,503/- could be recovered from his Death-cum-Retirement gratuity by evading Rule 9(1)(b) of the Tamil Nadu Pension Rules, in case, the writ petitions are ordered against the petitioner. However, this Court vide order dated 10.09.2015 had granted interim stay of the impugned order of recovery on condition that the 3rd respondent, without prejudice to the rights of the contentions of the petitioner in the writ petition, shall recover a sum of Rs.1000/- per month till the disposal of the writ petition and in the event the petitioner succeeds in the writ petition, the above said amount recovered from his salary shall be refunded to him and the said order was made absolute by order dated 13.07.2018. But the said recovery is



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disproportionate to the monetary loss sustained by the Government. He would further submit that the recovery orders have been passed by the 3rd respondent based on the orders of the 2nd respondent while disposing of the appeal on merits taking into account of his take home salary and also the retirement of the petitioner. As the amount to be recovered is very huge, mere recovery from pay would not be enough to make good the loss and hence, the remaining portion of the amount was ordered to be recovered from his DCRG and Pension. As the petitioner has caused huge loss to the Government, he has to face the recovery as it is a public money. Though the nature of charges warrants imposing of removal or dismissal from service, the petitioner was very much allowed to join as Overseer on humanitarian grounds since the fact that these respondents are not personally against the petitioner but have the onus to safeguard the Government interest for preventing such fraudulent activities of such government servants who indulge in irregularities by causing misappropriation of Government money.

7. This Court considered the submissions made on either sides and perused the materials available on record.

8. The petitioner was working as Overseer in P.W.D Department. Apart from other works, the petitioner was given the work of remitting the



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collected amount from the sale of sand to the credit of the 4th respondent Account at the State Bank of India, Virudhachalam. As there was no adequate staff in the department, the petitioner used to remit the amount through two NMR workers namely Venkatesan and Perumal. During October, 2010, it was noticed that no credits have been made in the relevant government account number. It is the allegation of the petitioner that two NMRs namely Venkatesan and Perumal have been entrusted to deposit the cash in the Bank and they have created bogus vouchers, forged the stamps and manipulated the vouchers and challans and instead of taking action against them, the petitioner was suspended from service.

9. It is seen from the records that it is the petitioner who informed about the non-accounting of public money to the Bank as well as to the 4th respondent on 15.10.2010 and also made a complaint to the Superintendent of Police, Cuddalore District on 23.10.2010 for taking necessary criminal action against the said two NMRs, but the said compliant was not registered. Instead, the 4th respondent had made a complaint against the petitioner before the police and the Inspector of Police District Crime Branch, Cuddalore District, who investigated the case also found that the complaint made by the 4th respondent against the petitioner is false and dropped the



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case in Crime No.25/2010 in respect of the petitioner and informed the same to Judicial Magistrate No.II, Virudhachalam. Only thereafter, the suspension order passed against the petitioner was revoked by the 2nd respondent on 12.02.2013. The police further found that the two NMRs viz., Venkatesan and Perumal only had created bogus vouchers, forged the stamps and manipulated the vouchers and challans and a final report has also been filed before the Court to that effect.

10. It is pertinent to note that the substance of the charge levelled against the petitioner is that he had misappropriated the Government money for his personal gain but in the inquiry as well as in the findings of the disciplinary authority, it has been determined that the NMR workers have misappropriated the money and the only finding is that the petitioner failed to prevent such loss. In the 2nd charge levelled against the petitioner though it is stated that the petitioner has misused his official position and committed grave irregularity and misappropriated Government money for his personal gain, the findings for the said charge is that because of the petitioner's failure to be watchful in financial matters, it has resulted in misappropriation of Government money and nowhere in the punishment order, dated 08.11.2013, it is stated that the petitioner has misappropriated the money. It



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is also seen from the records that the accounts are not audited periodically and it is also the reason for the loss of Government money. According to the Tamil Nadu Public Works Accounts Code 550, reconciliation should be done every month but in the present case, it has not been done for three years. The department cannot wash off their hands by placing the entire blame on the petitioner.

11. In the domestic enquiry, it is the elementary principle of law that the findings of the Enquiry officer should be supported with materials and reasons. In the present case, there is no oral and documentary evidence available on record to accept the findings of the inquiry officer. As there was no adequate staff in the department, the NMR workers have been authorised by the department to remit the cash in the bank and the 3rd respondent has also stated so. It is also seen that Venkatesan & Perumal who are the accused in Crime No.25 of 2010 in the very same issue regarding misappropriation of the Government money have been examined as department witnesses which shows the malafide on the part of the respondents.

12. Be that as it may, obviously, the petitioner was not directly responsible for the misappropriation of the amount, merely because the



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department found that it was not possible to recover the amount from the main culprit some other scapegoat cannot be found out and cannot be levied with the punishment of recovery of the loss. Further, if there is negligence on the part of the petitioner, it cannot be a cause for punishing the petitioner with the recovery of loss sustained by the department. Moreover, recovery should not be ordered as a matter of routine.

13. This Court is not able to understand as to why the criminal complaint against the said NMRs has not been proceeded with. It is not the case of the respondents that the petitioner herein got any wrongful gain. It is the petitioner who brought the above fraud committed by the two NMRs to the notice of the respondent. But the two NMRs have been examined as witnesses in the case of the petitioner. If the criminal complaint would have been proceeded with, the real culprit could have been found out.

14. Even otherwise, in the present case, the alleged lapse on the part of the petitioner is only supervisory in nature and there is no evidence of the petitioner's direct involvement in the loss incurred. Though there was a complaint against the petitioner, it was found that the petitioner has no role to play and the charges were dropped. Thus, the order passed by the 3rd respondent imposing punishment of recovery of amount from the petitioner's



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salary, cannot be sustained. Therefore, the impugned orders deserve to be quashed.

15. For the foregoing reasons, the Writ Petitions are allowed. The impugned order passed by the 2nd respondent dated 14.11.2014 and the impugned order passed by the 3rd respondent dated 28.08.2015 are quashed and set aside. The petitioner shall be entitled to all other benefits, as a consequence to quashing of the impugned orders. Recovery made from the petitioner should be refunded to him within a period of four weeks from the date of receipt of this order. Consequently, the Review Application is dismissed. No costs. The connected miscellaneous petition is closed.

21.12.2022

Index:Yes/No
Speaking/Non-speaking order
vsi

Note: Issue order copy on 27.02.2023

To

1. The Secretary to Government,
Public Work Department,
Fort St.George,
Chennai.



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