IN THE HIGH COURT OF JUDICATURE AT MADRAS

| Reserved on : 31.07.2024 | Pronounced on : 27.09.2024 |
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CORAM

**THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR**

**W.P.No.28523 of 2021**

P.Dharani ... Petitioner

Vs.

The State of Tamil Nadu,
Represented by its Additional Chief Secretary to Government,
Home (Transport – II) Department,
Secretariat, Chennai – 600 009 ... Respondent

**Prayer:** Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the respondent in connection with the impugned order passed by him in G.O (2D) No.90, Home (Transport-II) Department dated 15.04.2021 against the petitioner and quash the same.

For Petitioner : Mr.K.M.Ramesh, Senior Counsel for Mr.A.Ganesan

For Respondent : Mr.M.Murali, Government Advocate

**O R D E R**

The petitioner herein was appointed as 'Motor Vehicle Inspector, Grade-II' in the Transport Department of the State of Tamil Nadu on 18.01.1988 and thereafter promoted to the post of 'Motor Vehicle Inspector, Grade I' on 05.09.1994 and he was further promoted to the post of 'Regional Transport Officer' in Vellore District on 23.08.2008. While he was working as such, on 29.10.2010 between 17:45 hrs and 22:15 hrs, a joint surprise check was conducted by the Inspection Cell Inspector, District Inspection Cell Office, Vellore and officials of the Vigilance and Anti-Corruption, Vellore Detachment, resulting in seizure of unclaimed and unaccounted cash totalling to a sum of Rs.85,680/-. Thereafter, the petitioner was considered for further promotion to the post of 'Deputy Transport Commissioner' and was promoted as such on 12.08.2016 and posted in Tirunelveli District. While the petitioner was due to retire from service on attaining the age of superannuation on 30.06.2017, the petitioner was placed under suspension through proceedings dated 29.06.2017 and he was not allowed to retire from service till the enquiry into the charges that are pending against him are concluded and final orders are passed by the competent authorities. It is thereafter, the petitioner approached this Court by filing W.P.No.30135 of 2017, questioning the action of the respondents in not allowing him to retire from service and this Court, after taking into consideration the fact that the enquiry was already initiated against the petitioner in respect of the incident that took place on 29.10.2010, by an order dated 23.11.2017, directed the Tribunal for Disciplinary Proceedings to complete the enquiry within a period of six months. It is thereafter, the Tribunal for Disciplinary Proceedings framed identical charges against the petitioner and two others namely Mr.Kaliyappan and Mr.A.Manickam, who were working as 'Motor Inspector, Grade-I, Vellore District'. The charge that is framed against the petitioner herein reads as under:-

> *“ That, actuated by corrupt and dishonest motive and in abuse of your (Accused Officer-1, Accused Officer-2 and Accused Officer-3) official position and authority, you (Accused Officer-1) while working as Regional Transport Officer, Vellore, you (Accused Officer-2) while working as Motor Vehicles Inspector, Gr.I, Regional Transport Office, Vellore and you (Accused Officer-3) while working as Motor Vehicles Inspector, Gr.I, Regional Transport Office, Vellore obtained illegal gratification other than legal remuneration in as much as during a joint surprise check conducted by the Inspection Cell Inspector, District Inspection Cell Office, Collectorate, Vellore and officials of Vigilance & Anti-Corruption, Vellore*

*Detachment, on 29.10.2010 between 17.45 hrs and 22.15hrs, which resulted in seizure of unclaimed and unaccounted cash totaling to sum of Rs.85,680/- (Rupees Eighty five Thousand six Hundred and Eighty only) which was seized from (i) office premises a sum of Rs.27,730/- (i.e., Rs.26,700/- from Rack near B2 seat (Accused Officer A. Jayasankar) and Rs.1030/- from the window of office. (ii) An unaccounted cash of Rs.46,910/- from Private persons / Touts namely 1.Tvl. I.S. Ravichandran Rs.1250/-, 2.V. Janardhanan-Rs.3830/-, 3.S.Mohammed Sherif- Rs.430/-4. R. Senthilkumar-Rs.1390/-, 6.G. Thanikkachalam-Rs.9320/-, 5. M. Nagarajan-Rs.3380/-, 7.G.K.Saravanan-Rs.8565/-, 8.S. Mohandoss-Rs.13,445/-, 9. S. Mohideen-Rs.2090/-, 10. J. Vinodth-Rs.1450/- and 11. M. Suresh Babu-Rs.1760/- respectively who were present and handling the official documents inside the office (iii) An unaccounted cash of Rs.11,040/- from office staff l.e. Rs.2300/- from V. Dhanalakshmi (A.O) Rs.1550/- from D. Sujatha (AO), Rs.3040/- from K.Varadhan (AO), Rs.3750/- from Data Entry Operator Ahel Gnanaraj and Rs.400/- from Date Entry Operator Sureshkumar.*

*For the presence and the seizure / recovery of the above said amount of Rs.85,680/- (Rupees Eighty five* *thousand six hundred and eighty only) you A.0.1, A.0.2 and A.O.3 could not satisfactorily account for.*

*Thereby you (Accused Officer-1, Accused Officer-2 and Accused Officer-3) have failed to maintain absolute integrity and devotion to duty and violated Rule 20 of the Tamil Nadu Government Servants Conduct Rules, 1973."*

Thereafter, the Tribunal for Disciplinary Proceedings, after having conducted a detailed enquiry in TDP Case No.1 of 2018, submitted its report to the Government and in turn, a copy of the same was communicated to the petitioner through Letter dated 24.01.2020 and the petitioner was afforded an opportunity to make further representation on the findings of the Enquiry Officer on the charge levelled against the petitioner. Accordingly, the petitioner submitted his representation on 09.03.2020 and thereafter, on considering the same, the 1st respondent passed orders in G.O (2D). 90, Home (Transport-II) Department, dated 15.04.2021, imposing the major punishment of compulsory retirement on the petitioner. It is aggrieved by the said order dated 15.04.2021, the petitioner approached this Court by filing the present Writ Petition.

2. Heard Mr.K.M.Ramesh, learned Senior Counsel for the petitioner

and Mr.M.Murali, learned Government Advocate appearing for the respondents and perused the entire material on record.

3. As already noted above, the charge that is framed against the petitioner and two other delinquent employees namely Mr.Kaliyappan and Mr.A.Manickam, who worked as 'Motor Inspector, Grade-I, Regional Transport Office, Vellore District' are verbatim identical. The charge that is framed against the petitioner is already extracted herein above. The other two delinquent employees, who faced the very same charge like the petitioner were imposed with a punishment of “stoppage of increments for a period of three years with cumulative effect”. Aggrieved by the said order of punishments imposed on the said delinquent employees in G.O (2D) No.48, Home (Transport-II) Department, dated 14.02.2022 and G.O (2D) No.49, Home (Transport-II) Department, dated 14.02.2022, the said two delinquent employees approached this Court by filing W.P.Nos.28749 and 28750 of 2022. Both the Writ Petitions were dismissed by a learned Single Judge of this Court by a common order dated 11.08.2023.

4. Though Sri.K.M.Ramesh, learned Senior Counsel argued the matter at length by drawing the attention of this Court to the minute particulars,

including the various questionair that were considered by the Enquiry Officer and also drawn the attention of this Court to the report of the Enquiry Officer on merits of the charge and the value of the evidence that was adduced during the process of enquiry, on having been confronted with the findings that were recorded by this Court in W.P.Nos.28749 and 28750 of 2022 of the very same evidence and also the view expressed by this Court about the scope of interference by this Court in such matters, especially in the context of the findings that were already rendered by this Court, rightly focussed his arguments on the ground that the petitioner herein was treated differentially than the other two delinquent employees on the ground that the said two delinquent employees were imposed with the punishment of "stoppage of increment for a period of three years with cumulative effect" on the very same charge that was framed against the petitioner, but the petitioner herein was imposed with the punishment of compulsory retirement. Thus, contended that the punishment that was imposed on the petitioner is liable to be modified to that of the "stoppage of increments for a period of three years with cumulative effect" on par with the other two delinquent employees.

5. On the other hand, Sri.M.Murali, learned Government Advocate contended that this Court cannot go into the merits and demerits of the

charges or the findings thereon and also cannot act as an Appellate Authority. He also further contended that the Enquiry Officer has gone very detail into the matter and basing upon the material available on record, and on the principle of preponderance of probability, arrived at a conclusion holding that the charge framed against the petitioner was proved and the same was rightly accepted by the 1st respondent. He also further contended that the petitioner herein, being the head of the Regional Transport Office, where the joint surprise check took place, is bound to be held responsible for all the activities of the entire office, and it is only because of the lenience and connivance of the petitioner, the entire staff working in the said office could able to involve in unauthorized malpractices. Therefore, he tried to justify the punishment of compulsory retirement on the petitioner.

6. No doubt the scope of interference in the matter of Disciplinary Proceedings by this Court in exercise of jurisdiction under Article 226 of the Constitution of India is very limited and it is also settled law that this Court cannot act as an Appellate Authority to reverse the findings recorded by the Enquiry Authority and Disciplinary Authority.

7. As already noted above, the very same charge is framed against the

petitioner and two other delinquent employees and a common enquiry was conducted by the Tribunal for Disciplinary Proceedings and a common enquiry report was submitted to the 1st respondent. The entire material, which is sought to be relied upon by the learned counsel for the petitioner in the present proceedings was already considered by a learned Judge of this Court in W.P.Nos.28749 and 28750 of 2022 and also recorded certain findings on the same. It would be appropriate to note the said findings recorded by the learned Judge, which reads as under:-

> *9. It is not in dispute that on 29.10.2010 between 17.45 hrs and 22.15 hours a surprise check was conducted by the Inspector of the District Inspection Cell Inspector along with officials of the Directorate of Vigilance and Anti-corruption in the office of the RTO, Vellore, where the petitioners were working as Motor Vehicles Inspector Grade-I and District Special Cell , which resulted in the seizure of unclaimed and unaccounted cash totalling to a sum of Rs.85,680/-. Though learned senior counsel for the petitioner submitted that there is a discrepancy in respect of the amount seized, it was only a total mistake. The amount actually recovered under the seizure mahazar was only Rs.85,680/- and not Rs.98,390/- . To this effect, a rectification mahazar was also prepared in which the*

*petitioners have also affixed their signature. Therefore, the petitioners cannot now take advantage of such calculation error.*

*10. It is seen from the records that during surprise check, a sum of Rs.26,7000/- which was found hidden in between the pages of the registers maintained by the office and a sum of Rs.1,300/- which was found scattered nearby window at the outside, were seized. The amount seized from the rack near B2 was proved to be unaccounted and the amount recovered from nearby window at the outside was found to be unclaimed. As also, certain amounts were recovered from some of the staff members and they were also departmentally proceeded with. The presence of 11 outsiders at a particular point of time in the office was also found to be one of the strong circumstances against the petitioners. The tribunal found that those outsiders were none other than touts. The tribunal discarded their evidence for want of acceptable evidence that they came to the office at that particular time to avail the services of the department. On considering the evidence, both oral and documentary, adduced on either side, the tribunal applying rule of preponderance of probabilities found* *that those unlawful and illegal money transactions must have taken place only with the knowledge of the petitioners and the RTO who were superior officers in the office and held that the charges were proved. The disciplinary authority, after considering the available materials independently, including the further representations of the petitioners, concurred with the findings of the tribunal and proceeded to impose the punishment of stoppage of increment for a period of three years with cumulative effect.*

*11. The contention that no amount was seized from either of the petitioner cannot be countenanced as strict rules of evidence as applicable in a criminal trial are not applicable in Disciplinary Proceedings. The Supreme Court has been consistently held that the writ courts should be slow in reappreciating the entire evidence in the Disciplinary Proceedings.*

In the light of the above findings already recorded by a learned Single Judge, it is not open for this Court to re-examine the same, especially in the context of the fact that the said order dated 11.08.2023 passed in the above writ petitions has attained finality.

8. Then coming to the contention of the learned counsel for the

petitioner on the ground of discrimination in the matter of imposing penalty is concerned, it is noteworthy to consider the submissions made by the learned Government Advocate as noted above.

9. It is not in dispute that the petitioner is the head of the Regional Transport Office, Vellore and he is also physically available at the time of the joint surprise check conducted on 29.10.2010 and the recovery and seizure of an amount of Rs.85,680/- is unclaimed and unaccounted money recovered from the office of the Regional Transport Office. Had the petitioner, being head of the office, discharged his duties in the manner expected of him, there would not have been any scope for such illegal or unauthorized activities in the said office. Thus, it is the petitioner who gave scope for such unauthorized and illegal activities in his office and failed the take appropriate steps to prevent the same. The 1st respondent also having passed the impugned order in G.O (2D) No.90, Home (Transport-II) Department, dated 15.04.2021 verbatum as that of the orders passed in respect of the other two delinquent employees in G.O (2D) No.48, Home (Transport-II) Department, dated 14.02.2022 and G.O (2D) No.49, Home (Transport-II) Department, dated 14.02.2022 and has consciously taken note of the fact that the petitioner

herein is the head of the office in question in Paragraph No.6 of the impugned order, and then came to the conclusion that the petitioner deserves the punishment of compulsory retirement from service and accordingly, imposed the said punishment. Therefore, the contentions raised on behalf of the learned counsel for the petitioner on the ground of discrimination in the matter of imposing the punishment does not merit consideration and is liable to be rejected.

10. In the light of the above, this Court does not find any merit in the Writ Petition and the same is accordingly dismissed. No costs. Connected Miscellaneous Petitions, if any shall stand closed.

**27.09.2024**

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Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No

To

The Additional Chief Secretary to Government of Tamil Nadu,
Home (Transport – II) Department,
Secretariat, Chennai – 600 009

**MUMMINENI SUDHEER KUMAR, J.**

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**Pre-Delivery Order made in**
**W.P.No.28523 of 2021**

**27.09.2024**