



W.P.(MD)No.12945 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.11.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.12945 of 2014

S.Manoharan

... Petitioner

vs.

1.The Superintendent of Prisons,
Central Prison,
Madurai-625 016.

2.The Deputy Inspector General of Prisons,
Madurai Range,
Madurai-625 016.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the order of the 2nd respondent in Na.Ka.No.1348/Mu.Oo./2014, dated 21.06.2014, confirming the order of punishments passed by the 1st respondent and to quash the punishment of compulsory retirement given to the petitioner and consequently, to direct the respondents to issue all the consequential retirement benefits to the petitioner with continuity of service.



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For Petitioner : Mr.R.Aravindan
For Respondents : M/s.D.Farjana Ghoushia
Special Government Pleader

ORDER

This writ petition is filed for writ of Certiorarified Mandamus, to quash the impugned order of the 2nd respondent, dated 21.06.2014, confirming the order of punishments passed by the 1st respondent and to quash the punishment of compulsory retirement given to the petitioner and consequently, to direct the respondents to issue all the consequential retirement benefits to the petitioner with continuity of service.

2. The petitioner was appointed as Grade II Warden in Jail Department on 13.05.1983. Subsequently, promoted as Chief Head Warden on 18.10.2002. While the petitioner was working in Kodaikanal Sub Jail, a charge memo, dated 18.12.2004, was issued for the alleged misconducts. The allegations are extracted hereunder:



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“i. That the Assistant Prison Officer post was vacant, since the petitioner was holding the post below the said post, he was entrusted with the duties of the Assistant Prison Officer. The petitioner without taking prior permission and without informing and without handing over the charge has left the duty on 23.11.2004

ii. The petitioner has not maintained the register

iii. The petitioner has not handed over keys of the cash box

iv. The petitioner has not carried out any entries from 06.11.2004 onwards.

v. The petitioner has received Rs.3638/- from the Treasury on 17.11.2004 but the same was not entered in the register, subsequently he handed over the amount through some other employee on 30.11.2004.

vi. Likewise, the petitioner has not made any entry for Rs.85/- and Rs.15/- was not available in the cash box and subsequently it was handed over through some other person.”

The petitioner has submitted an explanation on 10.01.2005 wherein the petitioner had replied that the petitioner was on leave from 22.11.2004, the keys could not be handed over since the other officer was also on leave, there were no transaction from 06.11.2004 hence no entries were made, the amount could not be



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handed over to Radhakrishnan since he was on leave, but when the petitioner intended to handover in person, unfortunately the petitioner was on ill, hence subsequently he handed over through one Gopalakrishnan. Then Rs.85/- is paid from advance amount to ABT parcel service, which is placed for approval. Then for affixing seal on the table, the petitioner has paid from his own money. And finally submitted that in future the petitioner would be careful and prayed to drop the proceedings.

3. Subsequently, another charge memo, dated 09.05.2005 was issued, wherein it is alleged as follows:

“i. The petitioner has deducted the amount Rs.673/- from the Sanitary Worker namely Mrs.Maheswari, has stated he made an entry on 13.05.2004, but on 14.05.2004 has stated he has not entered, finally remitted only on 01.06.2004, thereby from 14.05.2004 to 31.05.2004 the petitioner was possessing the government money and hence has committed temporary misappropriation.

ii. The petitioner has not paid Rs.842/- and Rs.784/- to the concerned employees on 11.03.2005, but belatedly paid on 01.04.2005.

iii. The petitioner has received Rs.1123/- on 31.03.2005 from the treasury



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to pay for telephone charges, but has remitted the charges only on 06.04.2005.”

The petitioner was suspended from service on 28.04.2005. The petitioner has submitted reply stating he is not assigned the duty and hence he is not responsible.

4. Separate enquiries were conducted without following the procedure and the enquiry officer has given separate findings, dated 07.10.2005 and held that all the charges are proved. A second show cause notice, dated 10.10.2005, was issued and the petitioner has submitted his reply. The 1st respondent has passed two separate punishment orders, dated 05.12.2005 and imposed the punishment of compulsory retirement twice.

5. The contention of the petitioner is that the first respondent has not applied his mind and failed to consider the nature of charges, evidence adduced and other material evidence available on record. Therefore, the petitioner preferred an appeal before the appellate authority. The 2nd respondent being the



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appellate authority confirmed the punishment order. Aggrieved over the same, the petitioner preferred writ petitions in W.P.(MD)Nos.6362 and 6363 of 2006. This Court, vide order, dated 04.04.2014, has set aside the order and remitted back to the 2nd respondent to consider the statutory appeal afresh on merits and in accordance to law and directed to pass a speaking order. After considering the same, the present impugned order is passed. Aggrieved over the same, the present writ petition is filed.

6. The respondents have filed a counter affidavit stating that the petitioner was already punished for ten delinquencies. The petitioner was imposed with punishment of censure and increment cut in all the nine delinquencies. In the tenth delinquency, the petitioner was imposed with a punishment of compulsory retirement. The respondents further submitted that after the orders were passed by this Court, the petitioner was directed to submit further explanation and the petitioner was also directed to present in person to submit his defence for the punishment of compulsory retirement. Based on his explanation submitted by the



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petitioner, the offences against the petitioner were discussed in the impugned order. The petitioner has stated that disciplinary action was not taken against the drawing officer, since drawing officer is responsible for the discrepancies occurring in Sub Jail. Further, he was compelled to maintain the cash register by the then in-charge Sub Jail Superintendent. The petitioner was in-charge of the Sub Jail and performed the works such as preparing of bills and making entries and other concerned works. Therefore, the petitioner's explanation was not convincing. When the work attached to the said post is handed over to the petitioner, the petitioner is expected to discharge the said work in letter and spirit. Moreover, the petitioner has committed temporary misappropriation by depositing the amount in the concerned Bank account belatedly. The petitioner has not paid the telephone bills and was retaining the cash with him for a period of six days. This also would amount to temporary misappropriation. The respondents have taken a lenient view and have imposed a punishment of compulsory retirement. Therefore, the claim of the petitioner cannot be entertained. Hence, the respondents prayed to dismiss the writ petition.



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7. Heard Mr.R.Aravindan, learned Counsel appearing for the petitioner and M/s.D.Farjana Ghoushia, learned Special Government Pleader appearing for the respondents and perused the records.

8. The charge against the petitioner is that he did not hand over the keys, moreover the petitioner has unauthorizedly absented from 23.11.2004 onwards. The claim of the petitioner is that he was admitted in Government Hospital and he was taking treatment from 22.11.2004 to 05.01.2005. The petitioner has also informed about his condition and has obtained leave and the same was sanctioned. On 27.11.2004, one P.Gopalakrishnan was deputed to receive the key from the petitioner at the Government Hospital, Madurai. Therefore, the petitioner claims that because of his health issues, he could not attend the Office from 22.11.2004. The same would be evident from the defence of the said P.Gopalakrishnan, wherein he has deposed before the enquiry officer that the petitioner was admitted as in-patient and the said Gopalakrishnan approached the petitioner in the Government Hospital and thereafter, he has received the keys.



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Even according to the respondents, the period from 23.11.2004 to 24.11.2004 and for the 2nd spell from 25.11.2004 to 04.01.2005 for 41 days were considered as earned leave and the subsequent period was considered as earned leave based on medical report/medical certificate. Since the respondents themselves have condoned the leave period for the above said period, the respondents cannot take any disciplinary proceedings.

9. After hearing the rival submissions this Court has given its anxious consideration. It is seen the first charge memo dated 18.12.2004, the charges are cleared explained. The respondents failed to take into account that the petitioner was on leave, the person to whom the charge has to be handed over was also on leave. Infact the leave was over lapping. Also the respondents failed to take into consideration that the petitioner had meet out the expenses from his own money and hence the allegation the petitioner retained Rs.15/- cannot be considered as temporary misappropriation. As far as the amount of Rs. Rs.3638/- received from Treasury is concerned, the petitioner has received it on 17.11.2004 but the



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petitioner was unwell and subsequently he was admitted to hospital as inpatient, hence he could not pay the same to the said Radhakrishnan. However, the same was paid to the said Radhakrishnan, which would be evident from the evidence of the said Radhakrishnan. From the above explanation it is evident that the person to whom charge can be handed over was also on leave, the petitioner was also on leave, thereafter on inspection the higher authority has directed the said Radhakrishnan to take charge, then the petitioner had handed over to the him. Therefore, this Court is of the considered opinion that the charges in the first show cause notice are clearly explained and the charges ought to be held as not proved. Hence the enquiry report stating that the charges are proved is erroneous and consequently the punishment ought to be set aside. This Court has rightly set aside in the earlier writ petition and directed the respondents to reconsider. Again the respondents have passed the same order, hence this Court is of the considered opinion that the impugned order is liable to be set aside as far as the first show cause notice is concerned.



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10. The next contention raised by the petitioner is regarding the 2nd charge memo. In the 2nd charge memo, the allegation against the petitioner is that an amount Rs.673/- was deducted from the Sanitary Worker namely Mrs.Maheswari and the same was not deposited in the government account, but the petitioner has stated he made an entry on 13.05.2004, but on 14.05.2004 has stated he has not entered, finally remitted only on 01.06.2004, thereby from 14.05.2004 to 31.05.2004 the petitioner was possessing the government money and hence has committed temporary misappropriation. Again, the petitioner has not paid Rs. 842/- and Rs.784/- to the concerned employees on 11.03.2005, but belatedly paid on 01.04.2005. Again, the petitioner has received Rs.1123/- on 31.03.2005 from the treasury to pay for telephone charges, but has remitted the charges only on 06.04.2005.

11. The contention of the petitioner is that the petitioner was entrusted with the work of making entries, but the petitioner was not entrusted with the work of the handing money. For which the petitioner relies on the charges itself wherein it



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is stated in the Annexure II that the petitioner was entrusted with the work of “administration of sub jail except to handle money”. It further states the petitioner is entrusted with the maintenance of registers of payment of amount, stock registers and other documents maintenance except the handling of money. It is pertinent to mention herein that the petitioner had challenged the punishment order is the earlier round of litigation and this Court has set aside the punishment and directed to reconsider the punishment. After reconsidering the same the present impugned order is passed. In the present impugned order, it has been accepted that the petitioner was entrusted only the administration except handling of money, but he was orally instructed to handle money also. For which the respondents relied on the “Subsidiary Jail Manual Chapter-III Rule No.8”, wherein it is stated that “all officers of a prison shall obey the directions of the superintendent, all officers shall perform such duties as may be imposed on them by the superintendent or be prescribed by the rules under section-59”. Based on this rule the petitioner is bound to obey the orders of the superintendent. Since he has failed obey then the petitioner is liable to be punished. This Court is not able



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to appreciate this contention of the respondents. If the petitioner was orally instructed then the respondent ought to have mentioned that he was entrusted the said work in the 2nd charge memo. When it has been specifically mentioned in the charge memo that the petitioner was entrusted with the work of administration other than the handling of money, when there is no mention about the oral direction to handle money as well, then the respondents cannot travel beyond the charge memo. More so when the petitioner has taken a defence that he was not granted with the handling of money, the respondent ought to have either modified the charge memo or ought to have withdrawn the charge memo and issued fresh charge memo. Therefore, this Court is of the considered opinion that the very charge memo is vitiated and hit the principles of natural justice.

12. Therefore, this Court is inclined to set aside the impugned order with liberty to conduct fresh enquiry by issuing fresh charge memo. But it is seen that the petitioner had attained superannuation as on date.



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13. It is seen that the compulsory retirement was imposed on 05.12.2005 and the same was quashed by this Court on 04.04.2014. The present impugned order is passed on 21.06.2014. Therefore, to meet the end of justice it would suffice that if the date of compulsory retirement is fixed on the date of the second order dated 21.06.2014. Therefore, the compulsory retirement is fixed as 21.06.2014. The petitioner is entitled to calculate the service from 13.05.1983 to 21.06.2014 and pay the pensionary benefits. It is made clear the petitioner is not entitled to any backwages for the period from 05.12.2005 to 21.06.2014, but entitled to calculate the service benefits alone. The respondents shall modify this punishment within a period of eight weeks from the date of receipt of the copy of the order.

14. With the above said observation, the writ petition is disposed of. No costs.

Index : Yes / No
Internet : Yes

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To

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- 2.The Deputy Inspector General of Prisons,
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