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W.P. No. 9372 of 20



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.02.2025

PRONOUNCED ON : 10.03.2025

CORAM

**THE HON'BLE MR. JUSTICE R. SUBRAMANIAN
and
THE HON'BLE MR. JUSTICE G. ARUL MURUGAN**

W.P. No. 9372 of 2024
and
W.M.P. No. 10384 of 2024

S.Kanni

...

Petitioner

Vs.

1.Disciplinary Authority /
Hon'ble Principal District Judge,
Tiruvannamalai.

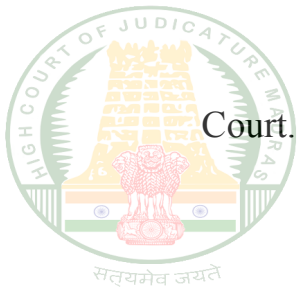
2.Hon'ble Judicial Magistrate No.II,
Tiruvannamalai.

3.Inquiry Officer /
Hon'ble Additional District Munsif,
Tiruvannamalai.

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Respondents

Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned final order passed by the first respondent vide his proceedings A.No./AW1 in D.P.No.4/2023 dated 30.10.2023 and quash the same and consequently, direct the first respondent to permit the petitioner to retire his service from 19.12.2022 along with all service benefits including to release all the retiral dues within a time frame as may be stipulated by this



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W.P. No. 9372 of 20



For Petitioner : Mr.V.P.Sengottuvel, Sr. Advocate,
for Mr.K.V.Muthu Visakan

For Respondents : Mr.Suhrith Parthasarathy

ORDER

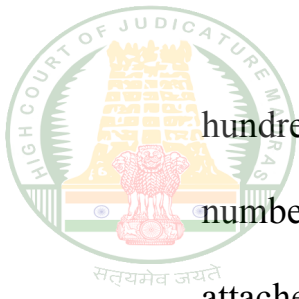
(Order of the Court was made by **G.ARUL MURUGAN, J.**)

This Writ Petition is filed challenging the order of the first respondent dated 30.10.2023, whereby the punishment of dismissal from service was imposed against the petitioner.

2. The petitioner was originally appointed as Night Watchman in the District Judiciary of Tiruvannamalai on 10.04.1982. In appreciation of his services, he was promoted to various positions including Peon, Record Clerk, Examiner, Junior Assistant, Assistant and Head Clerk. The petitioner had put in an unblemished service of 40 years and 7 months and was to attain superannuation on 28.02.2023.

3. However, by order dated 19.12.2022, the petitioner was placed under suspension on the ground that there was a shortfall in the amount remitted by him in the Treasury from the amount that has been collected by him as fine. The petitioner had submitted a reply on 21.12.2022 itself stating that there was a Lok Adalat and pre-sitting sessions in which, several

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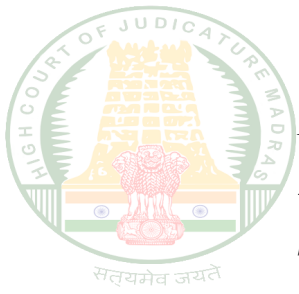


hundred cases were disposed of and further, due to the disposal of large number of cases, it was the practice in those days for the police constables attached to the concerned police station to collect the fine amount from individual accused and handover in a lump sum. It was his categorical submission that the alleged excess amount of Rs.12,900/- was not in his possession and there is no misappropriation on his part.

4. On that particular day, he had the assistance of Mr.Umamaheshwaran, as Ministerial Clerk who had collected the entire fine amount and handed it over along with the E-Challan and only on trust, he had received the amount without verifying the fine receipts correlating with the fine register and if there is any discrepancy, he will immediately make good the shortfall by remitting it immediately.

5. A charge memo came to be issued on 20.01.2023 under Section 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, hereinafter referred to as 'the Rules', framing the following two charges:

“Charge No.1: That the said Thiru.S. Kanni, Head Clerk, Judicial Magistrate II Court, Tiruvannamalai, during the period 07.04.2022 to 11.11.2022 while functioning as Head Clerk, Judicial Magistrate II Court, Tiruvannamalai, had maintained the Registers of Fine Register, Fine Receipt and E-Challan. On verification of the



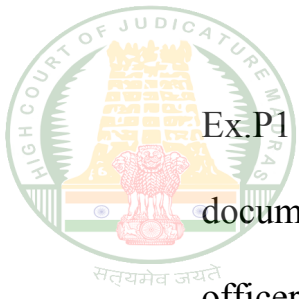
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Registers it is found that Rs.73,800/- was received as fine amount on 23.06.2022, and had deposited Rs.70,900/- through E-Challan in SBI, Tiruvannamalai Branch on 24.06.2022 in E-Challan No.20220624007464. The balance of Rs.2900/- was not deposited. Further, it is found that the fine amount of Rs.27,000/- received on 12.08.2022 and Rs.95,700/- received on 13.08.2022, in total Rs.1,22,700/- fine amount was received. In these amount Rs.17,000/- fine amount for 12.08.2022 and Rs.95,700/- fine amount for 13.08.2022 was paid to SBI, Tiruvannamalai Branch in E-Challan No.202208161002510. The Balance amount of Rs.10,000/- was not deposited to the SBI, Tiruvannamalai. In the above period, the said Delinquent have not verified the fine amount and thereby he had acted irregularly and in negligence manner and failed to extend his duty consciously.

Charge No.2: That the said Thiru.S. Kanni, had received the fine amount and had not deposited the fine amount Rs.12,900/- (Rs.2900/- + Rs.10000/-) in a Bank within a stipulated time, and thereby he had acted irregularly, negligently, and irresponsibly in his duty. The fine amount belongs to the government you were handled the said amount and failed to extend his duty consciously and by this way he had also affected the court proceedings. ”

6. The petitioner-delinquent submitted his explanation on 01.02.2023 and reiterated his earlier reply submitted. Not satisfied with the reply, the third respondent enquiry officer was appointed. The petitioner had participated in the enquiry. On the side of the Department, as many as 4 witnesses were examined as P.W.1 to P.W.4 and 9 exhibits were marked as



Ex.P1 to Ex.P9. The delinquent examined himself as R.W.1 and only one document was marked as Ex.R1. After concluding the enquiry, the enquiry officer submitted a report on 01.03.2023, holding both the charges as proved. A second show cause notice was issued calling for further representation in respect of the enquiry report on 15.03.2023 for which the petitioner had submitted his reply on 31.03.2023.

7. In the meantime, since the petitioner reached the age of superannuation on 28.02.2023, the first respondent passed orders under Fundamental Rule 56(1)(c) not permitting the petitioner to retire and had retained him in service, pending enquiry and final orders to be passed on the charges. The first respondent-Disciplinary Authority, after considering the enquiry report and the explanations offered by the petitioner, agreed with the findings of the enquiry officer and by order dated 30.10.2023, passed orders imposing punishment of dismissal from service. Assailing the said punishment, the petitioner has preferred the above writ petition.

8. Mr.V.P.Sengottuvel, the learned Senior Counsel appearing for Mr.K.V.Muthu Visakan, contended that when the petitioner had a long unblemished service of nearly 4 decades and there was no actual misappropriation but only a minor lapse in accounting, the extreme



punishment of dismissal is too harsh and not proportionate to the charge leveled. It is his further contention that when the petitioner had remitted the amounts that had been collected on the 3 dates, amounting to nearly Rs.2,00,000/- without any delay, the shortfall of Rs.12,900/- had been put against, as though withheld wantonly and the disciplinary authority had proceeded to impose the extreme punishment.

9. Learned Senior Counsel also drew the attention of this Court to the reply submitted by the petitioner as early as on 21.12.2022 i.e., immediately after the order of suspension, in which he had put forth all the details and the petitioner also remitted the shortfall and in such circumstances, there was no necessity for the authorities to proceed further. It is his further contention that though the petitioner may be found to have been negligent in allowing the shortfall by not properly verifying with the records, but definitely it is not a serious lapse warranting a major punishment and sought for interference of this Court.

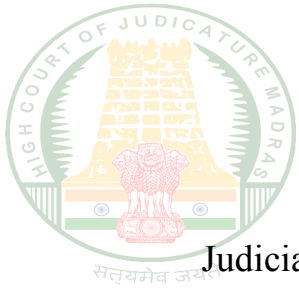
10. Per contra, Mr.Suhrith Parthasarathy, learned counsel for the respondents contended that admittedly, the petitioner was incharge of collecting the fine amounts and was incharge of the registers. There had been a shortfall of Rs.12,900/- which the petitioner had not remitted to the



Treasury for which, departmental proceeding has been initiated. It is his contention that, when the petitioner who was responsible for collecting the fine amounts and depositing it, had failed to carry out his duty properly, then it cannot be taken as minor lapse, as the interest of the institution cannot be put at stake due to the acts committed by the delinquent.

11. Learned counsel further contended that the enquiry officer has conducted the enquiry by affording reasonable opportunity to the petitioner, where the petitioner did not choose to cross examine any of the witnesses. In fact the petitioner had admitted the lapse and once the enquiry officer had concluded the charges as proved, then it is the prerogative of the disciplinary authority to decide on the appropriate punishment to be imposed. The disciplinary authority by considering the overall facts and circumstances has arrived at the conclusion that the appropriate punishment to be imposed, would be that of dismissal from service. Learned counsel also submitted that the petitioner had failed to avail the appellate remedy by filing an appeal against punishment imposed under Rule 19 and sought for dismissal of the writ petition.

12. Heard the rival submissions and perused the materials available on record.



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13. The petitioner had entered into the service of the District Judiciary of Tiruvannamalai as a Night Watchman in the Tiruvannamalai District Court on 10.04.1982 had rendered a service of 40 years and 7 months. From the post of Night Watchman, he has been promoted to several positions including Peon, Record Clerk, Examiner, Junior Assistant, Assistant and Head clerk. The petitioner who had a good service record, was about to attain superannuation on 28.02.2023. However during the sunset of his service, the hopes of the petitioner gloomed due to issuance of the suspension order dated 19.12.2022, by which the petitioner was placed under suspension.

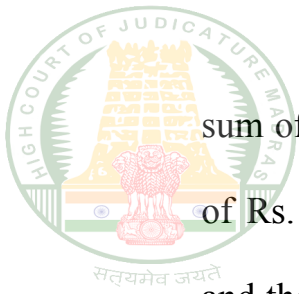
14. A notice also came to be issued on 20.12.2022 stating that, when the records were verified in the Judicial Magistrate Court No.II, Tiruvannamalai during the period in which, the petitioner had worked as Head Clerk, they found that there was a shortfall in the deposit made in the Bank from the fine amount that has been collected. Immediately, the petitioner had submitted a reply on 21.12.2022 explaining the situation that in view of the Lok Adalat conducted, in which, nearly three hundred cases were settled, money was collected. The concerned police stations collected and paid even in lumpsum, which was received by one Umamaheshwaran,



Ministerial Clerk and in trust, the petitioner had collected it and paid it in the Bank and that no excess amount was available with him. However, he submitted that the shortfall will be immediately rectified and also remitted the shortfall in the bank.

15. The disciplinary authority choose to proceed to initiate departmental proceedings and issued a charge memo dated 20.01.2023 framing the aforesaid charges. Not satisfied with the reply of the petitioner submitted on 01.02.2023, the enquiry officer was appointed and the petitioner participated in the enquiry and the enquiry officer submitted a report on 01.03.2023, holding both the charges as proved. The second show cause notice also came to be issued on 15.03.2023 for which the petitioner had furnished his explanation on 31.03.2023. The first respondent-disciplinary authority concurred with the findings of the enquiry officer and by order dated 30.10.2023 imposed the punishment of dismissal from service.

16. Admittedly, a sum of Rs.73,800/- was collected as fine by the petitioner on 23.06.2022, out of which a sum of Rs.70,900/- alone was remitted on the same day. There was a shortfall of Rs.2,900/-. Further, the petitioner had collected a sum of Rs.27,000/- on 12.08.2022, out of which, a



sum of Rs.17,000/- was deposited on the same day and there was a shortfall of Rs.10,000/-. Further, a sum of Rs.95,700/- was collected on 13.08.2022 and the entire amount was deposited on the same day. As such, in respect of the amounts collected on these three days, even though there is no shortfall in the deposit of the major amount collected on 13.08.2022, there is a total shortfall of Rs.12,900/- in respect of the amounts collected on the other two dates. However, the fact remains that there has not been any delay in depositing the amount and all the amounts collected on these three days had been deposited in the Bank on the same date but for the shortfall of Rs.12,900/-.

17. When the petitioner was working as Head Clerk in the Judicial Magistrate Court No.II, Tiruvannamalai and when the records were verified and this shortfall was noticed, the same has been intimated by the Judicial Magistrate. Immediately, on receipt of the notice, the petitioner had submitted a genuine explanation that he had carried out an unblemished service of nearly 40 years and there was no possibility or requirement of the petitioner for any misappropriation. The petitioner at the first instance had submitted that on these days, there were Lok Adalats conducted, in which,

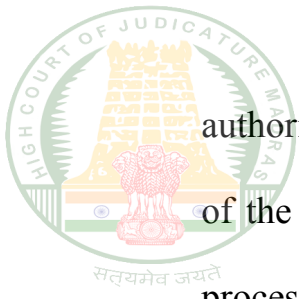
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around three hundred cases have been settled and the fine amount has been collected in lumpsum by the concerned police station and the petitioner who had the assistance of Umamaheshwaran, Ministerial Clerk, who collected these amounts by making corresponding fine receipts and E-challan, he had in trust, had collected the money and deposited the same in the Bank whatever was handed over. Though the petitioner was responsible for the collection and incharge of the register of fine receipts and E-challan, the petitioner did not notice the shortfall of these amounts. But, however, immediately on the same being pointed out, the petitioner had remitted these amounts and made good the shortfall.

18. Admittedly, lapses were found in the duty of the petitioner and necessary disciplinary proceedings have been initiated and after conducting the enquiry, charges have been proved and the disciplinary authority had come to the conclusion that the punishment of dismissal from service would be appropriate to the charges framed.

19. We are conscious of the fact that the scope of Judicial review in the disciplinary proceeding is very limited and this Court, while exercising the power of judicial review under Article 226 of the Constitution of India, does not sit in appeal over the decision arrived at by the disciplinary



authority and this Court does not function as an appellate authority. The role of the Court in judicial review is only to see whether the decision making process was proper but not the decision itself.

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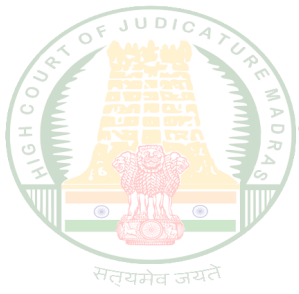
20. Having said that, the following are the undisputed facts in the instant case:-

(i) The petitioner had put in an unblemished service of more than 40 years, without any sort of complaints and was due to attain superannuation on 28.02.2023.

(ii) While he was in the duty as Head Clerk, particularly on the three dates i.e., on 23.06.2022, 12.08.2022 and 13.08.2022, Lok Adalats have been conducted and nearly three hundred cases have been settled in the Lok Adalat for which, the fine amounts have been collected.

(iii) When Lok Adalat was conducted, in which, several hundred cases were settled, the petitioner cannot solely carry out all the work, which definitely required the assistance and in this case, the assistance of Umamaheshwaran, Ministerial Clerk was relied upon.

(iv) There is no manipulation of records but fine amounts have been collected by issuance of proper receipts, e-challans and corresponding



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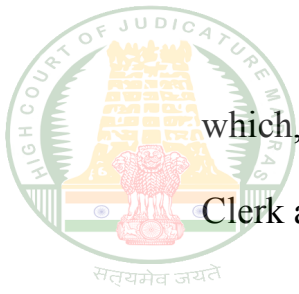


entries have been made in the register.

(v) Later, when the records were verified and the accounts were tallied, a shortfall of Rs.12,900/- was found, which the petitioner had remitted immediately making good the shortfall.

(vi) Immediately on being informed, the petitioner had explained the entire scenario and had remitted the short fall.

21. The above facts coupled with the evidences adduced during domestic enquiry is to be considered, to arrive at a conclusion, 4 witnesses have been examined and nearly 9 documents were marked on the side of the employer. The entire evidence goes to show that when the amounts were collected on 3 dates, there was no delay in remitting the payments to the Bank. But however, even though full remittance was made on one particular day, there was a shortfall of Rs.12,900/- in respect of two other dates. When all along the explanation of the petitioner was that, the lapse was not in respect of regular working day of the Court duty but in the Lok Adalats that were conducted in which, nearly three hundred cases were settled. These contentions of the petitioner are not denied or controverted anywhere in the enquiry and it only reveals that, this shortfall was only in the remittances made in the settlement of huge disposal of nearly three hundred cases in 13/18



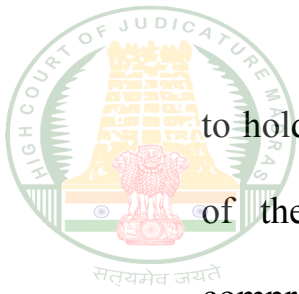
which, the fine amounts were received by the Umamaheshwaran, Ministerial Clerk and entrusted to the petitioner.

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22. It is true that the petitioner being a Head Clerk was having a high level of responsibility in cross verifying the amounts collected with the fine receipts issued, E-challan and the petitioner cannot simply take rescue only on the fact that due to the huge disposal of cases in the Lok Adalat, a lapse has been committed. Nevertheless, from the evidence available in the enquiry, nowhere it is found that the petitioner had misappropriated this amount of Rs.12,900/- which had resulted in shortfall.

23. In fact, there is no iota of evidence to suggest that there has been any manipulation of record or any delay in deposit or to come to the conclusion that the petitioner had *mala fide* intention to misappropriate these amounts. After rendering 4 decades of unblemished service, there is nothing to suggest that the petitioner would wantonly withhold Rs.12,900/- risking his entire service to be doomed. With all the materials available, this is not a case of any misappropriation of having manipulated the record but definitely, a case of negligence.

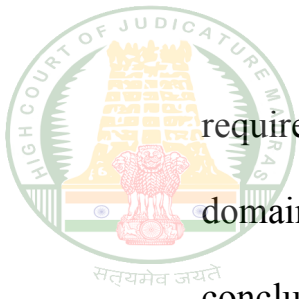
24. The petitioner that too being in the judicial service, is expected



to hold the trust with high level of honesty and integrity. The lapses of any of the persons attached with the judiciary, cannot be condoned or compromised as it involves the public confidence in the institution. Though there is no lapses in collecting the fine amounts, issuing the receipts and challans and entering in the register, still there has been a shortfall when the deposit was made.

25. Having come to the conclusion that the lapses on the part of the petitioner would amount to negligence, then the proportionality of the punishment needs to be gone into. No doubt even negligence amounts to a misconduct, for which, the delinquent could be charged and the appropriate punishment could be imposed. However, while in the case of negligence, with a dishonest motive, definitely a harsher punishment even to that of dismissal from service is warranted but, in a case where there is no misappropriation or loss and the negligence is found to be without any dishonest motive, in such circumstances, a minor punishment could be imposed.

26. In the instant case, on coming to the conclusion that, it is the case of negligence on the part of the petitioner without any dishonest motive, then the punishment of dismissal from service imposed on the petitioner is too harsh and definitely shocks the conscience of this Court and



requires interference. It is also true that imposing of punishment is the domain of the disciplinary authority and when once this Court comes to the conclusion that the punishment imposed is disproportionate, then it has to be remanded back to the authority for imposing suitable punishment and also in the instant case, the petitioner had failed to avail the appellate remedy. However in the peculiar facts and circumstances of the instant case, where the petitioner after rendering four decades of service in the judiciary had attained the age of superannuation as early as on 28.02.2023 itself as Head Clerk, we do not deem it fit to relegate the petitioner to the appellate authority or remand the matter to the disciplinary authority for imposing punishment, at this point of time which will not be justified.

27. In view of the above deliberations, the impugned order of the first respondent in imposing the punishment of ‘dismissal from service’ is modified to that of *‘reduction in pay scale by one stage for one year, which will not have any adverse effect on the pension’*. Since the petitioner had already attained the age of superannuation and if the punishment could not be given effect to fully, then the amount equivalent to the punishment could be calculated and be withheld from the Gratuity as per proviso to Rule 8(4) of the Rules.



28. In view of the modified punishment, the respondents are directed to calculate the terminal and pensionary benefits of the petitioner and pay the same within a period of eight (8) weeks from the date of receipt of a copy of this order.

29. Accordingly, the Writ Petition stands *partly allowed* to the extent indicated above. Consequently, connected miscellaneous petition is closed. No costs.

(R.S.M., J.) (G.A.M., J.)
10.03.2025

Speaking Order
Index : Yes
Neutral Citation : Yes

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To
1. The Disciplinary Authority /
Hon'ble Principal District Judge,
Tiruvannamalai.

2. The Judicial Magistrate No. II,
Tiruvannamalai.

3. The Inquiry Officer /
Additional District Munsif,
Tiruvannamalai.



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W.P. No. 9372 of 20



R. SUBRAMANIAN, J.
&
G. ARUL MURUGAN, J.

AT

Pre-delivery Order made in
W.P. No. 9372 of 2024 and
W.M.P. No. 10384 of 2024

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