IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	*23.08.2024*
Pronounced on	***26.09.2024***

CORAM

THE HONOURABLE MR. JUSTICE BATTU DEVANAND

Writ Petition No.2319 of 2018
& WMP No.2836 of 2018

K.Iyyadurai Kannan ..Petitioner

vs.

1.The State of Tamilnadu,
rep. by its Principal Secretary to Government,
Municipal Administration & Water Supply Department,
Secretariat,
Fort St George,
Chennai-600 009

2.The Director of Town Panchayats,
Kuralagam,
Chennai-600 108

3.The District Collector,
Tuticorin District,
Turicorin. ... Respondents

PRAYER: Writ Petitions have been filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the first respondent in G.O.(Pathandu) no.202, MAWS Department dated

04.05.2016 confirming the impugned proceedings issued by the second respondent in Na.Ka.No.18989/05-3/A5 dated 18.11.2007 and to quash the same and consequently direct the respondents to reinstate the petitioner into service as Bill Collector with all consequential and attendant benefits.

For Petitioners	: Ms.Kaviya for Mr.S.Nedunchezhiyan
For Respondents	: Mr.S.Rajesh, GA

O R D E R

This Writ Petition has been filed seeking for issuance of a Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the first respondent in G.O.(Pathandu) no.202, MAWS Department dated 04.05.2016 confirming the impugned proceedings issued by the second respondent in Na.Ka.No.18989/05-3/A5 dated 18.11.2007 and to quash the same and consequently direct the respondents to reinstate the petitioner into service as Bill Collector with all consequential and attendant benefits.

2.Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents and perused the entire material available on record.

3.The petitioner was initially appointed as Bill Collector in Kadambur Town Panchayat, Tuticorin District and thereafter, he was transferred to various places. While so, when he was working in Srivaikundam Special Village Panchayat for the period from 2001 to 2004, he was suspended from services on 25.11.2004 on the allegation that he committed mis-appropriation of professional tax amount collected in the Special Village Panchayat, Srivaikundam. Thereafter, he was issued with a charge memo dated 12.04.2005 by the third respondent. Four charges were framed against the petitioner. The main allegation is that the petitioner, who had worked as Bill Collector for the period from 01.10.2003 to 06.10.2004 had mis-appropriated an amount of Rs.72,695/- collected towards professional tax amount and he has tampered the bill books and thereby, violated Rule 20 of the Tamil Nadu Government Servants Conduct Rules 1973. The petitioner submitted his explanation on 24.01.2005 denying the charges. Thereafter, an enquiry officer was appointed to conduct the enquiry in respect of charges levelled against the petitioner. After enquiry, the enquiry officer submitted his report on 31.01.2006. Thereafter, the petitioner was asked to submit his explanation to the findings recorded by the enquiry officer and accordingly, the petitioner has submitted his explanation on 28.05.2007. Thereafter, the second respondent issued proceedings dated 18.11.2007 terminating the petitioner from service.

4.Aggrieved by the same, the petitioner preferred an Appeal before the first respondent under Rule 19 & 20 of the Tamil Nadu Government Servants(Disciplinary & Appeal) Rules (herein after referred to as "the Rules"). As the said Appeal was not disposed of, the petitioner filed a Writ Petition in WP No.19724 of 2015 and the same was disposed of by this Court on 06.07.2015, directing the first respondent to consider the petitioner's Appeal and to pass orders therein. Thereafter, the first respondent issued proceedings in G.O.(Pathandu) no.202, MAWS Department dated 04.05.2016, rejecting the Appeal filed by the petitioner.

5. The learned counsel for the petitioner has submitted that the order passed by the second respondent on 18.11.2007 imposing the punishment of dismissal from service and the consequential order passed by the first respondent dated 04.05.2016 dismissing the Appeal filed by the petitioner

are *ex-facie* illegal, arbitrary and contrary to law. The learned counsel would further submit that the order of imposing punishment of dismissal from service passed by the second respondent without conducting proper enquiry and without providing reasonable opportunity to the petitioner and without including any witnesses, cannot be sustained and the same is liable to be set aside.

6.It is the contention of the learned counsel for the petitioner that the enquiry officer did not provide any reasonable opportunity to the petitioner and the enquiry was conducted in a false manner, no witnesses have been examined on the side of the petitioner and the petitioner was not given any opportunity to let in evidence on his behalf and to examine or to cross-examine the witnesses. It is also contented that the enquiry report was submitted on 31.01.2006, even without referring to the statement submitted by the petitioner during the enquiry.

7.The learned counsel for the petitioner further contends that the report of the enquiry officer was not furnished to him, which is in violation of the principles of natural justice. He would submit that while the petitioner was working as Bill Collector in Srivaikundam Special Village Panchayat, he remitted every day collection towards professional tax and it was duly received by one J.Sivakumar, Junior Assistant, who has to remit the same into the Bank. It is also contended that the money lying in the PF account of the petitioner was transferred, at the instance of the Executive Officer and the Junior Assistant, even without any application from the petitioner and the remaining amount was also paid by them on the premise that the petitioner had remitted the said amount with an ulterior motive. Without verifying of these facts, which are borne out of record, simply based on the report of the enquiry officer, the petitioner was dismissed from service.

8.The learned counsel for the petitioner further contends that Thiru.Subramaniam, Executive Officer, J.Sivakumar, Junior Assistant and one Ponpandi, former Executive Officer were also issued with charge memo for the same issue. But the charge against Mr.Subramaniam, Executive Officer was dropped since he died during enquiry, while Mr.Sivakumar, Junior Assistant was issued with orders exonerating him from charges, despite the fact that he was the person who remitted the money into the Bank. As such, it is clear that the enquiry was conducted in a biased manner without verification of records and without providing any reasonable opportunity to the petitioner.

9.The learned counsel for the petitioner further contends that the first respondent has also without considering the grounds raised by the petitioner in a proper manner, passed a non-speaking order, rejecting the Appeal filed by the petitioner and as such, the orders passed by the first respondent and the second respondent are illegal, arbitrary and in violation of the principles of natural justice and sought to allow the Writ Petition by setting aside the orders impugned in this Writ Petition.

10. On the other hand, learned Government Advocate appearing for the respondents would submit that while the petitioner was working as Bill Collector in Kadambur Town Panchayat, Tuticorin District, audit inspection was held on 04.10.2004 for the period 2002-2003. The audit team found that the petitioner had tampered the records, replaced the Bill books bearing nos.34,36, 37 & 48 with new books and mis-appropriated professional tax to the tune of Rs.72,695/-.

11.The learned Government Advocate further submit that later the petitioner admitted the same and remitted the entire amount into the Town Panchayat account on 16.11.2004. Therefore, the third respondent initiated disciplinary proceedings under 17(b) of the Rules bearing Na.Ka.No.2464/04/P2 dated 25.11.2004 and suspended the petitioner from service. A show cause notice was issued to the petitioner on 12.04.2005 and he offered the explanation on 21.04.2005. Being not satisfied with the explanation, a charge memo dated 20.09.2005 was issued to the petitioner. Subsequently, the third respondent vide proceedings dated 28.12.2005, appointed the Assistant Director (Panchayat), Thoothukudi as an enquiry officer. The enquiry officer, after conducting due enquiry, submitted his report on 31.10.2006. The second respondent, after receiving the report from the enquiry officer, the petitioner was afforded with an opportunity to offer his additional explanation. The petitioner has submitted his additional explanation on 28.05.2007. After perusing the report submitted by the enquiry officer as well as the additional explanation submitted by the petitioner, the second respondent passed final orders on 18.11.2007 and removed the petitioner from service. The petitioner preferred an Appeal before the first respondent and the first respondent, vide letter dated

28.09.2011, sent the Appeal for the opinion of Tamil Nadu Public Service Commission Regulations 1954. While the Appeal was under process, the petitioner sent his reminder/representation dated 11.02.2015 and filed WP.No.19724 of 2015 before this Court. This Court, vide order dated 06.07.2015, directed the first respondent to dispose of the Appeal on merits and in accordance with law within a period of 12 weeks from the date of receipt of a copy of the order. Subsequently, the Tamil Nadu Public Service Commission sent its opinion on 21.03.2016. Thereafter, the first respondent on consideration of the Appeal, rejected the same as the charges against the petitioner were proved beyond doubt.

12. The learned Government Advocate further submits that it was proved that the petitioner has mis-appropriated the professional tax to the tune of Rs.72,695/- by tampering the records. During enquiry, it was found that the petitioner was replaced the Bill books bearing nos.34, 36, 37 & 48 with new books and kept those books in his custody.

13.The learned Government Advocate further submits that the petitioner was given ample opportunity to offer his explanation and the charges were proved during the enquiry. As the petitioner had admitted the findings of audit team and also remitted the professional tax amount mis-appropriated by him and due procedures are complied with from the date of invoking of Rule 17(b) of the Rules till passing of final order.

14.The learned Government Advocate further submits that the petitioner had received the enquiry report and offered additional explanation on findings of the enquiry report. Hence, now he cannot say that he was not furnished with enquiry report and as such, there is no violation of principles of natural justice. Therefore, this Writ Petition is liable to be dismissed as devoid of merits.

15. Having heard the respective learned counsel and on careful examination of the entire material available on record, it is an admitted fact that an amount to the tune of Rs.72,695/-, which was collected towards professional tax by the petitioner was mis-appropriated as per the findings of the audit team during their inspection held on 04.10.2004. Though the petitioner was contended that the Executive Officer and Junior Assistant who transferred the money in PF account of the petitioner without any

application from the petitioner and the remaining amount was also paid by them on the premise that the petitioner had remitted the amount with ulterior motive, it appears from the various documents available on record that the petitioner has remitted the said amount into the Town Panchayat account on 16.11.2004. The petitioner also admitted the same in his explanation submitted to the charge memo. It appears that now the petitioner has invented a new version to escape from the punishment. The contention of the petitioner that he has handed over the professional tax amount collected by him to one J.Sivakumar, Junior Assistant of Srivaikundam Special Village Panchayat, but there should be some endorsement in the Office records. It is true that the petitioner being the Bill Collector, he has to collect the professional tax and he has to remit the same to the Junior Assistant of the Town Panchayat, who in-turn has to credit the same into the Bank account of the Town Panchayat. But in the present case, there is no documentary evidence to show that the professional tax amount collected by the petitioner was remitted to the Junior Assistant of Town Panchayat Office.

16.Besides this, having admitted the said fact, the petitioner has remitted the entire amount of Rs.72,695/- on 16.11.2004, into the Town

Panchayat account. In addition to that the audit team also found that the petitioner had tampered the records and replaced the Bill books bearing nos.34, 36, 37 & 48 with new books, which is a serious mis-conduct on the part of the petitioner. It appears, after perusing enquiry report of the competent authority, the Junior Assistant one J.Sivakumar was exonerated from charges. On perusal of the order of punishment imposed by the second respondent, it was confirmed by the first respondent in Appeal, this Court is of the view that the petitioner was afforded with a reasonable opportunity to putforth his case before the original authority and as well as before the Appellate authority and after following due process of law, the order of punishment of removal from service of the petitioner is passed by the second respondent and the same was confirmed by the first respondent while dismissing the Appeal of the petitioner. The petitioner contends that there is violation of principles of natural justice in issuing the orders impugned in this Writ Petition. But this Court is of the considered opinion that there is no violation of principles of natural justice in issuing the impugned orders, which are passed by following due procedure as contemplated under law.

17. For the above said reasons, this Court is of the considered opinion

that there is no illegality and infirmity in the orders passed by the respondents 1 & 2 and the petitioner failed to make out any case seeking interference of this Court into the orders passed by the respondents 1 & 2.

18.Accordingly, this Writ Petition is dismissed.

No costs.

Consequently, connected miscellaneous petition is closed.

26.09.2024

Index : Yes/No
Speaking order:Yes/No
dn

To
1.The State of Tamilnadu,
rep. by its Principal Secretary to Government,
Municipal Administration & Water Supply Department,
Secretariat,
Fort St George,
Chennai-600 009

2.The Director of Town Panchayats,
Kuralagam,
Chennai-600 108

3.The District Collector,
Tuticorin District,
Turicorin.

BATTU DEVANAND, J

dn

Pre-Delivery order in
Writ Petition No.2319 of 2018

26.09.2024