



W.A(MD) No.1371 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 05.12.2024

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

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1.The Director of Treasuries and Accounts,
(Now the Commissioner of Treasuries and Accounts)
Panagal Building,
Saidapet,
Chennai-15,
(Now at 3rd Floor,
Perasiriyar K.Anbazhagan Maaligai,
No.571, Anna Salai,
Nandanam, Chennai-35).

2.The Treasury Officer,
Thoothukudi,
Tuticorin District.

... Appellants / Respondents

Vs.

S.Murugesan

... Respondent / Writ Petitioner

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 16.03.2022 made in W.P.(MD)No. 19862 of 2016 and thereby allow the present writ appeal.



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For Appellants : Mr.K.Selva Ganesan
Additional Government Pleader
For Respondent : Mr.G.Thalaimutharasu

ORDER

(Order of the Court was made by **G.R.SWAMINATHAN, J.**)

The writ petitioner herein was working as junior assistant (security) in Sub Treasury, Kovilpatti, Tuticorin District. It was alleged that fraudulent ECS report with debit advice was sent to the State Bank of India, Kovilpatti Branch and a sum of Rs.5,38,363/- was credited to the respondent's personal bank account by manipulating the claim relating to one P.Latha, Tamil Pandit, Government Bharathiar Centenary Memorial Girls Higher Secondary School, Ettayapuram. The respondent had his personal savings bank account in the State Bank of India at Thoothukudi Main Branch. He was suspended vide proceedings dated 23.01.2013. Charge memo dated 16.04.2013 was issued. It contained as many as six articles of charge. The first charge read that on 23.11.2012, a sum of Rs.38,363/- was credited to the delinquent's personal bank account by manipulating the ECS file pertaining to the claim of the aforesaid P.Latha. The second charge was that the claim file of the said



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P.Latha was manipulated and it was made to appear that the claim was Rs.5,38,363/- instead of Rs.38,363/- and the additional amount of Rs. 5,00,000/- was also credited to the respondent's personal bank account. The remaining four articles of charge also are a fall-out of the charges 1 & 2. The said Latha was cited as a witness. The respondent was eventually removed from service vide order dated 31.12.2013 by the treasury officer, Thoothukudi. Questioning the same, the respondent filed an appeal before the Director of Treasuries and accounts, Saidapet, Chennai. The appellate authority also confirmed the order passed by the disciplinary authority and dismissed the appeal vide proceedings dated 25.01.2016. Challenging the same, the respondent filed W.P.(MD)No. 19862 of 2016. The writ petition was disposed of vide order dated 16.03.2022 by modifying the punishment of removal from service to one of reduction of rank for a period of one year. He was denied backwages by applying the principle “No Work No Pay”. Challenging the said order, this writ appeal came to be filed.

2. The learned Additional Government Pleader appearing for the appellants reiterated all the contentions set out in the memorandum of



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ground of writ appeal and called upon this Court to set aside the order passed by a learned single Judge and dismiss the writ appeal.

3. Per contra, the learned counsel appearing for the respondent submitted that the order passed by a learned single Judge does not call for interference. He pointed out that the respondent was a victim of circumstances. If really, the respondent had any intention to embezzle and misappropriate treasury funds, he would have definitely withdrawn the amount from his savings bank account. He had not done so. The amount transferred to his account remained intact. The respondent's defence is that he was not aware as to how the amount of Rs.5,00,000/- was credited to his account. The learned counsel drew our attention to the fact that the criminal prosecution initiated against the respondent ended in acquittal. Copy of the Judgment dated 17.06.2016 in C.C.No.14 of 2014 on the file of the Judicial Magistrate Court No.1, Kovilpatti has been enclosed in the typed set of papers. He added that non-examination of certain material witnesses is fatal to the case of the disciplinary authority. When the delinquent had pleaded that the assistant treasury officer was in the know of the entire transaction and that he was



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innocent, the said official ought to have been examined during enquiry.

His final contention is that the appellate authority had passed a non-speaking order. He called upon this Court to dismiss the writ appeal.

4. We carefully considered the rival contentions and went through the evidence on record. The case against the petitioner is one of embezzlement and misappropriation. In such cases, if the charge is held to be proved, the punishment can only be removal or dismissal from service. The question of modification will not arise at all. The learned single Judge having noted that the appeal preferred by the delinquent had been disposed of by a non-speaking order ought to have set aside the same and remanded the matter or in the alternative dealt with the matter on merits. Instead of doing so, the learned single Judge chose to modify the punishment of removal from service to one of reduction of rank for a period of one year. This is neither here nor there. If the writ petitioner was guilty, he deserved to be given nothing less than the capital punishment of removal from service. If he was innocent, he ought to have been exonerated. The writ court can interfere with the quantum of punishment and substitute a lesser punishment only under certain



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circumstances. Such circumstances are wholly absent in this case. The writ petitioner does not dispute that a sum of Rs.5,38,363/- was credited to his personal account. Such crediting would not have happened unless an improper ECS report with debit advice had been issued to the Kovilpatti Branch of State Bank of India. The writ petitioner does not dispute that a sum of Rs.38,363/- was subsequently credited to the account of Mrs.P.Latha who was cited as witness in the charge memo.

5. More than anything else, the writ petitioner admitted Charge No.1 set out in the charge memo dated 16.04.2013. Enquiry was conducted by the Assistant Treasury Officer, Tiruchendur. Copy of the report has been made available. It is seen therefrom that the writ petitioner had admitted both charges 1 & 2 during enquiry. When the writ petitioner had himself pleaded guilty, the enquiry officer in his report dated 02.08.2013 rightly rendered the finding of guilt in respect of all the six charges. The disciplinary authority in such circumstances also had no option but to pass an order of removal from service. It is true that the appellate authority's order is a non-speaking one. But then, all the facts leading to imposition of punishment have been set out in the



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appellate authority's order. In normal circumstances, we would have set aside the order passed by the appellate authority and remanded the matter to him for fresh consideration. Such a course of action need not be adopted in this case. This is because, it would be a useless formality. The delinquent in his explanation had admitted Charge No.1. During enquiry, he admitted both charges 1 & 2. Even before us, it is not disputed that a sum of Rs.5,38,363/- was credited from the treasury account to his personal account. We fail to understand as to how such transfer could have ever taken place. The writ petitioner was dealing with the relevant file. He cannot pat himself on his back by claiming that he had not withdrawn any amount. It appears that the fraudulent transfer was noticed immediately and therefore, the writ petitioner decided to play safe by not withdrawing any amount. In any event, the writ petitioner pleaded guilty to the charges and therefore, nothing remains to be considered further. The writ petitioner also cannot lay much store by the acquittal earned by him. It is well settled that acquittal in criminal case cannot always come to the rescue of the delinquent. The Judgment of acquittal was rendered only subsequently. The Hon'ble Supreme Court of India in the decision reported in *(1992) 4 SCC 711 (Nelson*



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Motis V. Union of India) had held that the scope of a criminal case is very different from that of a departmental disciplinary proceeding and an order of acquittal cannot conclude the departmental proceeding. The subsequent judgment of acquittal cannot dislodge or displace the finding of guilt arrived at in the departmental proceedings much earlier. Before the criminal court, the delinquent pleaded not guilty and claimed to be tried. During departmental enquiry, he admitted the charges framed against him. Therefore, we are not inclined to sustain the case of the respondent by referring to the Judgment dated 17.06.2016 made in C.C.No.14 of 2014 on the file of the Judicial Magistrate No.1, Kovilpatti. The materials on record clearly point to the fact that there was fraudulent transfer of funds from the treasury account to his personal savings bank account. In such circumstances, the disciplinary authority rightly imposed the punishment of removal from service. Interference with such a considered order was not at all warranted. The learned single Judge erred in substituting the punishment imposed on the writ petitioner. The order passed by the learned single Judge is set aside. The Writ Petition stands dismissed. The Writ Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.



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(G.R.S., J.) (R.P., J.)
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