IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.12696 of 2024
and W.M.P.Nos.13850 and 13851 of 2024

V.Kumar .. Petitioner

Versus

Greater Chennai Corporation,
Represented by its Commissioner,
Ripon Buildings,
Chennai - 600 003. .. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in proceedings bearing G.D.Pro.C.No.E13/1263/2023, dated 26.03.2024 and quash the same and direct the respondent to reinstate the petitioner into service, with continuity of service w.e.f. 18.09.2017 together with all monetary, seniority and attendant benefits, including the issuance of promotional orders.

For Petitioner : Mr.Richardson Wilson

For Respondent : Mr.E.Sundaram,
Government Advocate

ORDER

This Writ Petition is filed challenging the order of the respondent, dated 26.03.2024, in and by which, the punishment of compulsory retirement from the Corporation service was imposed on the petitioner.

2. The petitioner, who was employed as a Junior Engineer in the Corporation of Chennai, during the period from 01.09.1996 to 31.12.2007, is said to have been in possession of assets, pecuniary resources and properties worth of Rs.46,36,888.45 ps in his own name or in the name of his wife and family members, for which, he could not account for through the known sources of income. Given the disproportionate wealth, a criminal case was registered and is pending. While so, the self-same charges were also framed

departmentally and were proceeded against the petitioner. Since the petitioner denied the charges, an enquiry was conducted. After completion of the Disciplinary Proceedings, based on the enquiry report and upon considering the findings of the Enquiry Officer and the further and additional explanation of the delinquent officer, the order impugned in the Writ Petition was passed on 26.03.2024.

3. When the matter is taken up for admission, *Mr.Richardson Wilson*, learned Counsel for the petitioner submitted that though, in the normal course, the petitioner has to file an appeal against the order of punishment, he had approached this Court directly because it would not be a misconduct at all. He would submit that having disproportionate wealth to the known sources of income may be criminal misconduct under the *Prevention of Corruption Act, 1988.* The same is only alleged against the petitioner and is yet to be proved before the Criminal Court. Regarding the Departmental Proceedings, the same is not enumerated as misconduct in the *Chennai*

Corporation Service Conduct Rules, 1968 (hereinafter the *Conduct Rules*). When the same is not enumerated as misconduct and when the same is not relatable to the duties of the petitioner, the departmental charges could not have been framed against the petitioner even before the conclusion of the Trial in the Criminal Court. Therefore, the very charge is unsustainable and the impugned order of punishment on the said charge is also unsustainable. Therefore, on that limited ground, this Writ Petition is to be entertained by this Court.

4. I have considered the said submissions made by *Mr.Richardson Wilson*, learned Counsel for the petitioner and *Mr.E.Sundaram*, learned Government Advocate for the respondent Corporation.

5. It is true that possessing assets disproportionate to the known sources of income is not specifically and elaborately mentioned as misconduct in the *Conduct Rules*. The gravamen of the charge is that when

a person is a public servant when he is unable to show the source of income or the manner of possession of properties, it is obvious that he has gained the same only by getting bribes. Rule 20 of the *Conduct Rules* requires every Corporation Servant, at all times to maintain absolute integrity. "Integrity" means honesty and incorruptibility. When the petitioner is working as a Junior Engineer in the Corporation possesses assets worth almost half a crore which could be unearthed by the vigilance and anti-corruption, certainly, the same would violate Rule 20 of the *Conduct Rules.* It is per *se* dishonest. No further specific allegation as to with reference to which of the official duties and from whom the money or property was ill-gotten. The requirement is "<u>absolute integrity at all times</u>". Especially, (i) when receiving unauthorised gifts is expressly prohibited under Rule 3 of the *Conduct Rules*; (ii) when investments, lending and borrowing without notice to the Corporation is dealt with under Rule 6 of the *Conduct Rules; (iii)* when possession of movable, immovable and valuable properties dealt with under Rule 7 of the *Conduct Rules;* and (iv) when private trade or employment is dealt with under Rule 8 of the *Conduct Rules;* and when the petitioner possesses the unaccounted property either through himself or through his family members, it leads to the obvious conclusion that the same is obtained only through bribe. Therefore, the conduct alleged against the petitioner is expressly a misconduct under Rule 20 of the *Conduct Rules* and thus, the contention of the learned Counsel for the petitioner cannot be accepted. Once the conduct is a misconduct, then, it is for the delinquent official to bring-forth such evidence before the enquiry authority to prove the source of income or the manner of possession of his assets. When the enquiry authority has come to the conclusion that the charge has been proved, the punishment is imposed.

6. The question is no longer *res integra*. The very same question was raised before the Hon'ble Supreme Court of India in ***B.C.Chaturvedi Vs. Union of India***[1] and it is relevant to extract paragraph 9 which reads as follows:

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[1] (1995) 6 SCC 649

" **9.**The next question is whether the charge of being in possession of assets disproportionate to his known sources of income is a misconduct. Section 5(1)(e) of the Act [which is equivalent to Section 13(1)(e) of the Prevention of Corruption Act, 1988] defines “criminal misconduct”. A public servant is said to commit the offences of criminal misconduct 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 for. Thus, pecuniary resources or property disproportionate to his known sources of income is a criminal misconduct. In the 1988 Act, an explanation has been added to Section 13(1)(e) to explain that “known sources of income” means income received from any lawful source and such receipt has been intimated in accordance with the provision of any law, rules or orders for the time being applicable to a public servant. The charged officer must be a public servant. He must be found to be in possession of, by himself, or through any person on his behalf, at any time during the period of his office, pecuniary resources or property disproportionate to his known sources of income. If he cannot satisfactorily account thereof, he is said to have committed criminal misconduct. No doubt it is a presumptive finding but that finding is based on three facts. <u>Being a public servant, if at any time, during the period of his office, he is proved to have been in possession, by himself or through any person on his behalf, of pecuniary resources or property disproportionate to his known sources of income, he is enjoined to satisfactorily account for the same. If he fails to account for, he commits misconduct. Therefore, as in a prosecution laid under Section 5(1)(e) of the Act [equivalent to Section 13(1)(e) of 1988 Act], a public servant is liable to punishment</u>. The need to make this misconduct expressly a part of enumerated items of misconduct under Central Civil Services, CCA Rules is

> obviated."
>
> (Emphasis supplied)

7. As a matter of fact, now under the *Central Civil Services (Discipline & Appeal) Rules*, for such a charge only the punishment of Dismissal or Removal alone can normally be imposed. The relevant rule reads thus:

> " (viii) removal from Service which shall not be a disqualification for future employment under the Government;
> (ix) dismissal from Service which shall ordinarily be a disqualification for future employment under the Government.
> Provided that every case in which 36the charge of possession of the assets disproportionate to known sources of income or the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act is established, the penalty mentioned in clause (viii) or clause (ix) shall be imposed. Provided further that in any exceptional case, and for special reasons recorded in writing any other penalty may be imposed."

In the instant case, for the reasons best known, only a punishment of compulsory retirement is imposed.

8. In any event, there is no special ground to entertain the present Writ Petition when the petitioner has an effective, alternative remedy of filing an appeal against the order of punishment.

9. In view thereof, this Writ Petition is dismissed, however, with a liberty to the petitioner to file an appeal before the appellate authority if he still chooses to. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

05.06.2024

Neutral Citation : yes
grs

D.BHARATHA CHAKRAVARTHY, J.

grs

To

The Commissioner,
Greater Chennai Corporation,
Ripon Buildings,
Chennai - 600 003.

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