



W.P.(MD)No.2923 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.2923 of 2017
and W.M.P(MD)No.2372 of 2017

Sekar

... Petitioner

vs.

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to the Government,
Municipal Administration and Water Supply Department,
Fort Saint George,
Chennai – 09.
2. The Director of Town Panchayats,
O/o. The Director of Town Panchayats,
Kuralagam,
Chennai – 108.
3. The District Collector,
Sivagangai District,
Sivagangai.

... 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 impugned order in Na.Ka.No.1065/2007-1/D2 dated 10.02.2009 on the file of the



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Respondent No.3 and its consequential order in Na.Ka.No.5312/2009/A5 dated 03.07.2009 on the file of respondent No.2 and the consequential impugned Order in G.O.Ms.No.105 Municipal Administration and Water (Town 4) dated 24.02.2016 on the file of Respondent No.1 and quash the same as illegal and consequently to direct the Respondent No.3 to re-instate the petitioner back in service with all consequential benefits.

For Petitioner : Mr.T.Lajapathi Roy
For Respondents : Mr.C.Baskaran
Government Advocate (Civil Side)

ORDER

This Writ Petition is filed by the petitioner for issuance of a ***Writ of Certiorarified Mandamus***, to quash the impugned order, dated 10.02.2009 in Na.Ka.No.1065/2007-1/D2 passed by the 3rd respondent and its consequential order, dated 03.07.2009 in Na.Ka.No.5312/2009/A5 passed by the 2nd respondent and the consequential impugned G.O.Ms.No.105 Municipal Administration and Water (Town 4), dated 24.02.2016 passed by the 1st respondent and also sought for a consequential direction to the 3rd respondent to re-instate the petitioner back in service with all consequential benefits.



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2(i). The brief facts as stated in the affidavit are that the petitioner was appointed as a Bill Collector in the Thirupuvanam Town Panchayat on 13.11.1991 and subsequently, he was transferred to various places. A charge memo, dated 21.07.2007 was issued to the petitioner, under Section 17(b) of *Tamil Nadu Civil Services [Discipline and Appeal Rules]*, wherein, three charges were framed against the petitioner. The Charge Nos.1, 2 & 3 are extracted hereunder:

Charge No.1, states that, while the petitioner was working in Thirupuvanam Town Panchayat for a period from 07.11.2006 to 27.01.2007, the Daily collected tax amount handed over by the Bill Collectors and the amount collected on the Non taxable items put together entered in the day book and the whole amount was not remitted in the bank on the next day and the shortage amount of Rs.70,624/- was temporarily misappropriated.

Charge No.2 : states that, while the petitioner was working in Thirupuvanam Town Panchayat for a period from 13.11.2006 to 24.01.2007, the daily collected tax amount handed over by the Bill Collectors and the collected



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non taxable amount all together entered in the day book was not remitted on particular day and remitted belatedly.

Charge No.3: states that, non remittance of the collected amount to a temporary misappropriation and belatedly remitting the same amounts to a temporary misappropriation and there is dereliction of duty in sincere and honest manner and thus acted in violation of *Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules, 1973*.

2(ii). It is further stated that the petitioner has sought Enquiry report and other documents to submit his explanation and to participate in the enquiry and the same were not furnished. The petitioner replied to the charges and enquiry was conducted on 02.05.2008 and the petitioner has raised the same issue before the Enquiry Officer. Subsequently, personal hearing was conducted on 02.02.2009 and the petitioner has attended the personal enquiry. After completing the enquiry, the Enquiry officer has submitted his report on 10.02.2009, whereby, the report states that all the charges framed against the petitioner were proved. Based on the report, the 3rd respondent vide his proceedings, dated 10.02.2009 imposed



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a punishment of dismissed from service. The petitioner preferred appeal and the 2nd respondent dismissed the appeal on 03.07.2009.

2(iii). The specific contention raised by the petitioner is that, he was working as a Bill Collector and he was not assigned the duty of the Junior Assistant. Moreover, the petitioner had contented before the Appellate Authority that the alleged counter foil, wherein the respondents relied on was not produced before the Enquiry Officer and the same was not mentioned in the Charge Memo also. If the counter foil is produced, that would indicate that who has remitted the alleged amount on which date, however, the Appellate authority has not considered the said ground. During the pendency of the appeal, the petitioner has approached this Court and filed a writ petition in W.P.No.17301 of 2015 with the prayer for *Mandamus* to direct the first respondent to consider and dispose of the Review Petition, dated 01.09.2009. Thereafter, the first respondent has passed the impugned G.O.Ms.No.105 Municipal Administration and Water (Town 4), dated 24.02.2016.



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2(iv). According to the petitioner, the first respondent has not considered the petitioner's plea. Therefore, the petitioner has filed this Writ Petition prays to allow this Writ Petition by setting aside the impugned order with the consequential relief to reinstate the petitioner back into service.

3. The second respondent has filed counter affidavit stating that the petitioner has temporarily misappropriated the funds which were collected to the tune of Rs.70,624/-, hence a charge memo was issued. In the enquiry charges were held proved and the enquiry report was served to the petitioner. Thereafter, the 3rd respondent imposed the punishment of dismissal from service. In appeal, the Appellate authority has dismissed the appeal and against the said order the petitioner has preferred a review petition before the 1st respondent on 01.09.2009. In the meantime, the petitioner has filed a writ petition in W.P.No.17301 of 2015 and the same was dismissed on 18.06.2015. Thereafter, the 1st respondent has passed the impugned G.O.Ms.No.105 Municipal Administration and Water (Town 4) dated 24.02.2016, whereby, the Appellate authority order was confirmed in the said G.O. Challenging the three orders, the instant Writ Petition has been filed. The respondents have afforded an opportunity to the petitioner and all the



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documents were served to the petitioner. Subsequently, the enquiry report was also served and the petitioner has acknowledged the receipt of the same. It is incorrect to say that the enquiry report was not served to the petitioner and it was already served on 16.12.2008. The claim of the petitioner is that some of the documents and the enquiry report were not furnished is incorrect. The Writ Petition is devoid of merits and prayed to dismiss the petition.

4. Heard Mr.T.Lajapathi Roy, learned counsel appearing for the petitioner and Mr.C.Baskaran, learned Government Advocate (Civil Side), appearing for the respondents.

5. The first issue that was raised by the petitioner before this Court is that the petitioner is not a competent person to remit the amount in the Bank. The petitioner was working as a Bill Collector and he is authorized to collect money and hand over the same to the Junior Assistant. The Junior Assistant is a proper authority to remit the amounts into the Bank. In the present case, the respondents have initiated an action against the Junior Assistant but subsequently, the charges were withdrawn. Very interestingly, the said Junior Assistant, namely,



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S. Suseendiran was one of the witness in the charge memo. The contention of the petitioner is that, since the said S.Suseendiran is an interested witness, his evidence cannot be taken. Moreover, the said Suseendiran is the appropriate authority to remit the amount in the bank and the same person in order to protect himself, had thrown the blame on the petitioner and hence the disciplinary proceedings ought to be struck down as violative of principles of natural justice.

6. The next issue that was raised by the petitioner is that the charge memo as well as the enquiry report states that, after “audit para” was raised by the audit, then only the amount was remitted. The Enquiry officer has stated that a sum of Rs.70,624/-was remitted by the accused into the Bank. It has not been specifically stated who has remitted the amount. The specific contention that was raised before the enquiry officer is that the petitioner has not remitted any amount into the Bank. The learned counsel appearing for the petitioner vehemently submitted that the petitioner had never deposited any amount into the Bank. The petitioner further contended that the said Suseendiran had remitted the amount and that is why the respondents have dropped the charges against the said Suseendiran. Even the enquiry report is silent who had remitted the amount and it



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is a deliberate not to spelt out the fact who had remitted the amount. He further submitted that, if the alleged counter foil is produced during the enquiry proceedings, or subsequently, before the Appellate authority or before the Government, then the real fact would have come light that who has remitted the amount into the Bank. But, the respondents have failed to ascertain the said fact. The petitioner has specifically raised the said plea in the grounds of appeal that the respondents ought to have verified the alleged counter foil. Since the respondents failed to verify the same, the enquiry proceeding is vitiated and liable to be quashed. For the foregoing reasons, this Court is of the considered opinion that non verification of the counter foil is fatal to the disciplinary proceedings.

7. The petitioner was already aged about 58 years and in another three months the petitioner will attain the age of superannuation. Under such circumstances, if the matter is remitted back for fresh consideration, then that would take another couple of years. Hence, this Court is of the considered opinion that, if the punishment is modified as Compulsory Retirement that would meet to the ends of Justice. The respondents shall implement the compulsory retirement punishment and disburse the terminal and other monetary benefits to



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the petitioner, within a period of six weeks from the date of receipt of copy of the order. With the directions, this Writ Petition is disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
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To

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