IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.04.2025

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.6505 of 2022
and
WMP.No.6582 of 2022

R.Anvardeen

... Petitioner

Vs.

THE CHIEF EXECUTIVE OFFICER,
Tamil Nadu Waqf Board,
No.1, JAFFER Syrang Street,
VallaiSeethakathi Nagar,
Chennai-600 001.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, call for the records relating to the impugned Proc. No.4857/E1/2021 dated 28.02.2022 on the file of the Respondent and quash the same.

For Petitioner : Mr.Om Prakash
Senior Counsel
for Mr.S.Kumaradevan

For Respondent: M/s.C.Shankar

ORDER

Writ petition is filed for issuance of a writ of Certiorari, to quash the impugned order dated 28.02.2022, of the respondent, whereunder the salary of the petitioner was attached for recovery of a sum of Rs.3,00,000/- allegedly misappropriated by the petitioner.

2. The petitioner was recruited through Employment Exchange by the Tamil Nadu Waqf Board, on 19.09.2008, on consolidated pay and on temporary basis. The petitioner was posted as Personal Assistant to the Chairman of the Board. The petitioner was thereafter appointed as a permanent staff as Junior Assistant/Waqf Inspector, for Villupuram District by proceedings dated 07.02.2011. The petitioner was placed in-charge of District Waqf Board, Cuddalore. While the petitioner was working as Waqf Inspector, he was suspended from service on 06.08.2014, on the allegations of misappropriation of funds of the Waqf board. On 21.11.2014, a charge memo was issued to the petitioner and thereafter, on 05.02.2015, an enquiry officer was appointed. The enquiry officer conducted a detailed enquiry and submitted his report on 19.02.2015, to the Disciplinary Authority, the respondent herein. The enquiry officer found that in respect of 3rd charge relating to the issue of cheque of

Rs.3,00,000/- from the mosque account in favour of third party, that it went unaccounted resulting in misappropriation of Rs.2,00,000/- from the Waqf funds. The enquiry officer in his report found that the 3rd charge with regard to the misappropriation of Rs.2,00,000/- from the mosque account was partly proved and therefore, suggested that the charge may be administratively decided. The respondent on 24.02.2015, called upon the petitioner to submit his further explanation to the enquiry report by enclosing a copy of the same. On 03.03.2025, the petitioner submitted his detailed explanation to the enquiry officer's report. After considering the same, the respondent passed the punishment order on 09.03.2015, imposing punishment of stoppage of increment, for a period of one year with cumulative effect. In view of the said order, the petitioner's suspension was revoked, and he was reinstated and posted as A1 Junior Assistant in Head office of Waqf Board. The petitioner thereafter preferred an appeal against the aforesaid punishment order on 06.04.2015. In the petitioner's appeal, the Chairman, Waqf Board vide order dated 03.03.2016, modified the punishment of stoppage of increment for a period of one year with cumulative effect to one without cumulative effect. The petitioner preferred further appeal on 30.03.2016, to the Appellate Authority, under the Tamil Nadu Waqf Board and the same was pending. Meanwhile, the petitioner was temporarily promoted as Junior Assistant on 28.12.2016. Whileso, one Mohamed Jiaudin submitted a petition to the Chairman of the Board, raising certain allegations against the petitioner and seeking action. So also, one Jahir Hussain filed writ petition in W.P.No.4321 of 2019, for a Writ of Mandamus seeking direction to the respondent to place his complaint dated 04.01.2019, against the petitioner along with other complaints made by other persons before the Tamil Nadu Waqf Board, for enquiry within a stipulated time. In the said writ petition, interim orders were passed, in pursuance of which, the petitioner was issued a notice of enquiry, to which the petitioner submitted a detailed reply. The petitioner on the basis of the aforesaid complaint, was once again suspended on 20.02.2019. The petitioner filed writ petition in W.P.No.3270 of 2020, challenging the suspension order dated 20.02.2019. The said writ petition was disposed on 11.02.2020, directing the respondent herein, to consider the petitioner's representation and pass appropriate orders on or before 31.03.2020. The respondents on threat of contempt action, in Contempt Petition No. 566 of 2020 dated 09.07.2020, revoked the suspension order and reinstated the petitioner and posted him as Superintendent / Executive Officer of Hazrathpeer Mohammad Shah Aulia Dargah, Thucklay, Kanyakumari District. Whileso, on the basis of the various complaints received by the Waqf Board, the matter was referred to Directorate of Vigilance and Anti-Corruption, and a case in Crime No. 15 of 2020, was registered against the petitioner under Sections 409, 420 of IPC and 13(2) r/w. 13(a) of Prevention of Corruption Act (Amendment) Act, 2019. The petitioner applied for anticipatory bail before this Court in Crl.O.P.No.3485 of 2021, and this Court was pleased to grant anticipatory bail, on condition of deposit of Rs.3,00,000/- in the name of the Waqf Board. The said order was later modified, directing the petitioner to deposit the amount of Rs.3,00,000/- to the credit of Crime No.15 of 2022, before the Honb'le Chief Judicial Magistrate/ Special Judge for P.C Act, Cuddalore. The petitioner complied with the aforesaid orders on 09.07.2021. The petitioner appeared before DVAC and submitted his statement, which was recorded and after elaborate enquiry, no final report was filed before the concerned court. As nothing incriminating was found against the petitioner, the DVAC exonerated the petitioner of the charges. Whileso, one Mr.Ajmal Khan filed writ petition in W.P.No.17148 of 2021, for a writ of Mandamus directing the respondent's to conduct an enquiry against the petitioner and other respondents therein, based on representation dated 07.05.2021, and subsequent petitions dated 28.05.2021 and 16.06.2021. The said writ petition was disposed with directions to the respondents 1, 2 and 3 issued therein. The respondent in pursuance of the aforesaid order, placed the petitioner under suspension for the third time on 27.08.2021, for the very same allegations, which had been enquired and decided earlier. The petitioner therefore filed the writ petition in W.P.No.18737 of 2021, challenging the above said suspension order. In the said writ petition, on 08.10.2021, an interim order of status quo was ordered. The petitioner was thereafter reinstated into service as Superintendent of Waqf/ Executive Officer, Virupatchipuram etc. Later, the respondent on 28.02.2022, passed the impugned order for recovery of misappropriated amount of Rs.3,00,000/- with interest from the petitioner's salary in 15 Equated Monthly Instalments from March 2022 with interest at 13.3 % per annum. The impugned order was passed on the basis of the Government letter dated 09.02.2022. Aggrieved by the said impugned order, the petitioner preferred the above writ petition for the aforesaid relief.

3. The respondent filed detailed counter denying all the contentions raised by the petitioner in the writ affidavit. The respondent's after referring to the facts of the case submitted that impugned order did not amount to double jeopardy,

because the recovery order was only aimed at compensating for the loss caused to the Waqf, and not as a punitive measure. The respondents submitted that the punishment imposed by the CEO, of stoppage of increment for a period of one year with cumulative effect and subsequent modification by the Board as stoppage of increment for one year without cumulative effect stem from the illegal activities of the writ petitioner. According to the respondent's, the recovery order related to the loss incurred to the Waqf, which was not considered by the CEO and the Board at the time of imposing punishment. The Government identified the omission based on the enquiry officer's report and therefore there was no question of serving a notice or show cause notice. The respondents submitted that the Government as the Administrative head of the Board under section 97 of the Waqf Act, 1995, was empowered to direct the Board with general or special directions. According to the respondents, the direction of the Government was a Special Direction and therefore, the respondent was bound to comply with the same. According to the respondents, the amount deposited by the petitioner in Crl.O.P.No.3485 of 2021, was only for getting anticipatory bail. The amount was not deposited voluntarily to the Board, for making the loss caused to the Board and therefore, the petitioner could not draw any support from such deposit. The respondents therefore prayed for dismissal of the writ petition.

4. The learned senior counsel for the petitioner contended that the impugned order deserved to be set aside on the short ground of double jeopardy. According to the learned senior counsel, for the very same allegations, a punishment of stoppage of increment for a period of one year with cumulative effect was imposed, which on appeal by the petitioner was modified to stoppage of increment for one year without cumulative effect. The learned senior counsel submitted that appeal was also filed for modification and the same was pending. Whileso, the respondents ought not to have passed the impugned order of recovery of the alleged misappropriated amount. The learned senior counsel therefore submitted that the impugned order seeking attachment of petitioner's salary for recovery of alleged misappropriated amount, amounted to double jeopardy. The learned counsel further submitted that the enquiry officer in his report clearly found that misappropriation was not proved and therefore, the order of punishment on the ground of misappropriation was illegal. The learned senior counsel in any event submitted that there was absolutely no loss to the respondent, as the amount was already deposited in the bail court in Crl.O.P.No.3485 of 2021. For all the above

reasons, the learned senior counsel prayed to set aside the impugned order.

5. The learned counsel for the respondent reiterated the submissions made in the counter affidavit in support of the impugned order.

6.I heard both the learned counsels and perused the materials placed on record.

7. On the basis of the facts narrated above, it is to be seen, if the impugned order of recovery and attachment of salary of the petitioner for misappropriation of funds of the Board is sustainable or not.

8. The foremost contention of the learned senior counsel for the petitioner is that the impugned order amounts to double jeopardy. It is seen that the petitioner was issued with charge memo on 05.02.2015, by the respondent framing '6' charges. Charge numbers 2 and 3 related to misappropriation of sum of Rs.2,00,000/-. The enquiry officer returned a finding that the charge no. 2 was proved and charge no.3 was partly proved. Based on the enquiry officer's report

and the further explanation submitted by the petitioner, the respondent passed the punishment order on 09.03.2015, imposing punishment of stoppage of increment for a period of one year with cumulative effect. Thereafter the petitioner preferred an appeal to the Appellate Authority, Chairman Waqf Board, who modified the punishment from stoppage of increment for one year with cumulative effect to stoppage of increment for one year without cumulative effect. The petitioner thereafter preferred further appeal to the Appellate Authority under the Tamil Nadu Waqf Board on 30.03.2016, and the same is pending consideration. Whileso, based on a complaint dated 07.05.2021, by one M.Ajmal Khan, and the order passed by the Hon'ble High Court in W.P.No.17148 of 2021, the Government vide order dated 09.02.2022, directed the respondent to recover the amount paid outside of contract to third person, on the ground that then CEO had not given proper thought to the enquiry officer's report. In pursuance of the said order of the Government, the respondent passed the impugned order of recovery attaching the salary of the petitioner with interest at 13.3 % per annum.

9. As rightly contended by the learned senior counsel for the petitioner, the respondent after an elaborate enquiry into the charges of misappropriation,

deemed it appropriate to impose the punishment of cut in one year increment with cumulative effect and the same was modified by the Appellate Authority. Against the modification order dated 03.03.2016, the petitioner filed further appeal to the Tamil Nadu Waqf Board on 30.03.2016 and the same is pending consideration. Whileso, on the basis of the complaint by one Ajmal Khan, and on directions of Hon'ble High Court in W.P.No.17148 of 2021, dated 16.06.2021, the Government directed the respondent to recover the misappropriated amount of Rs.3,00,000/-. The respondent in compliance of the aforesaid order, passed the impugned order dated 09.02.2022.

10. It is pertinent to note here that in the Government order dated 09.02.2022, it is clearly stated that the then Chief Executive Officer without properly appreciating the enquiry officer's report and the charges, failed to recover the amount. The counter also acknowledges that the Governments direction was based on the enquiry officer's report and the failure of Chief Executive Officer in not recovering the misappropriate funds. The impugned order is undoubtedly based on the charges framed against the petitioner in the disciplinary proceedings, which charges on being proved resulted in imposition of punishment of stoppage

of increment for one year without cumulative effect. Once the petitioner was proceeded departmentally and punishment was also imposed, on the basis of the same proceedings, the proceedings for recovery, in my view, clearly amounts to double jeopardy.

11. I am therefore of the view that the impugned order is invalid and illegal and therefore the same cannot be sustained. As the writ petition succeeds on the ground of double jeopardy, other issues raised by the learned senior counsel for the petitioner are not traversed. At this juncture, it is to be noted that the petitioner has preferred a further appeal to the Appellate Authority under the Tamil Nadu Waqf Board on 30.03.2016, and the same is pending.

12. In view of the above discussions, the impugned order dated 28.02.2022, is set aside. Considering the fact that the petitioner preferred an appeal on 30.03.2016, against the modified punishment order dated 03.03.2016, to the Appellate Authority under the Tamil Nadu Waqf Board, a direction is issued to the Appellate Authority to consider and pass orders on the petitioner's appeal within a period of eight (8) weeks from the date of receipt of copy of this order.

Writ petition is accordingly allowed with the aforesaid direction. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

29.04.2025

Index:Yes/No
Neutral Citation:Yes/No
Speaking order:Yes/No
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N.MALA,J.

dsn

To
The Chief Executive Officer,
Tamil Nadu Waqf Board,
No.1, JAFFER Syrang Street,
Val laiSeethakathi Nagar,
Chennai-600 001.

W.P.No.6505 of 2022

29.04.2025