



W.P. (MD) No. 6324 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 04.01.2024

PRONOUNCED ON : 24.01.2024

CORAM:

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

W.P(MD).No.6324 of 2009

S.Paulraj

...Petitioner

Vs

1.The Principal District Judge
Virudhunagar District
at Srivilliputhur

2.The Registrar General
High Court Judicature at Madras
Chennai

...Respondents

Prayer : Writ Petition has been filed under Article 226 of Constitution of India to issue a writ of Certiorarified Mandamus, to call for the records and proceedings of the second respondent in R.O.C.No.894/2006/C-1 dated 01.11.2007 confirming the proceedings of the first respondent dated 19.12.2005 and quash the same and directing the respondents to restore the petitioner's pay to its original position and also to give the arrears of increments due to the petitioner with all consequential benefits.



W.P. (MD) No. 6324 of 2009

For Petitioner : Mr.R.V.Rajkumar

For Respondents : Mr.D.Venkatesh

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ORDER

(Made by **R.VIJAYAKUMAR,J.**)

The present writ petition has been filed by the Head Clerk of Principal District Munsif Court, Srivilliputhur challenging the order of imposition of punishment of stoppage of two increments with cumulative effect.

2.The facts leading to the filing of this writ petition are as follows:

(i)The writ petitioner was working as Head Clerk at Principal District Munsif Court, Srivilliputhur in the year 2002. On 28.10.2002, one Advocate by name Mr.G.Ramasamy had filed four complaints before the said Court. Those complaints were not taken on file and as per the endorsement in C.R.19 Register, they were returned on 31.10.2002. When the said counsel had approached the officer for taking back his returned complaint, he found that two of the complaints were missing and the original pro-notes annexed to the other two complaints were also missing. Hence, he lodged a complaint to the Principal District Munsif, Srivilliputhur on 31.12.2002.

(ii)Based upon the said complaint, a memo was issued to the writ petitioner on 16.06.2003 calling for explanation. The writ petitioner had



W.P. (MD) No. 6324 of 2009

submitted his explanation on 02.07.2003. Not being satisfied with the said explanation, a charge memo was issued to the writ petitioner on 30.09.2003 under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules. In the charge memo the petitioner was charged with the misconduct of gross dereliction of duty for missing of two complaints and missing of two pro-notes in other two complaints. The petitioner had submitted his written statement of defence contending that the Assistant Head Clerk one S.Renganayaki who had been deputed from the Additional District Munsif Court, Srivilliputhur was in-charge of return and safe custody of the complaint. In fact, after returning the complaint on 31.10.2002, he was on leave between 01.11.2002 to 04.11.2002. Hence, he was not responsible for missing of two complaints or the pro-notes annexed to the other two complaints.

(iii)The Additional District Munsif, Srivilliputhur was appointed as the Enquiry Officer. After considering the oral and documentary evidence let in on either side, the Enquiry Officer arrived at a finding that no other employee was instructed to handle the complaint copies as contended by the delinquent.

(iv)The delinquent alone had verified the complaint and made the return endorsement. The Enquiry Officer further found that the delinquent has not chosen to examine himself or any one else to establish that the complaint copies



W.P. (MD) No. 6324 of 2009

were handed over to the Assistant Head Clerk. The Enquiry Officer further relied upon the evidence of the learned District Munsif and arrived at a finding that no one was placed in-charge of Assistant Head Clerk post by way of oral directions as contended by the delinquent.

(v)The Enquiry Officer further found that till a complaint was lodged by the concerned counsel on 31.12.2002, the delinquent had not brought to the notice of the Presiding Officer with regard to the missing of the plaint and the pro-notes. Based upon the said findings, the Enquiry Officer found that the delinquent has guilty of misconduct. The first respondent herein who is the Disciplinary Authority after considering the Enquiry Report in detail had imposed a punishment of stoppage of two increments with cumulative effect on the writ petitioner by his proceedings dated 19.12.2005.

(vi)Challenging the said punishment, the petitioner had filed an appeal before the second respondents herein. The second respondent under the impugned order dated 01.11.2007 has confirmed the order of punishment imposed by the first respondent. Challenging these two orders, the present writ petition has been filed.

3.Contentions of the learned counsels:

(i)The learned counsel appearing for the writ petitioner had contended



W.P. (MD) No. 6324 of 2009

that the Disciplinary Authority as well as the Appellate Authority have not taken into consideration the fact that one Renganayaki was placed in-charge as Assistant Head Clerk during the relevant point of time from Additional District Munsif Court, Srivilliputhur. After returning the complaints on 31.10.2002, he had gone on leave for 5 days and therefore, he was not aware of the alleged missing of the complaint or the missing of the suit pro-notes.

(ii) The learned District Munsif, Srivilliputhur alone had issued a charge memo and thereafter, he himself had conducted the enquiry and has also appeared as a witness in the enquiry proceedings. Therefore, the entire enquiry is vitiated.

(iii) Only the first respondent is the appointing authority and therefore, the charge memo issued by the District Munsif, Srivilliputhur is without jurisdiction and therefore, all further proceedings are liable to be set aside. The documents that were relied upon by the Enquiry Officer were not served upon the delinquent/writ petitioner. The authorities have not properly appreciated inconsistency between the complaint and the deposition of PW1 and PW2

(iv) The Head Clerk Assistant namely Renganayaki and Jesudas were arrayed as a delinquent along with the writ petitioner. However, one Chinnappa who was in-charge in the petitioner's place during his leave period between



W.P. (MD) No. 6324 of 2009

01.11.2002 to 04.11.2002 was not at all examined.

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(v) DW1 and DW2 have categorically deposed that it is the duty of the Assistant Head Clerk to have the safe custody of the returned bundles and to make an endorsement in C.R.19 Register. Therefore, the petitioner who is the Head Clerk is no way responsible for the alleged missing of the plaint and the pro-note. Hence, the learned counsel for the petitioner prayed for setting aside the punishment imposed upon the petitioner.

4. Per contra, the learned counsel appearing for the respondents had contended that the evidence of the learned District Munsif, Srivilliputhur would clearly reveal that no one was placed in-charge as an Assistant Head Clerk at the relevant point of time. The filed complaints were verified only by the delinquent and he alone had made an endorsement with regard to the return of the plaint. He was responsible for safe custody of the returned plaint. Therefore, the Disciplinary Authority as well as the Appellate Authority were right in arriving at a finding that the petitioner has committed gross dereliction of duty and has imposed appropriate punishment upon the writ petitioner. Hence, he prayed for dismissal of the writ petition.

5. We have carefully considered the submissions made on either side and perused the material records.



W.P. (MD) No. 6324 of 2009

WEB COP 6.Discussion:

(i) It is not in dispute that the writ petitioner was working as Head Clerk of Principal District Munsif Court, Srivilliputhur at the relevant point of time. An Advocate by name Mr.G.Ramasamy had filed four complaints on 28.10.2002. Out of the said four complaints, two complaints went missing and the original pro-note annexed to the other two complaints were also found missing.

(ii) It is contended on the side of the delinquent that only the Assistant Head Clerk is responsible for making endorsement in the returned complaint as custody of the returned complaint. The Presiding Officer has been examined as Enquiry Officer side witness. He has categorically deposed that the Assistant Head Clerk post in the concerned Court was vacant and no other staff either Renganayaki or Jesudas was placed in-charge of Assistant Head Clerk post. Therefore, it is clear that during the relevant point of time, the writ petitioner alone was in-charge of verifying complaint, making entries in C.R.19 Register and safe custody of the complaint and the documents annexed to the complaint.

(iii) A perusal of the explanation submitted reveals that the counsel who had filed the complaint had made oral enquiry with delinquent on 21.12.2002 indicating the fact that another counsel by name Mr.Gurusamy is having the



W.P. (MD) No. 6324 of 2009

custody of two pro-notes that were filed along with the plaint. The explanation further points out that the said Advocate Gurusamy is calling upon the plaintiff's counsel to settle the matter having custody of two suit pro-notes. This explanation submitted by the writ petitioner would clearly reveal that the missing pro-notes have gone into the hands of an Advocate by name Mr.Gurusamy who is no way connected with the suit. Therefore, it is clear that the documents filed before the Court and which were in the custody of the writ petitioner have gone missing due to the gross dereliction of duty on the part of the writ petitioner.

(iv) From the explanation submitted by the writ petitioner, it could also be seen that he became aware of missing of the plaint copies and the pro-notes even on 21.12.2002. A written complaint was lodged by the plaintiff's counsel only on 31.12.2002. The delinquent has not made any complaint to the Presiding Officer with regard to the missing of pro-notes until a formal complaint was lodged by the plaintiff's counsel. Therefore, it is clear that the delinquent was responsible for missing of the plaint and the pro-note and hence, he has not chosen to bring it to the notice of the Presiding Officer.

(v) Though the learned District Munsif, Srivilliputhur is not the appointing authority, he is the immediate higher authority of the writ petitioner.



W.P. (MD) No. 6324 of 2009

It is settled position of law that the immediate higher authority is empowered to issue charge memo and conduct enquiry. However, major penalty could be imposed only by the Disciplinary Authority/ Appointing Authority. In the present case, the learned Additional District Munsif, Srivilliputhur has issued the charge memo and conducted the enquiry and submitted the report before the first respondent herein. The first respondent who is the Disciplinary Authority has considered the enquiry report and has imposed punishment of stoppage of two increments with cumulative effect. Therefore, the contention of the learned counsel for the writ petitioner that the learned District Munsif, Srivilliputhur has no jurisdiction to issue charge memo or conduct enquiry is not legally sustainable.

(vi) The petitioner was in-charge of custody of plaint and the documents annexed to the plaint and the said documents had gone missing which is a grave misconduct. Therefore, this Court does not find that the punishment of stoppage of two increments with cumulative effect imposed by the Disciplinary Authority and confirmed by the Appellate Authority are in any way disproportionate to the proved mis-conduct.



W.P. (MD) No. 6324 of 2009

WEB COP **7.Conclusion:**

In view of the above said facts, there are no merits in the writ petition.

The writ petition stands dismissed. No costs.

(D.K.K.J.,)

(R.V.J.,)

24.01.2024

Index :yes
Internet :yes
NCC : yes/no
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W.P. (MD) No. 6324 of 2009

To

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W.P. (MD) No. 6324 of 2009

**D.KRISHNAKUMAR, J.
AND
R.VIJAYAKUMAR, J.**

msa

Pre-delivery Order made in
W.P(MD).No.6324 of 2009

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