



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.11408 of 2021

C.Vellaichamy

... Petitioner

V.

1.The Additional Chief Secretary,
Home (Transport-II) Department,
Secretariat, Fort St.George,
Chennai – 600 009.

2.The Commissioner,
Tribunal for Disciplinary Proceedings,
Collector's Office Campus,
Nagercoil, Tirunelveli District.

3.The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Nagercoil, Kanyakumari District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records pertaining to the impugned order of the first respondent vide his proceedings in G.O (2D) No.134, Home (Transport-II) Department dated 11.06.2021 and quash the same as arbitrary and illegal.



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For Petitioner : Mr.A.Robinson

For Respondents : Mr.R.Suresh Kumar,
Additional Government Pleader

ORDER

Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

2.The petitioner is employed as typist in the office of the Regional Transport Office, Nagercoil. There was vigilance raid on 25.03.2010. Crime No.2 of 2010 was registered on the file of the third respondent for the offences under Sections 7, 8, 12 r/w.13(2) r/w.13(1)(a), 13(1)(c), 13(1)(d) and Section 14 of the Prevention of Corruption Act against a number of officials attached to the RTO, Nagercoil. The petitioner figured as A6. The matter was investigated and it was decided that the material was not sufficient to successfully prosecute the accused. Therefore, the case was referred to the Commissioner for Disciplinary Proceedings, Nagercoil. On the side of the prosecution, as many as 27 witnesses were examined. Exs.P1 to P56 were marked. Six officials have been proceeded against. The petitioner is official no.6. After consideration of the evidence, the Commissioner for Disciplinary Proceedings, Nagercoil concluded that the charges framed against



the officers 1 to 6 were not proved. However, the disciplinary authority disagreed with the said findings. The disciplinary authority issued notice to the petitioner to offer his further representation and the petitioner submitted his further representation. Not satisfied with the same, an adverse order came to be passed against the petitioner vide G.O(2D) No.12 Home (Transport-II) Department dated 21.01.2021. Since it was non-speaking in nature, questioning the same, the petitioner filed WP(MD)No.1717 of 2021 on the ground of violation of principles of natural justice. The impugned G.O was quashed and the matter was remitted to the file of the government for fresh consideration. Pursuant to the remand, the present impugned G.O (2D) No.134 Home (Transport-II) Department dated 21.01.2021 was issued imposing the punishment of stoppage of increment for a period of two years with cumulative effect. Challenging the same, this writ petition has been filed.

3.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for.

4.The respondents have filed a detailed counter affidavit and the learned Government counsel for the respondents took me through its contents. He pointed out that it is open to the disciplinary authority to differ



from the findings of the enquiry authority and that the same cannot be questioned. In the case on hand, during the raid in question, there was a cash deficit to the tune of Rs.730/- and that therefore, the petitioner was rightly found guilty of the charge. He called upon this Court to dismiss this writ petition.

5.I carefully considered the rival contentions and went through the materials on record. The petitioner was working as a typist in the office of the RTO, Nagercoil. There was a vigilance raid on 25.03.2010. The only charge made against the petitioner is that there was a cash deficit of Rs.730/- with the petitioner. The imputation was that the petitioner had misappropriated the said amount. I wanted to know as to how the tribunal had approached the matter. The tribunal has rendered a finding in its order dated 30.09.2014 as follows :

“Charge 2 :

In order to prove the charge against the fifth accused officer Thiru.Karthikeyan and the 6th accused officer Thiru.Vellaichamy PW.2, PW.3, PW.4, PW.5, PW.19 and PW.20 were examined as prosecution witnesses. PW.2, PW.3, PW.4 and PW.5 deposed that they were told by the Vigilance Police, the raiding team, that there was deficit in the accounts of the 5th accused officer Thiru.Karthikeyan and in the accounts of



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Thiru.Vellaichamy, the 6th accused officer and they do not know anything directly. They (PW.2, PW.3 and PW.4) further deposed that the agents would make payment at the cash counter for four or five persons at a time in challans and agents have also come on the day of raid for paying fees and the persons in the queue for paying fees fled away from the scene on seeing the vigilance police and functions of computers were stopped as it is and PW4 Accountant deposed that only after entering the request in the computer (permit, change of name etc.,) the amount of fees how much has to be paid for that request would be known and thereafter only the fees would be collected from the persons standing in queue. The defence counsel argued that likewise on that day of surprise check, some requests were entered into the computer but before the accused officer could collect the money from the remitter, the vigilance police entered and out of fear for the police, the remitter had run away with money and that is the reason for the deficit of money and the reason has to adopt. PW.4 has deposed further that Thiru.Arumugaperumal, the proprietor of the vehicle had come to Regional Transport Office, Nagercoil, the next day of the raid and paid Rs.740/- the deficit amount and got the receipt for the payment. PW.19 and PW.20 are not independent witnesses and their evidences are corroborated by other independent witnesses. On analysis of evidence, the evidence available in the case supports the probability of defence case and the prosecution witnesses did not support the prosecution case. Had the accused officers misappropriated the money, then the money would have been



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recovered from the accused officers and in the absence of recovery it has to be concluded that deficit has arisen. On the contrary the PW.19 the Deputy Inspection Cell Officer has deposed that Rs.300/- only was in the pocket of Thiru.Karthikeyan and as it is his own money PW.19 has returned the money to Thiru.Karthikeyan. If he misappropriated more money than Rs.300/- would have been found in his pocket. As such the accused officers 5 and 6 have not misappropriated the Government money but only deficit had occurred in view of the reasons explained above. The prosecution has failed to prove the charge 2 also.”

The reasoning adopted by the tribunal is eminently sound. The vigilance team could have charged the petitioner if excess and unexplained cash was found on his person and if that be so, the said amount can be said to be illegal gratification. What was found by the team was only cash deficit and not excess. The question is whether the petitioner could have been charged with misappropriation. If the petitioner had misappropriated the said amount, then, obviously it would have been only with him. No such recovery was made from his person and that is why the tribunal rightly found that the charges were not proved. The specific stand of the petitioner is that one Arumugaperumal had come to the office of the RTO, Sivagangai to pay some fee. When the petitioner was in the process of receiving amount and generated the receipt, the inspection team had arrived and the said



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Arumugaperumal left the scene out of fear without making his payment. He came the next day and paid the fee. This defence version was found to be probable by the tribunal. The disciplinary authority could not have differed from this. The reasons stated by the disciplinary authority are patently perverse. The learned counsel for the petitioner submits that the petitioner feeling aggrieved by the disposal of his representation earlier filed WP(MD)No. 12945 of 2017. This Court vide order dated 18.02.2019 had directed the Government to pass appropriate final order in the matter. It appears that this order was not complied with. Therefore, the petitioner filed one more writ petition in WP(MD)No.19780 of 2020. It appears that the learned Judge prima facie felt that case for initiation of suo motu contempt proceedings was made out and the competent authority was asked to appear through video conferencing. The contention of the petitioner's counsel is that these factors had probably led the first respondent to pass the impugned order. I find the contention of the petitioner to be more probable. In this view of the matter, the impugned order is set aside. The writ petition is allowed. No costs.

15.11.2022

Index : Yes / No

Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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