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W.P.(MD)No.21563 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.11.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.21563 of 2015

and

W.M.P.(MD)No.9462 of 2016

S.Rajapandi

... Petitioner

vs.

1.The Appellate Committee,
represented by its President,
Madurai Corporation,
Madurai.

2.The Commissioner,
Madurai Corporation,
Madurai.

... 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 impugned order passed by the 2nd respondent in his proceedings No.Va.Ma.Ni4/08596/03, dated 19.02.2009 and the impugned order passed by the 1st respondent in his proceedings No.Va.Ma.Nil/5218/09, dated 07.04.2010 and to



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quash the same on the ground that the same is arbitrary, illegal, and consequently, to direct the 2nd respondent to disburse the monetary benefits which the petitioner is entitled to for the period of 23.12.2003 to 18.02.2009.

For Petitioner : Mr.G.Ramanathan
For R1 : Mr.C.Baskaran
Government Advocate
For R2 : Mr.R.Murali

ORDER

This writ petition is filed for issuance of a writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 2nd respondent in his proceedings, dated 19.02.2009 and the impugned order passed by the 1st respondent in his proceedings, dated 07.04.2010 and to quash the same on the ground that the same is arbitrary, illegal, and consequently, to direct the 2nd respondent to disburse the monetary benefits which the petitioner is entitled to for the period of 23.12.2003 to 18.02.2009.

2. The brief facts of the case are that the petitioner joined as an Office Assistant in the 2nd respondent Corporation from the year 1975, then, promoted as



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Bill Collector on 05.10.1998. In the year 2003, a charge memo was issued against the petitioner for alleged misappropriation in tax amount of Rs.7,119/- simultaneously criminal case was also filed. In the criminal case, the petitioner was acquitted through judgment, dated 24.01.2008. The petitioner was suspended from service on 23.12.2003, for the alleged misappropriation. Thereafter, the petitioner submitted a representation, dated 13.02.2008, to reinstate the petitioner into service. After acquittal from the criminal case, the respondents initiated departmental enquiry on 06.06.2008. The enquiry officer has held that the charges are proved. Thereafter, the 2nd respondent, vide proceedings, dated 19.02.2009, revoked the suspension order and the punishment of demotion was imposed on the petitioner. The petitioner was demoted from Bill Collector to Office Assistant. Thereafter, the respondents have declared the suspension period as leave period without salary. The petitioner preferred an appeal and the same was confirmed by the appellate authority. Aggrieved over the same, the present writ petition is filed.

3. When the writ petition was admitted, this Court has granted interim



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stay, vide order, dated 03.12.2015. The respondents have filed a counter affidavit along with vacate stay petition.

4. The respondents submitted that on the account of non compliance of Fundamental Rule 53(2) and 53(3), the petitioner was not paid subsistence allowance. The petitioner was charged in a criminal case in the year 2003 and was acquitted on 24.01.2008. Actually, the petitioner was absconding during the relevant period and he did not furnish any address. Therefore, the subsistence allowance was not paid to the petitioner. A notice was also issued on 05.03.2004 which was returned. Even a publication was made in Dhinathanthi Newspaper. Therefore, the allegation that subsistence allowance was not denied by the respondents is incorrect and false. The respondents further submitted that it is an admitted fact that the petitioner has remitted the amount belatedly. The Revenue Assistant, vide communication, dated 15.12.2003, has brought to the notice of the higher officials that the petitioner has not remitted back the amount collected by him. Thereafter, the respondents have issued a suspension order, data 24.12.2003.



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Even according to the petitioner's deposition before the Criminal Court that he remitted back the amount only on 26.12.2003, i.e., after the issuance of suspension order. Therefore, even though it cannot be considered as misappropriation, it will come within the purview of temporary misappropriation. Therefore, respondents prayed to dismiss the writ petition.

5. Heard Mr.G.Ramanathan, learned Counsel appearing for the petitioner, Mr.C.Baskaran, learned Government Advocate appearing for first respondent and Mr.R.Murali, learned Counsel appearing for the second respondent and perused the records placed before this Court.

6. The learned Counsels appearing for the respondents vehemently opposed the submission of the petitioner that it is not the case of misappropriation and further submitted that the respondents issued a suspension order, thereafter only the petitioner has come forward to remit the amount. In other words if the



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respondents have not initiated any action or if the respondents have not suspended the petitioner from service, the petitioner would not have deposited the amount. This would clearly indicate the petitioner's intention to misappropriate the amount. However, the learned Counsel appearing for the petitioner submitted that allegation of misappropriation ought to be set aside since in the Criminal Case the petitioner was acquitted, moreover, the amount has been remitted back, hence the same cannot be considered as misappropriation.

7. After hearing the rival submission this Court is of the considered opinion that the punishment of reduction from Bill Collector to Junior Assistant is disproportionate and hitting the conscious of the Court. When the mistake of delayed remittance was realized by the petitioner, he had remitted the amount. Even the respondents admit that the petitioner had remitted the amount and the Criminal Court also acquitted based on the remittance of amount. To constitute a misconduct there should be intention to defraud and deliberately committed and



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has committed several times. In the present case no such finding was rendered in the criminal case as well as disciplinary proceedings. Even if the allegations are taken as such the punishment is disproportionate and hitting the conscious of the Court. Hence, this Court is inclined to remit the case to the authorities for reconsidering the punishment. However, it is submitted by the learned Counsel for the petitioner that the petitioner has already attained superannuation on 30.04.2013. Therefore, this Court is inclined to interfere in the punishment order and consequential order and the following orders are passed:

- i. The punishment of reduction from Bill Collector to Junior Assistant is modified as stoppage of increment for two years with cumulative effect.
- ii. The suspension period shall be regularized as duty period and pay all monetary benefits and service benefits for the said period.
- iii. The petitioner is entitled to subsistence allowance for the period of suspension.



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iv. The said exercise shall be completed within a period of 8 weeks from the date of receipt of a copy of this order.

8. With the above said observation, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes

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To

The President,
The Appellate Committee,
Madurai Corporation,
Madurai.



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S.SRIMATHY, J

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