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W.P.No.34681 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.34681 of 2012

K.Selvam

...Petitioner

-Vs-

1.The Assistant Elementary Educational
Officer, Kaveripattanam.

2.The District Elementary Educational
Officer, Dharmapuri,
Dharmapuri District.

3.The Director of Elementary Education,
Chennai – 600 006.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Certiorarified Mandamus, calling for the records relating to the dismissal of the petitioner by the 2nd respondent in his proceedings Na.Ka.No.2999/A3/2002 dated 29.11.2007 and the order of the 3rd respondent order dated 05.06.2008 in his proceedings Na.Ka.No.15644/A1/2008 and quash the same consequently direct the respondents to reinstate petitioner to the post of Junior Assistant with all his monetary benefits and consequential service benefits to which he is entitled and pass such further orders.

For Petitioner : Mr.A.N.Rajan



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For Respondents : Mr.T.M.Rajangam
Government Advocate

ORDER

This writ petition is filed for issuance of a Writ of Certiorarified Mandamus to quash the impugned orders passed by the 2nd respondent vide proceedings Na.Ka.No.2999/A3/2002 dated 29.11.2007 and by the 3rd respondent vide proceedings Na.Ka.No.15644/A1/2008 dated 05.06.2008 and consequently, direct the respondents to reinstate the petitioner to the post of Junior Assistant with all his monetary benefits and consequential service benefits.

2. The case of the petitioner is that he was working as Junior Assistant in the Office of Assistant Elementary Educational Officer, Kaveripattanam, from June, 1999 till his dismissal on 29-11-2007. While so, one Thiru.N.Muthukumarasamy, was working as Junior Assistant in Assistant Elementary Educational Office at Kaveripattanam. The above said N.Muthukumarasamy had committed falsification of records and misappropriated huge amount of P.F. Amount belonged to School Teachers. It is alleged that the petitioner helped him in the above misappropriation. Though he had nothing to do with the misappropriation he falsely implicated,



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he was working in Block II as Junior Assistant, but N.Muthukumarasamy who worked as a Junior Assistant in Block-I has committed misappropriation of huge amount.

3. Learned counsel for the petitioner submitted that three charges were levelled against the petitioner. The first charge against him is that Thiru.N.Muthukumarasamy who committed misappropriation has not produced the documents related to the commission of the offence and the Assistant Elementary Educational Officer has also not produced them before the District Elementary Educational Officer Kaveripattanam. A FIR was registered and a case was filed only against Thiru.N.Muthukumarasamy and the Assistant Elementary Educational Officer, Krishnagiri. It is not the case of the respondents that the petitioner misappropriated the amounts by fabricating false documents or utilized the misappropriated money. The only allegation is that he undertook along with other officials to produce the documents which all the staff of the office have failed to do so. The respondents had not tried to get the petitioner's signature in the undertaking since he was working in Block No.II and had nothing to do with Block No.I. So it cannot be presumed that the petitioner helped Thiru.N.Muthukumarasamy misappropriate the amounts. The petitioner has



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served with unblemished records.

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4. Learned counsel further submitted that the second charge against the petitioner is that he helped Thiru.N.Muthukumarasamy in committing misappropriation of amount. According to F.I.R. only two persons are named 1) N.Muthukumarasamy 2) Assistant Elementary Educational Officer and his name was not in the F.I.R. The charge is only against Thiru.N.Muthukumarasamy and the petitioner helped him. The finding in the enquiry report is that he signed two Bank Challans, which were utilized by Thiru.N.Muthukumarawsamy to take D.D. for lesser amount from the cheque amount. Only Thiru.N.Muthukumarasamy is answerable for that why he had taken D.D. for lesser amount. Thiru.N.Muthukumarasamy had not whispered anything against the petitioner or any role played by the petitioner in helping him. There is no evidence implicating the petitioner, it is only presumed that he helped Thiru.N.Muthukumarasamy.

5. As far as III Charge is concerned, it is not proved, but however the enquiry officer has said since the petitioner has not informed higher officials he indirectly helped Thiru.N.Muthukumarasamy to misappropriate P.F. amounts of School Teachers. Similarly placed Junior Assistant



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T.U.Ekambaram and L. Venkatesa Moorthy, suspension was revoked he was reinstated with all monetary benefits and regular service as though they have worked. The petitioner filed an appeal against the order of 2nd Respondent dated 20-11-2007 before the 3rd Respondent and the third respondent has not taken into account the evidence and findings as contemplated under Rule 23 of Tamil Nadu Civil services (Classification, Control and appeal) before rejecting the appeal. The Appellate Authority has arbitrarily rejected the appeal without considering the matters referred to in Rule 23. The petitioner cannot be made scapegoat for the offence committed by Thiru.N.Muthukumarasamy. In any event the punishment of the petitioner dismissal is excessive and severe not proportionate to the alleged allegation against him. Aggrieved by the impugned orders passed by respondents 2 and 3, the petitioner has approached this Court by way of filing this writ petition.

6. Learned counsel for the petitioner relied on the ruling of this Court in ***W.P.No.30049 of 2008 in K.A.Subramani Vs. The Director of Elementary Education, Chennai, dated 28.03.2018.***

7. Learned counsel for the petitioner also relied on the ruling of the Hon'ble Supreme Court in ***Special Leave to Appeal (Civil) No.25990 of 2012 in Govt. of Tamil Nadu Tr. Sec. To. Govt. Vs. Nan Gopal dated 02.07.2013.***



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8. A counter affidavit was filed on behalf of the respondents dated 23.11.2023.

9. Learned Government Advocate appearing for the respondents submitted that during the year 1997-2002 in the Office of the Assistant Elementary Educational Officer, (Now, redesignated as Block Educational Officer from 01.06.2008 by G.O.Ms.No.101 School Education (Budget-1) Dated 18.05.2018) Kaveripattinam in Dharmapuri District (Now Krishnagiri District), a large-scale misappropriation of Government funds by certain staff of the Assistant Elementary Education Office in collusion with the Treasury Department Staff had taken place by tampering of registers and documents. The Petitioner had worked as Junior Assistant during the relevant time in the office of the 1st Respondent. Three charges have been framed against the Petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

10. Learned Government Advocate further submitted that one Thiru. N.Muthukumarasamy, Junior Assistant in charge of the A3 section has misappropriated funds in the matter of disbursement of 10% of the part final amount from the Teachers Provident Fund by tampering with the MTC 70



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register and other relevant documents. The said N.Muthukumarasamy, who was in possession of registers/records, had not handed over them to the 1st Respondent despite oral and written requests. Further, he ignored the orders of the higher authorities in the matter. A complaint of misappropriation was duly lodged with the Police by the 1st Respondent. The charge is that the Petitioner herein has colluded with the said N.Muthukumarasamy in the financial irregularities.

11. On perusal of records reveals that the Petitioner along with K.Kulandai and others have written a letter to the 1st Respondent to the effect that they would submit the relevant records/registers within 20 days as they were found missing while shifting the office. Further, he has reported that based on the request of Thiru.N.Muthukumarasamy, he has signed two chalans for taking the draft for lesser amount that is payable to the teachers towards 10% of the final withdrawal from the Teachers Provident Fund. Subsequently, he has retreated his own statement stating that the signatures were not made by him. Though the Petitioner has colluded in the misappropriation of Teachers Provident funds along with Thiru.N.Muthukumarasamy, in order to escape from the clutches of punishment, the Petitioner has contended that he worked in another block and



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has nothing to do with the misappropriation of funds that took place in another block. The charge "that the Petitioner has colluded with Thiru. Muthukumarasamy in the misappropriation of Rs.17,67,825/- in the amount of Rs.38,42,825/- encashed on 22.12.2000 and 25.01.2001 in the Office of the Assistant Elementary Educational Officer Cum Additional Elementary Educational Officer. Kaveripattinam" was also proved. The charges framed against the Petitioner were examined by this Respondent carefully along with the report of the Enquiry Officer, explanation of the Petitioner on the Enquiry Report and relevant records and the Petitioner was awarded the major punishment of dismissal from service as the charges were proved.

12. Learned Government Advocate further submitted that the appeal preferred against the order of dismissal was considered as contemplated under Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The Petitioner has not adduced any valid reasons to consider the Appeal in his favour. Hence, the appeal was rightly rejected by the third Respondent. The averment that the suspension of similarly placed persons was revoked and they were reinstated with all monetary benefits and regular service cannot be a ground for revoking his suspension and reinstatement with monetary benefits and each case has to be decided on its own merits.



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13. Learned Government Advocate further submitted that the Hon'ble Supreme Court/High Courts have held that though normally punishment should be proportionate to the gravity of the misconduct of an employee, for corruption/misappropriation, the only punishment is dismissal. The Courts have held that it is not the amount embezzled, but the mensrea (criminal intention) to misappropriate public money that is enough justification to dismiss the delinquent employee. The Courts have also held that any sympathy shown in such cases is totally uncalled for and opposed to the public interest. The amount misappropriated may be small or large. It is the act of misappropriation that is relevant. Even for a small amount of embezzlement, it is observed that the only punishment is to sack. The amount misappropriated in the instant case is large and the order of dismissal is proportionate to the gravity of the offence and it is not excessive as alleged. The punishment imposed is in accordance with law and decisions of the Hon'ble Courts.

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

15. In the case on hand, the main allegation against the petitioner is



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that he has not produced the records or registers required by the 1st respondent / The Assistant Elementary Educational Officer. Apart from this, he has colluded with Thiru.Muthukumarasamy in the misappropriation of the Teachers Provident Funds. **The charge memo was issued to the petitioner which comprised of three charges, in which charges 1 and 2 were held 'proved' and charge no.3 was held 'not proved'. But however, the Enquiry Officer has said since the petitioner has not informed to the higher official that Thiru.N.Muthukumarasamy has misappropriated the Teachers Provident Funds.** The enquiry was conducted and charges 1 and 2 were proved. Based on the findings of the Enquiry Officer and the enquiry report, the petitioner was dismissed from service on 29.11.2007 by the 2nd respondent which was confirmed by the Appellate Authority namely, the 3rd respondent by order dated 05.06.2008. It is seen from the records that a criminal case was also registered against the petitioner and others for the misappropriation of the Teachers Provident Funds.

16. This Court in a connected matter regarding the other accused in the same criminal case in ***W.P.No.30049 of 2008 dated 28.03.2018, K.A.Subramani Vs. The Director of Elementary Education, Chennai, and others***, wherein it is held as follows:



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“13. It is seen from the records that the first accused (N.Muthukumarasamy); second accused (K.Chandramohan); fourth accused (Thangavel) and seventh accused (M.Nagarajan) died pending the said criminal case. It is also seen that one N.Nalgopal (thirteenth accused) in the said criminal case, who was also dismissed from service, was reinstated into service pursuant to the order passed by this Court. One N.Ramachandran (fifteenth accused), who was found guilty, was awarded lesser punishment of imposition of Rs.500/- per month to be recovered from his pension. One other person – Manivannan (third accused), who was found guilty by the department, was granted provisional pension.

15. In respect of an accused involved in the very same crime by name Nal Gopal, this Court in the writ petition filed by him, being W.P.No.13119 of 2010, by order dated 30.8.2013, held that there is not an iota of evidence available on record to substantiate the charges levelled against the petitioner even by preponderance of probabilities. This Court set aside the impugned order and allowed the writ petition.

18. Serious charge of corruption / misappropriation requires to be proved to the hilt, as it brings civil and criminal consequences upon the employee concerned. He would be liable to be prosecuted and would also be liable to suffer severest penalty awardable in such cases. Therefore, such a grave charge of quasi-criminal nature is required to be proved beyond any shadow of doubt and to the hilt. It cannot be proved on mere probabilities.

19. For the foregoing reasons, the impugned orders passed by the respondents, imposing the punishment of dismissal from service on the petitioner, warrants interference and accordingly, the same are set aside and the respondents are directed to reinstate the petitioner into service with continuity of service with all backwages and other attendant benefits. The said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order.”



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In the light of the above judgment in the connected matter, this Court is also of the considered view that there is not an iota of evidence available on record to substantiate the charges levelled against the petitioner even by preponderance of probabilities and the impugned orders passed by the respondents are liable to be quashed.

17. Aggrieved by the aforesaid order passed by this Court in W.P.No.13119 of 2010 by order dated 30.8.2013, a writ appeal in W.A.No.654 of 2012 has been preferred which was also dismissed by this Court by judgment dated 11.06.2012. Against which, a **Special Leave Petition in SLP(Civil) No.25990 of 2012** was filed which was also dismissed by the Hon'ble Supreme Court by order dated 02.07.2013, which thereby attained finality.

18. In view of the above factual matrix of the case and the order passed by the Hon'ble Supreme Court and by this Court in regard to the other accused in the same criminal case the impugned orders passed by the 2nd respondent vide proceedings Na.Ka.No.2999/A3/2002 dated 29.11.2007 and by the 3rd respondent vide proceedings Na.Ka.No.15644/A1/2008 dated 05.06.2008 are hereby quashed and the



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respondents are directed to reinstate the petitioner to the post of Junior Assistant with all his monetary benefits and consequential service benefits to which he is entitled within a period of eight weeks from the date of receipt of a copy of the order.

In the result, the **writ petition stands allowed with the above observations and directions.** No costs.

28.03.2024

cda

Index : Yes / No

Speaking / Non Speaking Order

J.SATHYA NARAYANA PRASAD, J.

cda

To

- 1.The Assistant Elementary Educational Officer, Kaveripattanam.
- 2.The District Elementary Educational Officer, Dharmapuri, Dharmapuri District.
- 3.The Director of Elementary Education, Chennai – 600 006.

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