IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.06.2023

CORAM

THE HONOURABLE MR.JUSTICE **J.SATHYA NARAYANA PRASAD**

W.P.No.9073 of 2011
M.P.No.2 of 2011

A.Varudaraju ... Petitioner

-Vs-

1. The Commissioner of Agriculture – cum
Secretary to Government,
Agriculture Department,
Secretariat,
Chennai 600 009

2. The Commissioner of Agricultural Marketing
and Agri Business,
Guindy,
Chennai 600 032

3. The Secretary,
Salem Market Committee,
Salem-16 ... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Ceriorarified Mandamus to call for the records passed by the second respondent in Se.Mu.Aa.AaONa1.9564/2000(2) dated 08.03.2004 and the subsequent order of the first respondent issued in GO.(2D) No.52, Agriculture (Agri.Marketing1) Department dated 19.04.2006 and the subsequent order passed in G.O.(2D) No.224, Agriculture (Agri.Admn.5) Department dated 06.10.2008 and the subsequent order passed in G.O.(2D) No.83, Agriculture (Agri.Marketing1) Department dated 23.03.2010 and consequently direct the respondents to reinstate the petitioner into service with all consequential and attendant benefits.

For Petitioner : Mr.R.N.Amarnath

For Respondents : Mr.V.Nanmaran,
Addl. Government Pleader for R1 & R2
: Mr.A.Selvendran
Special Government Pleader for R3

ORDER

This writ petition has been filed to call for the records passed by the second respondent in Se.Mu.Aa.AaONa1.9564/2000(2) dated 08.03.2004 and the subsequent order of the first respondent issued in GO.(2D) No.52, Agriculture (Agri.Marketing1) Department dated 19.04.2006 and the subsequent order passed in G.O.(2D) No.224, Agriculture (Agri.Admn.5) Department dated 06.10.2008 and the subsequent order passed in G.O.(2D) No.83, Agriculture (Agri.Marketing1) Department dated 23.03.2010 and consequently direct the respondents to reinstate the petitioner into service with all consequential and attendant benefits.

2. The facts of the case in a nutshell are as under:-

2.1 The petitioner was appointed as Office Assistant in the third respondent Market Committee on 08.09.1993 through employment exchange and subsequently, promoted as Junior Assistant on 14.09.1998. Thereafter, he was transferred and posted as Junior Assistant in the Head Office of Salem Market Committee.

2.2 While so, the petitioner was issued with a charge memo dated 13.09.2000 on 4 counts pertaining to belated payment of the advance and loan amounts recovered from the salaries of the employees, as if he was regularly doing it for many years, though the issue was confined to three months. The petitioner gave an explanation to the charge memo and participated in the enquiry. Notwithstanding the fact that the charges related to meagre amount under each head and the petitioner had also remitted the amounts and further in respect of one amount, ie, Rs.1,788.10, the petitioner had also made the payment, final orders were passed by the 2nd respondent on 08.03.2004 removing him from service.

2.3 As against the order of the second respondent dated 08.03.2004, the petitioner preferred an appeal to the first respondent/ State Government in the month of May 2004. However, no orders were passed by the 1st respondent. At that stage, the petitioner filed WP No. 10057 of 2005 challenging the order of dismissal from service, wherein, this Court passed orders on 24.03.2005 directing the first respondent to consider and pass orders on the appeal dated 11.05.2004 made by the petitioner within a period of 12 weeks from the date of receipt of the copy of the order.

2.4 Thereafter, the first respondent passed orders in G.O.(2D) No. 52, dated 19.02.2006 rejecting the appeal made by the petitioner based on the opinion given by the Tamil Nadu Public Service Commission. Subsequently, the petitioner filed a Revision Petition which was also rejected vide G.O. (2D) No.224, Agriculture (Agri Busi 5) Dept., dated 06.10.2008.

2.5 Subsequently, the petitioner made a further Revision Petition to the Government in the year 2009 which was forwarded by the 2nd respondent on 21.08.2009 to the first respondent. However, the first respondent had passed GO (2D) No.83, Agriculture (Agri Marketing) Dept dated 23.03.2010 again rejecting the Revision Petition filed by the petitioner stating that there are no fresh reasons stated to consider his claim. Challenging the orders dated 08.03.2004 and 19.04.2006 passed by the first and second respondents respectively and also challenging G.O. (2D) No.224 dated 06.10.2008 and G.O.(2D) No.83 dated 23.03.2010, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner submitted that the petitioner has temporarily misappropriated a meagre amount of Rs.1788.10/- and subsequently the petitioner has also made the payment on 05.10.2000. When the petitioner was drawing the salary amount for the employees from the State Bank of India, Salem Branch there was a shortage of Rs.30,000/- and the same was not noticed by the petitioner at the time of receiving the money. Later when the petitioner came to know about the same he immediately rushed back to the bank enquiring about the shortage of cash. But however the employees of the bank expressed their inability to help the petitioner. The learned counsel further submitted that there was a delay in remitting the amount recovered from the salaries of the employees relating to festival advances and other loans and advances which would come around less than Rs.3,000/- per month and the petitioner has remitted the amount after some days. The learned counsel further submitted that the petitioner was issued with a charge memo dated 13.09.2000 on 4 counts pertaining to belated payment of the advance and loan amounts recovered from the salaries of the employees. The petitioner has given explanation to the charge memo and participated in the enquiry. The second respondent passed an order dated 08.03.2004 removing the petitioner from service and as against this order, the petitioner

preferred an appeal to the first respondent State Government in the Month of May 2004. Since no orders have been passed by the 1st respondent, the petitioner filed W.P.No.10057 of 2005 and by order dated 24.03.2005, this Court directed the first respondent to consider and pass orders on the appeal dated 11.05.2004 made by the petitioner within a period of 12 weeks from the date of receipt of a copy of the order.

4. The learned counsel further submitted that after the orders of this Court, the first respondent has passed orders in G.O.(2D) No.52, dated 19.02.2006 rejecting the appeal made by the petitioner based on the opinion given by the Tamil Nadu Public Service Commission. The learned counsel further submitted that subsequently the petitioner has also filed a Revision Petition before the State Government by referring to the fact that he is the father of three girl children. However, the Revision Petition filed by the petitioner was also rejected in G.O (2D) No.224, Agriculture (Agri.Busi.5) Dept. dated 06.10.2008. The petitioner has made further Revision Petition to the Government in the year 2009 which was forwarded by the 2nd respondent on 21.08.2009 to the first respondent. However, the first respondent has issued G.O.(2D) No.83, Agriculture (Agri.Marketing) Dept dated 23.03.2010 again rejecting the Revision Petition filed by the petitioner stating that there are no

fresh reasons stated to consider the claim of the petitioner. The learned counsel further submitted that the actual shortage in remittance was only a sum of Rs.1,788.10/-. The learned counsel drew the attention of this Court to the order passed by the second respondent dated 08.03.2004 removing the petitioner from service in which the explanation given by the petitioner is mentioned stating that while withdrawing the amount from the Bank he did not notice the shortage of amount, later on he came to know that there was shortage in the money withdrawn by him and the amount to be paid by the petitioner was only a sum of Rs.1,788.10. The learned counsel further submitted that only on the admission made by the petitioner, the shortage amount of Rs.1,788.10 was brought to the knowledge of the respondents. The petitioner was also superannuated in the year 2017. The learned counsel for the petitioner relied upon the judgment of this Court in the case of ***N.Saravanakumar Vs The Government of Tamil Nadu Rep.by its Secretary and others*** W.P.No.29030 of 2015 and the relevant paragraphs are extracted as hereunder:-

> ***22.The allegations in both the writ petitions are similar and only the amount varies. As rightly pointed out by the Learned Counsel appearing for the petitioner the allegations as such will not amount to misconduct. Even according to the audit report and the report of the said Eswaramoorthy there is no allegations of misappropriation against the petitioner. To constitute misconduct there ought to be intention to defraud the bank and no such ingredient is***

stated in the enquiry report, in the audit report or in the report of the said Eswaramoorthy. The case of charges in disciplinary proceedings was dealt in W.P.No.29030 of 2015 in N. Saravanakumar Vs. the Government of Tamil Nadu and others, the Hon?ble Court vide order dated 30.09.2015 has held as under:

16. It is very pertinent to point out at this juncture that the allegation merely pertains to loss of revenue to the State and no ill~will or motive or corrupt practice has been levelled against the petitioner except the general charge, namely Charge No.8 which speaks about Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules, 1973. In the considered opinion of the Court, the charges framed against the petitioner are vague and admittedly, Annexure~II to the charge memo would also indicate that even prior to the tenure of the petitioner also, such alleged lapses took place, for which, the concerned officials have not been proceeded with and the said fact was also brought to the knowledge of the Disciplinary Authority by the petitioner in his interim reply, for which also, no response is forthcoming. Thus, on account of vague and indefinite charges framed against the petitioner, he is put to grave prejudice and hardship in 16 defending the charges framed against him.

17. It is also the submission of the learned Senior Counsel appearing for the petitioner that in the absence of any specific or definite allegation that discharge of official duty was with dishonest motive or exercise of official position for personal gain, charges under Rule 17(b) of the TNCS (D&A) Rules cannot be framed. The guidelines framed in this regard is referred to in the Division Bench Judgment of

Madurai Bench of this Court in W.P.(MD).No.6809 of 2004 and it is relevant to extract the same:

"32....The instructions were quoted as follows:

"Without prejudice to the generality of situations involving indiscipline, moral turpitude, corruption, etc., Charges under Rule 17(b) has to be framed in the following types of cases for imposing any one of the major penalties"-

1.Cases in which there is reasonable ground to believe that a particular offence has been committed by a Government Servant but the evidence forthcoming is not sufficient for prosecution in a Court of Law, e.g., [a]Possession of assets disproportionate to the known source of income; [b]Obtaining or attempting to obtain illegal gratification; [c]Misappropriation of Government property, money or shares; [d]Obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration, which is not adequate, etc.

2.Falsification of Government Records.

3.Irregularity or negligence in the discharge of official duties with a
dishonest motive.

4.Misuse of official position for personal gain.

5.Disclosure of secret or confidential information even 17 though it does not fall strictly within the scope of the official secrets act.

6.Misappropriation of Government Funds, false claims of travelling allowance reimbursement of false medical bills etc.,"

As already pointed out, on account of vagueness of

charges and in the absence of any specific allegation that negligence on the part of the petitioner in discharging his official duty was actuated with dishonest motive or he exercised his official position with personal gain, charges under Rule 17(b) of the TNCS (D&A) Rules, cannot be framed.?

In the present case also there is no allegation that the petitioner while discharging his official duty had committed with dishonest motive or he exercises his official position with personal gain, hence the charges cannot be sustained at all.

23. Therefore this Court is of the considered opinion the impugned orders ought to be quashed. Hence the writ petitions W.P.(MD)No.10608 of 2016 and W.P.(MD)No. 10609 of 2016 are allowed. The impugned orders in both the writ petitions are quashed and the respondents are directed to confer all monetary benefits, service benefits including notional promotion to the petitioner. The said exercise shall be completed within a period of six weeks from the date of receipt of the copy of the order.

5. The learned counsel for the petitioner relied upon the judgment of this Court in another case in W.P.(MD).Nos.10608 and 10609 of 2016 ***P. Sampath Kumar Vs The Chairman and Managing Director, Corporate Office, Indian Bank, Chennai*** and the relevant paragraph is extracted hereunder:-

23. In the considered opinion of the Court, in the absence of specific imputation of dishonest/oblique motive, lack of bonafide or utter negligence in discharge of duties, initiation of disciplinary proceedings is required to be quashed. The allegations pertains to the alleged act of the petitioner during his tenure as Commercial Tax Officer, Melur Assessment Circle for the period between 30.07.2012 and 31.12.2012 and in pursuant to the orders passed in W.P.Nos.11129/2013, 11324/2013 and 20336 of 2013, the petitioner and others were promoted as Assistant Commissioners and this Court is of the view that subsequent promotion of the petitioner has also washed out his alleged delinquency. The petitioner alone has been proceeded with for the reasons best known to the Disciplinary Authority and that apart, the charges framed against the petitioner are also very vague and in the absence of any specific allegation as to dishonest/oblique motive or deliberate act of negligence or undue favour shown, the impugned charge memo cannot be sustainable.

6. A counter affidavit was filed by the third respondent on 01.04.2022. The learned Special Government Pleader appearing for the third respondent submitted that the petitioner has not informed the third respondent about the shortage of amount of Rs.30,000/- on the same day. It is only when the inspection was made by the third respondent it was found that the writ petitioner has misappropriated the money of the employees temporarily and remitted the amount belatedly after a delay of 586 days and the misappropriated amount was Rs.1,788.10. The petitioner was placed under

suspension on 06.04.2000, subsequently charges were framed on 13.09.2000 against the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (D&A) Rules and the petitioner submitted his explanation on 21.09.2000 and remitted the amount of Rs.1788.10 on 05.10.2000. The petitioner was reinstated into service on 07.05.2001 pending disposal of the disciplinary action. The Secretary, Chengalpattu Market Committee, Kanchipuram was appointed as the enquiry officer in the disciplinary case and submitted his enquiry report on 30.04.2002 and the copy of the Enquiry Report was also furnished to the petitioner for his further explanation and he has submitted his explanation on 01.08.2002. Finally, the second respondent has passed the order removing the petitioner from service vide his proceedings No.DCI1/9564/2000(2) dated 08.03.2004. The learned Additional Government Pleader further submitted that the petitioner preferred an appeal to the first respondent on 11.05.2004 challenging the order of removal from service and the Government rejected the same based on the recommendation of the TNPSC vide G.O.No.(2D) No.52 Agriculture (AM I) Department dated 19.04.2006. The petitioner made another appeal petition to the Government requesting for reemployment and the Government carefully examined the appeal of the petitioner and decided to reject the same vide G.O.No.(2D) No.224 Agriculture

(AA 5) Department dated 06.10.2008 since no new grounds or acceptable reasons were mentioned in the appeal petition. The learned Additional Government Pleader further submitted that the petitioner filed a Review Petition to the Government to reconsider the petitioner's punishment of removal and requested the Government to reduce the punishment awarded to him and the review petition was also rejected by the Government vide G.O.No.(2D) No.83 Agriculture (AM I) Department dated 23.03.2010 since there was no new ground or acceptable reasons in the appeal petition.

7. Heard both sides and perused the materials available on record.

8. In this case the petitioner was working as a Junior Assistant in Head Office of Salem Market Committee and in the year 1998 when he was drawing salary amount for the employees from the State Bank of India, Salem Branch there was shortage of amount of Rs.30,000/- and the same was not noticed by the petitioner at the time of receiving the money. The charge memo dated 13.09.2000 was served on the petitioner on four counts pertaining to the belated payment of the advance and loan amounts recovered from the salaries of the employees. The charge relates only to a meagre amount of Rs.1,788.10 and the petitioner has also paid the same after a delay of 586 days on

05.10.2000. The enquiry was conducted and the enquiry officer has filed the report that the charges are proved and based on the enquiry report the second respondent passed an order dated 08.03.2004 removing the petitioner from service. The appeal to the first respondent, appeal to the Government and the Review Petition to the Government were all rejected vide G.O.No.(2D)No.52 Agriculture (AM I) Department dated 19.04.2006, G.O.No.(2D) No.224 Agriculture (AA 5) Department dated 06.10.2008 and G.O.No.(2D) No.83 Agriculture (AM I) Department, dated 23.03.2010 respectively. In this case the delinquency committed by the petitioner is misappropriation of a meagre sum of Rs.1788.10 which was also repaid by the petitioner after a delay of 586 days and for this, the punishment of removal of service imposed by the second respondent is too harsh and disproportionate.

9. It is pertinent to note that no documents have been filed to prove that the petitioner has misappropriated a sum of Rs.1788.10 and it is only on admission by the petitioner the respondents came to know about the actual shortage in remittance due to the mistake in calculation. The petitioner was 52 years old at the time of filing the writ petition and during the pendency of the writ petition he got superannuated in the year 2017. The actual shortage was a sum of Rs.1788.10 and the same was not found by the auditing or any other

inspection team and it is only on the admission made by the petitioner that due to the mistake in calculation there is a shortage of the above amount. The petitioner has not suppressed and he has fairly admitted that there is a shortage of a sum of Rs.1788.10 but the same was not paid immediately and it was remitted only after 586 days.

10. Hence, this Court is of the considered view that the punishment imposed on the delinquent removing him from service is too harsh and disproportionate to the delinquency committed by him and the delinquency committed is a temporary misappropriation of a meagre amount of Rs.1788.10 which is the actual shortage which was admitted by the petitioner himself and was not found by the audit team or the inspection team of the respondents. On this ground, the respondents ought to have taken a lenient view by imposing punishment under Rule 17(a) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules instead of imposing the major punishment, viz., removal from service under Rule 17(b), *ibid.*

11. In view of the above, the orders impugned in this writ petition are quashed. The respondents are directed to pay all consequential and attendant benefits to the petitioner within a period of six weeks from the date of receipt

of a copy of this order. Since the petitioner had retired in the year 2017, the question of his reinstatement does not arise**.**

12. In the result, the writ petition stands allowed. No costs. Consequently connected miscellaneous petition is also closed.

01.06.2023

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order

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To

1. The Commissioner of Agriculture – cum
   Secretary to Government,
   Agriculture Department,
   Secretariart,
   Chennai 600 009

2. The Commissioner of Agricultural Marketing
   and Agri Business,
   Guindy,
   Chennai 600 032

3.The Secretary,
   Salem Market Committee,
   Salem-16

J. SATHYA NARAYANA PRASAD, J.

dpq

W.P.No.9073 of 2011

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