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W.P.(MD)NO.27202 OF 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.12.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.27202 of 2022

J.Devaraj

... Petitioner

Vs.

1. The Tribunal for Disciplinary Proceedings,
Rep. by its Commissioner,
Tirunelveli District, Tirunelveli.

2. The Assistant Director of Panchayat,
Tirunelveli,
Tirunelveli District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for records of the 1st respondent herein in his proceedings in TDP No.1/2022 dated 25.02.2022 in so far as the petitioner is concerned and the consequential order passed by the 1st respondent herein on 16.11.2022 served on the petitioner on 21.11.2022 and quash the same.

For Petitioner : Mr.N.Balamuralikrishnan

For Respondents: Mr.R.Sureshkumar,
Additional Government Pleader.

* * *

**ORDER**

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Heard the learned counsel on either side.

2. The writ petitioner was working as Selection Grade Executive Officer in Kalakkad Town Panchayat. The petitioner is alleged to have granted building approval in favour of three applicants, namely, Seenithai, Joseph and Krishnan in violation of the relevant rules and statutory regulations. This became the subject matter of reference to the first respondent. The first respondent has taken cognizance against the petitioner and three others in TDP No.1 of 2022. The petitioner has filed this writ petition to quash the proceedings insofar as he is concerned.

3. The learned counsel appearing 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 quash the impugned proceedings insofar as he is concerned.

4. The learned Additional Government Pleader appearing for the respondents submitted that no case for interference has been made out.



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5. I carefully considered the rival contentions and went through the materials on record.

6. The primary argument put forth by the learned counsel appearing for the writ petitioner is that reference is made to the Disciplinary Proceedings Tribunal only if the case involves corruption. He drew my attention to the statements recorded by the Inspector of Police, Vigilance and Anti-Corruption Wing, Tirunelveli Detachment. The statements recorded by the prosecution do not indicate that any bribe amount was paid to the writ petitioner. On the other hand, the statements read that no bribe amount was paid to the petitioner. The learned counsel appearing for the petitioner wants me to conclude that the petitioner cannot therefore be accused of corruption. When the petitioner cannot be accused of corruption, reference to the Disciplinary Proceedings Tribunal is not maintainable. This is the logical syllogism underlying his argument.



7. I am however not persuaded. This is for more than one reason. The charges framed against the petitioner pertain to three applicants, namely, Seenithai, Joseph and Krishnan. In the typed set of papers, the statements of Seenithai and Joseph alone have been filed. The statement of Krishnan has not been enclosed. There is a weightier reason. Rule 2(a) of The Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules 1955 defines “ Corruption ” in the following terms:-

“ **Corruption** ” shall have the same meaning as the words, "Criminal misconduct by a Public Servant" defined in clauses (a), (b), (c), (d) and (e) of subsection (1) of Section 13 of the Prevention of Corruption Act, 1988 (Central Act XLIX of 1988). ”

The definition refers to the unamended Section 13(1) of the Prevention of Corruption Act 1988. It reads as follows:-

“13. Criminal misconduct by a public servant.—(1) A public servant is said to commit the offence of criminal misconduct,

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(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he dishonestly or fraudulently



misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person to do so; or

(d) if he,—

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest;

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property



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disproportionate to his known sources of income.”

Unamended Section 13(1)(d)(ii) of the Prevention of Corruption Act includes even abuse of one's position as a public servant to obtain for oneself or for any other pecuniary advantage. It is also an act of corruption. It is not necessary that acceptance of illegal gratification alone would constitute corruption. Even abuse of position by the public servant so as to obtain advantage for oneself or for another person would also amount to “corruption”. Therefore, the petitioner will have to necessarily establish that he did not abuse his position so as to confer advantage for the third party applicants. This is essentially a question of fact. This Court exercising writ jurisdiction will not be justified in going into the same. However, apparently there does not appear to be any basis for the charge that the petitioner took any bribe amount and granted building approval. I make this *prima facie* observation based on the materials placed before me.



8. This writ petition is disposed of at the admission stage itself. The learned counsel appearing for the petitioner laments that the petitioner is being visited with one charge or the other and as a result his promotion is being indefinitely deferred. Considering the special facts and circumstances of this case, I direct the first respondent to conclude the petition mentioned proceedings on merits and in accordance with law within a period of eight months from the date of receipt of a copy of this order. The other delinquent officials shall also extend their cooperation. They will not adopt any dragging on tactics. No costs. Consequently, connected miscellaneous petitions are closed.

01.12.2022

Index : Yes / No

Internet : Yes/ No

PMU

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G.R.SWAMINATHAN,J.

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