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W.P.No.7547 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.03.2024

CORAM :

**THE HONOURABLE MS.JUSTICE R.N.MANJULA**

**W.P. No.7547 of 2021**  
**and**  
**W.M.P.No.14340 of 2022**

R.Eswaran

...

Petitioner

-Vs-

- 1.The State of Tamil Nadu,  
Represented by its Principal Secretary to Government,  
Health and Family Welfare (D1) Department,  
Secretariat, Fort St. George, Chennai – 600 009.
- 2.The Director of Public Health and Preventive Medicine,  
359, Anna Salai, DMS Complex,  
Teynampet,  
Chennai – 600 006.
- 3.The Deputy Director of Health Services,  
Department of Public Health,  
Erode – 638 009.
- 4.The Inquiry Officer/Administrative Officer,  
Office of the Deputy Director of Health Services,  
Erode – 638 009.

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Respondents



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Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order on the file of the 2<sup>nd</sup> respondent in R.No.20003/DA/53/15 dated 20.12.2019 insofar as it relates to imposing punishment of removal from service and the consequential order of the 1<sup>st</sup> respondent in G.O.(D) No.1493 dated 29.12.2020 and quash the same and to consequently direct the 1<sup>st</sup> respondent to restore the petitioner in service with all benefits by imposing lesser punishment forthwith.

|                 |                                                                                                    |
|-----------------|----------------------------------------------------------------------------------------------------|
| For Petitioner  | : Mr.V.Ramamoorthy<br>for M/s.K.T.S.Sivakumar                                                      |
| For Respondents | : Mrs.M.Sneha<br>Special Counsel for Health<br>assisted by<br>Mr.E.Sundaram<br>Government Advocate |

### **ORDER**

This writ petition has been filed challenging the order of the 2<sup>nd</sup> respondent/Disciplinary Authority, dated 20.12.2019, imposing a punishment of “removal from service” against the petitioner, and the consequential order of the 1<sup>st</sup> respondent/Appellate Authority, dated 29.12.2020, confirming the order of the Disciplinary Authority, and for a direction to the respondents to reinstate the petitioner into service by imposing lesser punishment.



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2. The petitioner was appointed as Junior Assistant cum Typist in the Health Department of Government of Tamil Nadu in the year 1995.

While he was working as “Assistant” at Primary Health Centre, Thalavady, during the year 2012, the petitioner was issued with a Show Cause Notice, dated 08.08.2014, by the 3<sup>rd</sup> respondent for alleged misappropriation of funds under Dr.Muthulakshmi Reddy Maternity Benefit Scheme to the pregnant women below poverty line. Subsequently, the petitioner was issued with charge-memo, dated 27.02.2015, by the 3<sup>rd</sup> respondent under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, alleging that the petitioner had misappropriated a sum of Rs.3,72,000/- by encashing the said amount through cheque, but by not remitting the same into the Government account. Pursuant to the issuance of the charge-memo, an Enquiry Officer was appointed. After appreciating the documentary and oral evidence, the 4<sup>th</sup> respondent/Enquiry Officer came to a conclusion that there is no material evidence in support of the alleged misappropriation against the petitioner and therefore, the charges against the petitioner were held to be not proved. However, deviating from the findings of the Enquiry Officer, the 2<sup>nd</sup> respondent/Disciplinary



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Authority, by proceedings dated 21.02.2019, had taken a dissenting view that the charges against the petitioner are proved. Though the petitioner submitted his explanation, the 2<sup>nd</sup> respondent proceeded to pass final orders dated 20.12.2019, imposing a punishment of “removal from service” on the petitioner.

2.1 Challenging the order of removal from service, the petitioner preferred an appeal before the 1<sup>st</sup> respondent/Appellate Authority. However, the 1<sup>st</sup> respondent, vide proceedings dated 29.12.2020, dismissed the appeal filed by the petitioner, by relying upon the remarks of the Tamil Nadu Public Service Commission. Challenging the orders of the Disciplinary Authority and the Appellate Authority, the petitioner has filed the present writ petition.

3. The respondents have filed a counter affidavit stating that the petitioner, who had withdrawn a sum of Rs.3,72,000/-, has not remitted the same into the Government account, but has only remitted a sum of Rs.2,000/- and has played mischief by making alteration in the records as though an amount of Rs.3,72,000/- had been remitted into the



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Government account. However, on verification of Bank records, it was found that, only a sum of Rs.2,000/- had been remitted into the Government account. It is further stated in the counter affidavit that, during enquiry, the petitioner himself had admitted that he had gone to the Bank and encashed the cheque to the tune of Rs.3,72,000/-, which is also evident from the Bank records. It is stated in the counter affidavit that the 4<sup>th</sup> respondent/Enquiry Officer failed to take note of the monthly expenditure statement and monthly reconciliation statement and the purposeful omission of the transaction in the registers to be maintained by the petitioner, whereas, there are Bank records to show that there was a remittance made by the petitioner on the particular date. Therefore, the 2<sup>nd</sup> respondent/Disciplinary Authority decided to deviate from the findings of the Enquiry Officer. It is further stated in the counter affidavit that the 1<sup>st</sup> respondent/Appellate Authority has rightly dismissed the appeal preferred by the petitioner.

4. Mr.V.Ramamoorthy, the learned counsel for the petitioner, submitted that there is no concrete material evidence in support of the alleged misappropriation by the petitioner; the impugned order passed by



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the 1<sup>st</sup> respondent is without assigning any reason, but by simply relying upon the opinion of the Tamil Nadu Public Service Commission, and therefore, the same is liable to be set aside. The learned counsel for the petitioner further contended that the punishment of “removal from service” is disproportionate to the charges framed against the petitioner; the petitioner alone was charged, though the transaction involves several other persons; therefore the impugned orders are liable to be quashed.

5. On perusal of the impugned order of the 1<sup>st</sup> respondent/Appellate Authority, it is seen that the Appellate Authority has not considered the oral and documentary evidence to arrive at its conclusion, rather has only relied upon the opinion called for from the Tamil Nadu Public Service Commission. It can be seen that the order of the Appellate Authority is a non-speaking order without giving reasons for confirming the punishment imposed by the Disciplinary Authority. When the Enquiry Officer has rendered findings holding the charges against the petitioner as not proved and the Disciplinary Authority has taken a contradictory stand to hold the petitioner guilty of the charges, the 1<sup>st</sup> respondent, being the Appellate Authority, ought to have rendered



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independent findings on appreciation of entire evidence available on record, while arriving at a conclusion. Therefore, this Court is of the view that the matter can be remitted to the 1<sup>st</sup> respondent/Appellate Authority for fresh consideration. For this limited purpose, the impugned order dated 29.12.2020, passed the Appellate Authority, alone is liable to be quashed.

6. Accordingly, this writ petition is partly allowed and the order passed by the appellate authority in G.O.(D) No.1493 dated 29.12.2020 alone is set aside and the matter is remitted back to the 1<sup>st</sup> respondent for fresh consideration. No costs. Consequently, connected miscellaneous petition is closed.

**12.03.2024**

Index : Yes/No  
Speaking order: Yes/No  
Neutral Citation: Yes/No  
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**R.N.MANJULA, J.**  
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To

- 1.The Principal Secretary to Government,  
State of Tamil Nadu,  
Health and Family Welfare (D1) Department,  
Secretariat, Fort St. George, Chennai – 600 009.
- 2.The Director of Public Health and Preventive Medicine,  
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