



W.P.No.16559 of 20..

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.02.2025

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**Coram:
THE HONOURABLE MR.JUSTICE C.SARAVANAN**

**W.P.No.16559 of 2012
and M.P.No.2 of 2012**

- 1.K.Kolandhai (Deceased)
- 2.Mary Philomina
- 3.K.Joseph

...Petitioners

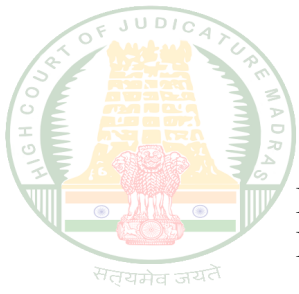
Versus

- 1.State of Tamilnadu rep. by
The Secretary to the Government,
School Education Department,
Fort St.George, Chennai – 600 009.
- 2.The Director of Elementary Education,
Chennai – 600 006.
- 3.The District Elementary Educational Officer,
Krishnagiri
- 4.K.Charles

...Respondents

(P2, P3 & R4 were substituted as Legal Representatives of the deceased sole Petitioner vide Order dated 21.12.2022 made in W.M.P.No.30255/2022 in W.P.No.16599 of 2012)

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari to call for the records pertaining to the orders in Na.Ka.No.2999/A3/2002 dated 27.11.2007 on the files of the third respondent herein and to quash the same.



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For Petitioners : Mr.R.Selvakumar
For Respondents - 1 to 3 : Mrs.P.Rajarajeswari,
Government Advocate

ORDER

With the consent of both sides, this writ petition is taken up for final disposal.

2. In this writ petition, the Petitioners have challenged the Order in Na.Ka.No.2999/A3/2002 dated 27.11.2007 (hereinafter referred to as “Impugned Order”) passed by the 3rd Respondent.

3. The brief facts of the case are that when the deceased 1st Petitioner was working as a Record Clerk in the office of the Assistant Elementary Educational Officer, Kaveripattinam during the year 2003, where one Muthukumarasamy had misappropriated the money which was meant for retired teachers. While so, on 19.12.2003, the Inspector of Police, District Crime Branch, Economic Offences Wing, Dharmapuri who investigated the case against the said Muthukumarasamy had arrested all the employees (including the deceased 1st Petitioner) who were working in the office of the Assistant Elementary Educational Officer, Kaveripattinam and remanded



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them. Pursuant to the same, the deceased 1st Petitioner was suspended from service. Challenging the Order of Suspension, the deceased 1st Petitioner filed W.P.No.28098 of 2005 before this Court. This Court had also stayed the said Suspension Order.

4. Thereafter, on 01.03.2006, the deceased 1st Petitioner was reinstated in service and posted in the office of the Assistant Elementary Educational Officer, Oothangarai. However, once again, the deceased 1st Petitioner was suspended from service. Aggrieved by the same, the deceased 1st Petitioner filed a writ petition in W.P.No.30248 of 2006 before this Court and obtained an order of interim stay of the second Suspension Order.

5. While so, the 3rd Respondent vide Order dated 27.11.2007, dismissed the deceased 1st Petitioner from service. As against the said Dismissal Order dated 27.11.2007 of the 3rd Respondent, the deceased 1st Petitioner submitted an Appeal Petition dated 26.12.2007 before the 2nd Respondent, but, the same was not considered by the 2nd Respondent. Aggrieved by the same, the deceased 1st Petitioner had filed a writ petition



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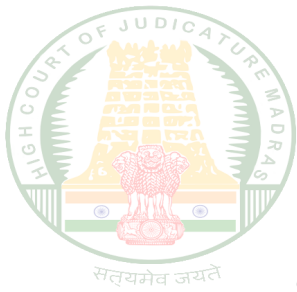
in W.P.No.15720 of 2008 before this Court praying to issue direction to the 2nd Respondent to dispose of the said Appeal Petition.

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6. This Court vide Order dated 03.07.2008 disposed of W.P.No.15720 of 2008 with a direction to the 2nd Respondent to consider the deceased 1st Petitioner's Appeal Petition dated 26.12.2007 and pass orders on merits and in accordance with law, within six weeks from the date of receipt of a copy of that order.

7. However, the 2nd Respondent without considering the deceased 1st Petitioner's Appeal Petition dated 26.12.2007 as per the aforesaid direction issued by this Court vide Order dated 03.07.2008 in W.P.No.15720 of 2008. Hence, left with no other alternative, the deceased 1st Petitioner had filed this writ petition for the relief stated *supra*.

8. During the pendency of this writ petition, the 1st Petitioner died on 09.10.2020. Thereafter, the legal representatives of the deceased 1st Petitioner were impleaded as 2nd Petitioner, 3rd Petitioner and 4th Respondent in this writ petition.



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9. The learned counsel for the Petitioners submitted that the deceased 1st Petitioner was in no way connected to misappropriation committed by the Muthukumarasamy and that, the 3rd Respondent had wrongfully dismissed the deceased 1st Petitioner from service. Hence, it is submitted that the Impugned Order dated 27.11.2007 passed by the 3rd Respondent is liable to be quashed.

9.1. It is further submitted by the learned counsel for the Petitioners that while dealing with an identical issue in ***Nal.Gopal Vs. The Secretary to Government and Ors.***, this Court had passed an Order dated 30.08.2011 in W.P.No.13119 of 2010 in favour of the Petitioner therein. Operative portion of the Order dated 30.08.2011 in W.P.No.13119 of 2010 reads as under:

“17. At this juncture, it is relevant to refer the principle laid down by the Hon'ble Apex Court in Roop Singh's case reported in 2009 (2) SCC 570. In the said decision, the Hon'ble Apex Court, by placing reliance on its earlier decision, has held as hereunder:

“21. Yet again in M.V. Bijlani v. Union of India 2006 (5) SCC 88 : 2006 SCC (L&S) 919, this Court held:

“25. ... Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-



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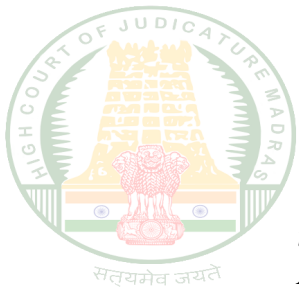
judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

22. Yet again in Jasbir Singh v. Punjab and Sind Bank reported in 2007 (1) SCC 566 : 2007 (1) SCC (L&S) 401, this Court followed Narinder Mohan Arya v. United India Insurance Co. Ltd. reported in 2006 (4) SCC 713 : 2006 SCC (L&S) 840 and stated that:-

"12. In a case of this nature, therefore, the High Court should have applied its mind to the fact of the matter with reference to the materials brought on records. It failed to do so."

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof."

The principle laid down by the Hon'ble Apex Court is squarely applicable to the facts of the instant case as in this case also, as already pointed out, there is not an iota of evidence available on record to substantiate the charges levelled against the petitioner even by preponderance of probabilities.



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18. *In view of the aforesaid reasons, this Court has come to irresistible conclusion that the impugned order is unsustainable in law. Accordingly, the impugned order passed by the 1st respondent in G.O.(ID) No.72 dated 01.03.2010 is hereby quashed and the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.*

19. *Consequently, the other earlier orders passed by the respondent, viz., the charge memo dated 21.04.2004; the order of suspension and not permitting the petitioner to retire from service dated 30.06.2005 and the 2nd show cause notice dated 29.03.2007, are hereby set aside. It is made clear that the said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order."*

Therefore, the learned counsel prayed that similar relief may be granted to the deceased 1st Petitioner as well.

10. On the other hand, the learned Government Advocate for the Respondents 1 to 3 submitted that the specific allegation against the deceased 1st Petitioner that the Petitioner was an abettor of the offence of misappropriation committed by Muthukumarasamy was proved in the enquiry conducted by the Enquiry Officer. It is further submitted by the learned Government Advocate that the Impugned Order passed by the 3rd Respondent is strictly in accordance with law and hence, this writ petition is liable to be dismissed as devoid of merits.

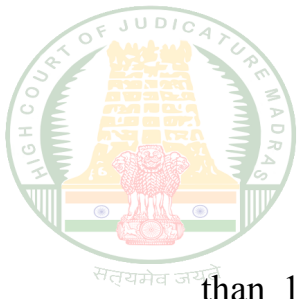


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11. Heard the learned counsel on either side and perused the materials available on record.

12. In the case of *Nal.Gopal Vs. The Secretary to Government and Ors.*, the Petitioner therein was issued with a Charge Memo on 21.04.2004 and was dismissed from service on 01.03.2010, whereas, in the present case, the deceased 1st Petitioner was issued with a Charge Memo on 15.03.2006 and was dismissed from service on 27.11.2007 i.e., immediately after 1 year from the issuance of Charge Memo. Therefore, the decision rendered by this Court in *Nal.Gopal's* case (cited *supra*) will not be applicable to the facts of the present case.

13. As far as this case is concerned, this Court had already come to the rescue of deceased 1st Petitioner by way of passing an Order dated 03.07.2008 in W.P.No.15720 of 2008, directing the 2nd Respondent to consider the deceased 1st Petitioner's Appeal Petition dated 26.12.2007 and pass orders. However, the 2nd Respondent did not comply with the aforesaid Order dated 03.07.2008 of this Court.

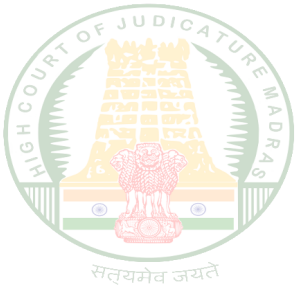


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14. It is to be noted that the deceased 1st Petitioner had put in more than 15 years of service and had not faced any disciplinary proceedings during the said period. However, due the disciplinary proceedings initiated against the deceased 1st Petitioner vide Charge Memo dated 15.03.2006, retirement benefits and other benefits have been denied to him.

15. Considering the above facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side, this Court is of the opinion that it would be just and necessary to issue appropriate direction to the 2nd Respondent to consider the deceased 1st Petitioner's Appeal Petition and dispose of the same on merits.

16. Accordingly, the 2nd Respondent is directed to consider the deceased 1st Petitioner's Appeal Petition dated 26.12.2007 and dispose of the same, on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order. Liberty is granted to the 2nd Petitioner, 3rd Petitioner and 4th Respondent (legal representatives of the deceased 1st Petitioner) to canvass all the submissions that are available in the said Appeal Petition before the 2nd Respondent.



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17. This Writ Petition is disposed of with above direction. No costs.

Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No

Speaking Order (or) Non-Speaking Order

To

- 1.The Secretary to the Government,
School Education Department,
Fort St.George, Chennai – 600 009.
- 2.The Director of Elementary Education,
Chennai – 600 006.
- 3.The District Elementary Educational Officer,
Krishnagiri



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C.SARAVANAN, J.

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