IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.P.No.15399 of 2019
and
W.M.P.No.15360 of 2019

K.Venkatesan
Bench Clerk Grade -III,
Principal District Munsif Court,
Ullundurpet,
Villupuram District. ... Petitioner

Vs.

1. The Registrar General,
High Court, Madras.

2. The Principal District Judge,
Villupuram.

3. TheAddititional District and
Sessions Judge, Tindivanam. ... Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records relating to the order dated 04/04/2019 in Roc.No.36968/2016/C1 of the 1st respondent confirming the proceedings dated 17/03/2016 in A.No.1205/2007 of the 2nd respondent and quash the same.

For Petitioner : Mr.V.Raghavachari,
Senior Advocate for
M/s.M.Durai Murugann,
Senior Counsel.

For Respondents : Mr.M.Kempraj

O R D E R

(Order of the Court was delivered by S.M.Subramaniam J.)

The punishment of stoppage of increment for four years with cumulative effect and stoppage of promotion till superannuation, issued by the Disciplinary Authority, and the appellate order, confirming the punishment, are under challenge in the present writ proceedings.

2. The petitioner was appointed as Junior Assistant in the Principle Subordinate Court, Tindivanam, and during an inspection, certain irregularities were identified relating to Motor Accident Claims. Charge Memorandum, under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, was issued against the writ petitioner. Though seven Charges were framed, Charge Nos.2, 4 and 7 alone are held proved. Therefore, we are inclined to extract only the said Charges as under:

*“**Charge II:-***

That you the said Tr.K.Venkatesan, formerly Junior Assistant, Principal Sub Court, Tindivanam and now Assistant, I Additional District Munsif Court, Kallakurichi, while discharging duty as Junior Assistant (Sherishtadar Assistant), Principal sub Court, Tindivanam had foreclosed the F.D.R. and a sum of Rs. 2,30,727/- concerned in M.C.O.P. 246/86 on 18/12/2006. But you have credited in M.C.O.P. 666/2001 (in which the amount was already disbursed fully) with an intention to make fraudulent payment to the Petitioner of M.C.O.P. 666/2001 with the help of Sherishtadar and Bench Assistant paid a sum of Rs.2,30,727/- to Tr.Paneerselvam and his Counsel Tr.Selvam, Advocate. Tr. Paneerselvam and his counsel Tr.Selvam already received compensation also full satisfaction recorded in M.C.O.P. 666/2001 on 11/09/2002. Thus you have created forgery documents and committed misappropriation of accounts and committed malpractice of fraudulent payment of Rs.2,30,727/- to a wrong person. Thus you are liable to be proceeded with under rule 17(b) of the Tamil Nadu Civil Services (D&A) Rules.

***Charge IV**:-*

Thus you the said Tr.Venkatesan, formerly Junior Assistant, Principal Sub Court, Tindivanam and now Assistant, I Additional District Munsif Court, Kallakurichi, *while discharging duty as Junior Assistant (Sherishtadar Assistant). Principal Sub- Court, Tindivanam, in M.C.O.P. 154/87 the compensation amount of Rs.86,555/- for minor 1st Petitioner Bharathi and an amount of Rs.86,555/- to minor 2nd Petitioner Anithi (totaling Rs.1,73,110/-) received and invested in Karur Vysya Bank, Tindivanam for 3 years. It was entered in the Investment Register in Sl.No.153/2003 and 154/2003. Subsequently the above F.D.Rs were renewed for another three years in the same bank and entered in Sl.No.299/2006 and 300/2006. But once again the same amount (Rs.86,555+ Rs.86,555) was invested in the I.C.I.C.I Bank, Tindivanam. Both banks are not nationalized banks and investments were made in violation of the Hon'ble High Court, Madras circular. Later an order was passed to send for the amount and the Principal was ordered to be credited in the C.C.D. Account and the interest to be forfeiture to Government. Since the amount is concerned with compensation to claimants forfeiture is illegal. Thus you manipulated, tampered and created false entries and caused loss to the claimants. Also they have created entries to pave way for malpractice. Thus you are liable to be proceeded with under Rule 17(b) of the Tamil Nadu Civil Services (D&A) Rules.*

***Charge VII**:-*

That you the said Tr.K.Venkatesan formerly Junior Assistant, Principal sub Court, Tindivanam and now Assistant, I Additional District Munsif Court, Kallakurichi, while discharging duty as Junior Assistant (Sherishtadar Assistant). Principal Sub-Court, Tindivanam, have failed to have thorough check before obtaining orders for payment, by verifying the records whether corresponding entries were made in the CC.D. Register. Thus you have passed way for all malpractices in the accounts branch.

Sl.No.	M.CO.P. NO.	C.C.D.NO. & DATED	AMOUNT AND DATE OF PAYMENT TO CLAIMANT	AMOUNT INVESTED IN BANK AGAINST WITH DATE AND NAME OF THE BANK
1.	295/1993	92/24/04/2002	1,07,893/- ON 12/06/2002	SBI, Alampoondi Rs.1,07,893/- 24/07/2003
2.	935/1998	353/06/08/2008	40,000/- ON 16/09/2002	SBI, Alampoondi Rs.40,000/- 24/07/2003
3.	621/1997	539/29/03/2002	3,850/- ON 13/11/2002	SBI, Alampoondi Rs.3,850/- 24/07/2003
4.	1423/1999	627/21/10/2002	5,000/- ON 19/11/2002	Punjab National Bank, Pombur on 01/08/2003
5.	1044/2000	628/21/10/2002	5,000/- ON 19/10/2002	Punjab National Bank, Pombur on 01/08/2003
6.	1412/1999	647/25/10/2002	10,200/- ON 19/11/2002	Karur Vysya Bank, Tindivanam on 24/07/2003

”

3. The petitioner submitted his explanations denying the Charges.

Not satisfied with the explanations, the Disciplinary Authority appointed an Inquiry Officer, who in turn conducted an inquiry by affording opportunity to the delinquent Officer. The petitioner participated in the process of inquiry and defended his case. Final inquiry report has been submitted holding that the Charges 2, 4 and 7 are held proved against the writ petitioner. Enclosing the copy of the Inquiry Report, a Show Cause Notice was issued by the Disciplinary Authority, seeking further objections from the delinquent Officer on the findings. The petitioner submitted his objections which was considered by the Disciplinary Authority and a final order was passed imposing the punishment of stoppage of increment for four years with cumulative effect and stoppage of further promotion. The petitioner preferred an appeal before the first respondent which was rejected. Thus, the present writ petition came to be instituted.

4. The learned Senior counsel, Mr.V.Raghavachari, appearing on behalf of the petitioner would mainly contend that the proved Charges are lapses and negligence and the said lapses and negligence were rectified. Therefore, the punishment of stoppage of increment with cumulative effect is harsh and excessive. It is contended that it is a mistake committed while

performing the duty and certain erroneous entries are made in the registers. Such errors were rectified by the writ petitioner and therefore, the punishment is not in proportionate with the gravity of the Charges held proved.

5. It is further contended that other co-delinquent, namely Sherishtadar, Bench Clerk and Junior Assistant, were exonerated from the allegations and the petitioner alone has been discriminated. Thus, the order of punishment and appellate order are to be set aside.

6. The learned standing counsel Mr.M.Kempraj, appearing on behalf of the respondent, would oppose by stating that the Charges are relating to misappropriation of Government funds. The proved Charges are grave in nature. It is not as if certain routine lapses are held proved. The intention to embezzle the Government money has been established during the course of inquiry. Thus, the punishment cannot be construed as excessive and therefore, the writ petition is to be rejected.

7. We have considered the rival submissions made on behalf of the

parties to the lis on hand. Admittedly, the Charge Nos. 2, 4, and 7 are held proved against the writ petitioner. In this context, it is relevant to consider the findings of the Inquiry Officer. Regarding Charge No.2, the Inquiry Officer has considered the documents and evidences available on record and the findings of the Inquiry Officer against Charge No. 2 reads as under:

> *"20. From the discussion made above, it can be concluded that E.P Clerk Kaleeswaran who has taken the E.P. on file has done it with Sherishtadar Assistant Venkatesan. As it relates to E.P. section. MCOP assistant Vinayagam is in no way connected. Sherishtadar Krishnamurthy was not working i.e. on 4.4.2006 on which date correction has been made. Hence E.P. Clerk Kaleeswaran has made endorsement in mcop.666/01, Knowing the fact that entire amount in that case has been withdrawn as he has gone through the bundle and F.S. was already recorded. Thiru.K. Venkatesan has made entries in the relevant register Ex.P4 on 4.4.2006 as per office order. Delinquents took the defence that they have repaid the amount through Lodgment schedule Ex.D5 and memo of Advocate Ex.D6 on 7.11.2008. Because of E.P.Clerk Kaleeswaran and Sherishtadar Assistant Venkatesan a sum of Rs.2,30,727/- which belongs to petitioner in MCOP.246/86 has been wrongly paid to petitioner in*

MCOP.666/01 as petitioner in MCOP.246/86 has mistakenly recorded as Full Satisfaction. As the amount has been deposited by the petitioner in MCOP.666/01, there is no interest loss to the petitioner in MCOP.246/86. There is also no loss to Government. But handing over the amount of petitioner in one case to petitioner in another case is a serious negligent act, even if it has been repaid with interest. Hence Sherishtadar Assistant K.Venkatesan has made the correction in the Ex.P4 Register by scoring MCOP.246/86 and writing it as MCOP.666/01 due to which this irregularity has erupted. Only after he would have made the endorsement about availability of the amount in the cheque application the other staff Kaleeswaran would have made the endorsement for payment. The act committed by Venkatesan is grave and that of Kaleeswaran is somewhat less than that.

Anyhow both Venkatesan and Kaleeswaran are responsible for this wrong payment. Hence Charge proved against delinquents Venkatesan and Kaleeswaran and not against delinquents Sherishtadar Krishnamoorthy and Bench Clerk Vinayagam."

8. Regarding Charge No.4, findings of the Inquiry Officer reads as

under:

“50. On perusal Sl.Nos.18 and 19 of Ex.P20 & Ex.P23 C.C.D. Register entries, it can be very well seen that entries have been made by one and the same person. Sl.Nos.18 and 19 in Ex.P20 entry has been made on 17.4.2003 stating that two minor amounts of Rs.86,555/- each has been deposited in Karur Vysya Bank, Tindivanam. Again adjacent to Ex.P20 entry Ex. P23 entries have been made on 20.6.2003 stating that same amounts have been deposited in ICICI Bank. At the time of making the entry Ex.P23, delinquent Venkatesan definitely should have seen the deposit made on 17.4.2003. Knowingly he deposited the same amount in another bank ICICI Bank within 2 months and makes entry in SI.Nos. 18 & 19 of Ex.P23. From the discussion made above it is concluded that delinquent Venkatesan has made double payment in MCOP.154/87. i.e. he has deposited in Karur Vysya Bank, Tindivanam on 17.4.2003 and again deposited the same amount on 20.6.2003 in ICICI Bank Tindivanam. But delinquent has taken the defence that he has send for the second payment in ICICI Bank and has credited the same in the C.C.D. as per Office order Ex.D4. It is a true fact that the amount has been credited in C.C.D. on 13.7.2010, after nearly 7 years and 3 months. Delinquent cannot deposit the government money to his whims and fancies in the Bank and can get rid of the charge merely because he credited the amount with

interest in C.C.D. It is a clear case of negligence. Hence this charge is proved against delinquent Venkatesan."

9. Relating to Charge No.7, the findings of the Inquiry Officer reads as under:

"53. For disbursing the amounts either to the party or to the counsel entries have been made in the repayment register (37 register) and the entries in the 37 register have been marked as Ex.P35 to Ex.P40 respectively as shown above. Similarly after making payments as stated above once again the concerned staff has obtained order from Principal Sub Judge for depositing in a bank. The following entries in the ledger would show that the amounts mentioned in Ex.P35 to Ex.P40 have been deposited in the banks mentioned as under as per Ex. P41 to. Ex. P46 respectively.

SI.No.	MCOP.No.	Amount	Bank	Ledger page	Exhibit
1	295/93	1,07,893/-	State Bank of India, Alampoondi	67	P41
2	935/98	40,000/-	State Bank of India, Alampoondi	76	P42
3	621/97	3,850/-	Punjab National Bank, Pombur	83	P43
4	1423/99	5,000/-	Punjab National Bank, Pombur	86	P44
5	1044/00	5,000/-	Punjab National Bank, Pombur	86	P45
6	1412/99	10,200/-	Punjab National Bank,	87	P46

Sl.No.	MCOP.No.	Amount	Bank	Ledger page	Exhibit
			Pombur		

54. As stated in the above column Ex.P41 to Ex.P46 entries have been made in the ledger stating that the same amounts which has been disbursed either to the party or to the counsel has been once again deposited in Bank as mentioned in the above table. The same fact is once again proved by the Office order Ex.P47 dated 12.7.2004 issued by Principal Sub Judge. As per Ex.P47 the amounts deposited in the above 6 banks have been sent for and the interest have been forfeited to the Government and the principal amount in the C.C.D. account. Three challans relating to this case, Ex.P48 series has been issued and the interest amount has been deposited in the banks. Hence from the evidence available on record, Ex.P35 to Ex.P40 would show that in all the above 6 cases the amounts have been disbursed either to the parties or to the Advocate even in 2002. But once again the same amounts relating to the same case has been deposited in bank as per Ex.P41 to Ex.P46. So Ex.P35 to. Ex.P46 would prove that after disbursing the amounts to the parties, the Government fund have been once again deposited in the banks mentioning the same MCOP Nos. As per the office order Ex.P26 dated: 8:4.2002 delinquent Venkatesan was allocated to maintain the ledger (35 Register) 35, *C.C.D. register 36, Repayment Register 37 investment register and cheque book. So as per the office order Ex.P26 delinquent Venkatesan, knowing the fact that the amounts involved in all the 6 cases have already been handed over to the parties or Advocates has once again made entries in the ledge as the same amount has been deposited in bank. Hence delinquent K.Venkatesan has acted negligently and has deposited the Government funds in the bank negligently.*

55. Delinquent Venkatesan claimed that he has not misappropriated any amount. He has only carelessly deposited the C.C.D. amount in the bank and the same has been sent for and the interest has been forfeited to the Government and the balance has been deposited in the C.C.D. account. It is true that delinquent K.Venkatesan has not misappropriated the amount but at the same time he cannot deposit the Government amount in the bank to his whims and fancies. Hence it is concluded that delinquent Venkatesan has acted negligently and has deposited the C.C.D. amounts in the bank to his whims and fancies. Hence this charge is proved against delinquent K.Venkatesan."

10. The scope of Judicial Review to interfere with the quantum of punishment is undoubtedly restricted. High Court, in exercise of the

powers of the judicial review, cannot substitute the punishments. In exercise of the judicial review, High Court must restrict its review to determine whether :

(i) the Rules of Natural Justice have been complied with,

(ii) the findings of the misconduct is based on some evidence,

(iii) the statutory rules, governing the conduct of the disciplinary inquiry, have been absolved,

(iv) whether the findings of the disciplinary authority suffer from perversity,

(v) the penalty is disproportionate to the proven misconduct.

11. In the present case, undoubtedly, the Charges framed are serious in nature. It cannot be construed as mere lapse or negligence. Factual inferences are drawn during the course of inquiry by the Inquiry Officer. The findings of the Inquiry Officer reveals that several such instances are noticed while dealing with the compensation amount in Motor Accidents Claims Tribunal. If transfer of money is made from one account to different account, the same cannot be construed as an ordinary lapse. However, in the present case, no further investigation has been undertaken. We are of the opinion that further investigation ought to have been conducted by the competent authorities to cull out the truth regarding large

scale irregularities or illegalities.

12. The Rules of Natural Justice has been followed in the present case. There is no complaint by the delinquent Officer that the Rules of Natural Justice has been violated. The delinquent Officer participated in the process of inquiry and defended his case at all stages. Thus, we do not find any infirmity in the matter of compliance of Rules of Natural Justice.

13. The findings of the Inquiry Officer in his report, as extract as above, would be sufficient to form an opinion that the misconducts are held proved based on some evidence.

14. Strict proof in departmental disciplinary proceedings are not required. Preponderance of probabilities are enough to punish a pubic servant under the the Discipline and Appeal Rules. Factual inferences can be drawn by the authorities while evaluating the documents available during the course of domestic inquiry. Thus, the procedures as contemplated for criminal trial and departmental disciplinary proceedings are distinct and different. High standard of proof is required to convict a person under criminal law. However, no such strict proof is required in departmental disciplinary proceedings.

15. Since the findings of misconduct is based on some evidence, we do not find any perversity in considering the issues. Consequently, the findings of the disciplinary authority, based on the findings in the inquiry report, do not suffer from perversity.

16. Finally, regarding the proportionality, we are of the opinion that in the present case, more than one transactions were identified. Though, further investigations ought to have been conducted, it was not conducted for the reasons best known to the authorities. There are large scale allegations in the matter of dealing with the MCOP compensation amount across the state of Tamil Nadu. Whenever, such cases are identified, larger implications are to be investigated by the competent authority to finding out further irregularities or illegalities. On some occasions, large scale collusions are also traceable. In the present case, transfer of accident compensation amount from one amount to another account and repaying the same after a lapse of 7 years itself raises a doubt and there is a possibility of drawing adverse factual inferences against the delinquent officers. No doubt, the proved Charges are grave in nature. It cannot be construed as a simple lapse occurs during the performance of ordinary duties. When the Court employees are authorised to deal with the

compensation amount in Motor Accident Cases, they are always expected to be cautious and transparent and maintain the records in accordance with the procedures as contemplated. Therefore, such mistakes committed, on more than one occasion cannot be viewed leniently.

17. We are of the opinion that the punishment of stoppage of increment, imposed on the petitioner, itself is a lenient view taken. In such nature of cases, further investigations are imminent, which was not conducted. In future, if any such lapses or negligence are noticed, then the learned Principle District Judges are expected to conduct further investigation to find out the larger implications, if any, in such financial matters regarding transfer of compensation, deposit of money etc., Thus, we are unable to accept the arguments that the punishment is not proportionate with the gravity of the proved Charges. Thus, we have arrived at an irresistible conclusion that the petitioner has not established any acceptable ground for interference.

18. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(S.M.S.J.,) **(K.R.S.J.,)**
21.03.2024

Index : Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
(sha)

To

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2. The Principal District Judge,
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