

WP(MD)No.578 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 24.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

WP(MD)No.578 of 2021

and

WMP(MD)Nos.496,500 and 4489 of 2019

C.Raja

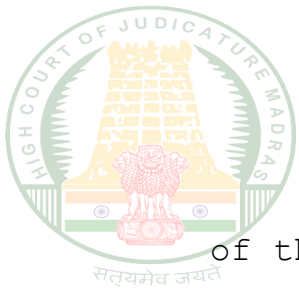
... Petitioner

Vs

- 1.State of Tamil Nadu,
represented by its Principal Secretary
to the Government,
Health and Family Welfare (D1) Department,
Secretariat,
Chennai - 600 009.
- 2.The Director of Public Health and
Preventive Medicine,
Office of the Director of Public Health and
Preventive Medicine,
Chennai - 6.
- 3.The Deputy Director of Health Services,
Office of the Deputy Director
of Health Services,
Dindigul - 624 002.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari to call for the records pertaining to the impugned order in GO(D)No.1231 Health and Family Welfare (D1) Department dated 19.11.2020 on the file



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of the respondent No.1 and the consequential impugned order in Na.Ka.No.5344/A1/2015 dated 22.12.2020 on the file of the respondent No.3 and quash the same as illegal.

For Petitioner : Mr.G.Karthik

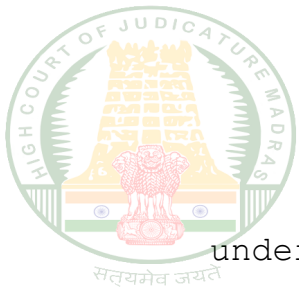
For Respondents : Mr.K.Balasubramani,

Special Govt.Pleader

ORDER

The petitioner / the erstwhile Superintendent at the Government Primary Health Centre, Chinnalapatti, Dindigul District was initially imposed with a punishment of stoppage of increment for two years and subsequently on revision he was imposed with a punishment of compulsory retirement from service vide the impugned orders and challenging the same, this writ petition has been filed.

2.The learned Counsel for the petitioner submits that based on a false complaint that the petitioner had demanded a sum of Rs.2,000/- from the complainant, departmental proceedings was initiated



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under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and in conclusion of the departmental proceedings, he was imposed with a punishment of stoppage of increment for two years vide order dated 15.06.2018. However considering the remaining period of service the petitioner had not filed any appeal challenging the order of punishment. While so after a period of one year and three months, the 1st respondent enhanced the punishment and imposed a punishment of compulsory retirement by initiating *suo motu* revision.

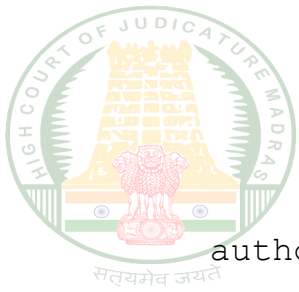
3.The learned Counsel for the petitioner further submits that the 1st respondent has initiated *suo motu* revision on the punishment imposed on the petitioner without any jurisdiction and in violation of Rule 36 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955. The revision should be initiated within a period of six months, however, in this case, the revision is initiated by the respondents after a period of fifteen months. Challenging the *suo motu* revision proceedings, the



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petitioner filed a writ petition in WP(MD)No.21452 of 2019 and pending the writ petition, the respondents have proposed to impose the punishment of compulsory retirement without providing any opportunity of hearing to the petitioner. Further the respondent have consulted the Tamil Nadu Public Service Commission for its views and have imposed the punishment of compulsory retirement. However before passing the impugned impugned orders, the views of the TNPSC was not furnished to the petitioner to submit his explanation. Therefore, it is violation of principle of natural justice. Further There is no reason assigned by the 1st respondent to enhance the punishment already imposed on 15.06.2018, after a period of fifteen months. Therefore, the impugned orders are liable to be set aside.

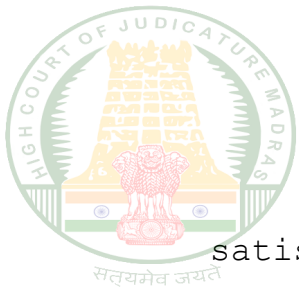
4.The learned Counsel by referring to the order passed by this Court in WP(MD)No.4776 of 2007 (in R.Swaminathan Vs Government of Tamil Nadu) submits that the delinquent officer should be furnished with all documents relied on by the disciplinary



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authority, enabling the delinquent officer to forward his explanation and non-furnishing of the relied on documents amounts to flagrant violation of principle of natural justice. He has also relied on the orders of the Hon'ble Supreme Court in ***Union of India and others Vs. R.P.Singh*** reported in ***(2014) 7 SCC 340***.

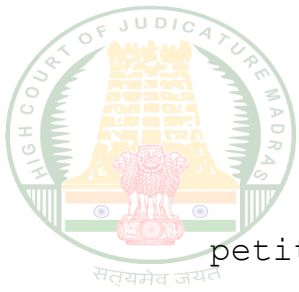
5.The learned Special Government Pleader appearing for the respondent by referring to the counter affidavit submits that based on the complaint received as against the petitioner that he had demanded Rs.2,000/- from the defacto complainant to prepare salary bill, for the period from 23.02.2015 to 31.03.2015 and again on another day, he demanded Rs.5,000/- to prepare pay bills for the above period and to prepare LPC, SR, Pay roll and to forward it to the Block Medical Officer, the disciplinary proceedings under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules was initiated as against this petitioner. A charge memo was issued to the petitioner on 04.04.2017 and the petitioner submitted his explanation on 29.05.2017. Being not



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satisfied with the reply, enquiry officer was appointed. During the course of enquiry, four witnesses were examined along with the petitioner and on 16.10.2017 the petitioner was provided with an opportunity to cross examine the witnesses, he had cross examined two witnesses, however he was not willing to examine the other witnesses. Based on the enquiry, the enquiry officer submitted his enquiry report on 31.01.2018 holding the charge framed as against this petitioner as proved. This report was furnished to the petitioner by communication dated 07.02.2018 for offering his explanation. The petitioner offered his explanation dated 28.03.2018. Considering the materials and further representation of the petitioner, the disciplinary authority imposed a punishment of stoppage of increment for two years with cumulative effect. The petitioner did not challenge this order of punishment by filing any statutory appeal.

6.The learned Special Government Pleader further submits that insofar as the contention of the



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petitioner with regard to the limitation of six months for initiating *suo motu* revision is concerned, in Rule 36 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 it is clearly explained that there is no time limit prescribed for the government to take up the revision in any disciplinary case. In this the case the the Secretary to the Government, Health and Family Welfare Department has initiated *suo motu* revision on the punishment imposed on the petitioner. Therefore, the government have the authority to initiate *suo motu* revision if necessary and there is no time limit for taking up such revision as per this above Rule.

7.The government enumerated the details of penalties under Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, by codifying the penalties as follows:

i)The charge of possession of assets disproportionate to known source of income, or

ii)The charge of acceptance from any person of any gratification, other than



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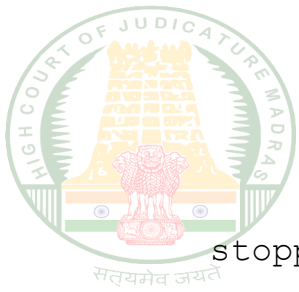
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legal remuneration, as a motive or reward for doing or forbearing to do any official act, or

iii) The charge of giving undue advantage with an intention to induce public servant to perform or not to perform a public duty or to reward the public servant for the performance or non-performance of a public duty is proved, the penalty mentioned in clause(vii) (Removal from service) or clause(viii) (Dismissal from service) shall be imposed.

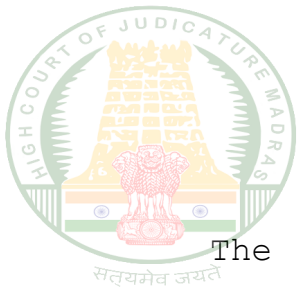
8.The learned Special Government Pleader has further submitted that the Hon'ble Supreme Court in **NEKRTC VS H.Amaresh (AIR 2006 SC 2730)** and **UPSRTC Vs Vinodh Kumar (2008 1 SCC 115)** has held that the punishment should always be proportionate to the gravity of the misconduct. However a case of corruption / misappropriation, the only punishment is a dismissal from service.

9.In view of the above punishment clauses, the government having felt that the punishment of



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stoppage of increment for two years did not commensurate with the gravity of the offence committed by the petitioner and it was less when compared to the delinquencies committed by the petitioner, proposed to enhance the punishment and issued a show cause notice dated 06.08.2019 to the petitioner to submit his representation on the proposed enhancement punishment within period of 15 days. The petitioner received this show cause notice on 18.09.2019 and vide his representation dated 04.10.2019 he requested 30 days time to furnish his reply. Instead of replying, the petitioner challenging the show cause notice filed a writ petition in WP(MD)No.21452 of 2019 before this Court. However even after 30 days also he did not submit his reply. Therefore the government have proceeded further and arrived at a provisional decision to enhance the punishment from stoppage of increment for two years to the punishment of a compulsory retirement. Further the government have obtained the views of the Tamil Nadu Public Service Commission on the provisional decision on the enhanced punishment.

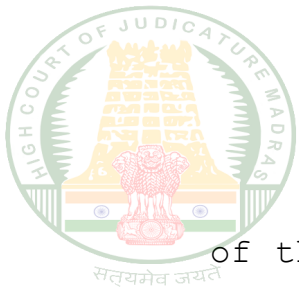


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The TNPSC has given an advice that the provisional decision of imposing compulsory retirement as a right one. Therefore the government further examining the case with all connected records and the advice of the TNPSC independently have confirmed the provisional decision already arrived at to impose a punishment of compulsory retirement on the petitioner and imposed the punishment of compulsory retirement vide the orders impugned herein.

10. With regard to the contention of the petitioner that the views of the TNPSC has not been furnished to the petitioner before passing the impugned government order and therefore, it is violative of principle of natural of justice is concerned, the learned Special Government Pleader submits that the State Public Service Commission's function is purely advisory in nature and it is not an appellate authority over the disciplinary authority. The advice tendered by the Public Service Commission is not binding on the disciplinary authority. In this regard he referred to the orders

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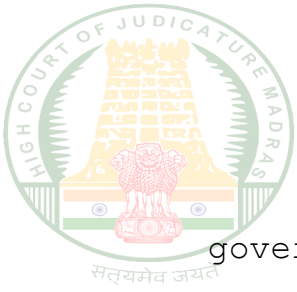
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of the **Hon'ble Apex Court in A.N.D'Silva Vs Union of India**, reported in **AIR 1962 SC 1130**.

11.In this case, the government independently examined the case and connected records and took a provisional decision to enhance the punishment to that of a compulsory retirement and also consulted the TNPSC and passed the order of compulsory retirement. When the government have independently considered the case, took a decision and passed an order, there is no need to furnish the views of the TNPSC to the petitioner before passing the impugned order. He also submits that the writ petition filed by the petitioner in WP(MD)No.21452 of 2019 was disposed of as infructuous by order dated 09.02.2022 based on the submission of the petitioner.

12.This Court considered the rival submissions and perused the materials placed on record.

13.The petitioner a Superintendent of Primary Health Centre, Chinnalapatti has challenged the



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government order passed in GO(D)No.1231 Health and Family Welfare (D1) Department dated 19.11.2020 by the 1st respondent / the Principal Secretary to the Government, Health and Family Welfare Department, and the consequential order in Na.Ka.No.5344/A1/2015 dated 22.12.2020 passed by the 3rd respondent / the Deputy Director of Health Services, Dindigul, in and by which the petitioner was imposed with a punishment of compulsory retirement in the revision by enhancing the punishment of stoppage of increment for two years on the proven charge against the petitioner in the disciplinary proceedings.

14.The disciplinary proceedings was initiated as against the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on the following charge:

"That Thiru C.Raja, Superintendent, Office of the Block Medical Officer Primary Health Centre, Chinnalapatti, Dindigul District has demanded Rs.2,000/-, from the complainant Dr.N.Raguraman, formerly Medical Officer to prepare salary



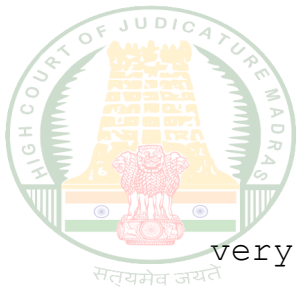
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bill for the period from 23.02.2015 to 31.03.2015 and again on another day also he demanded Rs.5,000/- to prepare the above said duty period pay bill and to prepare LPC, SR, Pay roll and to forward it to the Block Medical Officer, Primary Health Centre, Erichanatham Tirupur HUD on transfer of the complainant Dr.N.Raguram, by which he had violated the Rule 20(1) of the Tamil Nadu Government Servant Conduct Rules, 1973."

15.Further enquiry officer was appointed and based on the enquiry report he was imposed with a punishment of stoppage of increment for two years with cumulative effect by order dated 15.06.2018. This order was passed by the 2nd respondent/ the Director of Public Health and Preventive Medicine, Chennai. While so the government have found that the above punishment did not commensurate with the gravity of the offence committed by the petitioner since the petitioner had demanded bribe for settlement of salary bills, which was a deliberate dereliction from duty and the above punishment was



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very less when compared to the delinquency committed by the petitioner and therefore, the government decided to take up revision in this case as per Rule 36 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules by its order dated 06.08.2019. Rule 36 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules reads as follows:

“Rule 36. REVISION

(1) Notwithstanding anything contained in these rules -

(i) the State Government; or

(ii) the Head of the Department directly under the State Government, in the case of a Government servant serving in a department or office under the control of such Head of the Department, or departments; or

(iii) the Appellate Authority, other than the State Government, within six months of the date of the order proposed to be revised; or

(iv) any other Authority specified in this behalf by the State Government by a general or special order, and within such time as may be prescribed in such general or special order ; may at any time, either on their or its own motion or otherwise call for the records of any inquiry



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and after consultation with the Tamil Nadu Public Service Commission, where such consultation is necessary and revise any order made under these rules, may -

(a) confirm, modify or set aside the order; or

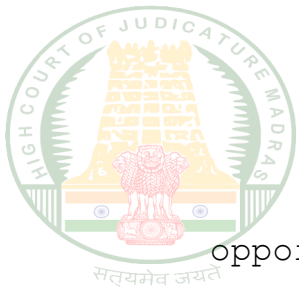
(b) confirm, reduce, enhance or set aside the penalty imposed by the order; or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as they or it may deem fit;

Provided that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government Servant concerned has been given a reasonable opportunity of making his representation against the penalty proposed.”

16.This rule makes it clear that under this rule the authority specified by the government may at any time revise any order by providing reasonable



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opportunity. Therefore, the contention of the petitioner that the government without having jurisdiction and after the limitation period of six months, has initiated *suo motu* revision is not acceptable, in view of the above rule, since the government have powers to take up revision at any time. Further the petitioner has been given an opportunity by letter dated 06.08.2019 to offer his explanation within a period of fifteen days and this letter was received by the petitioner on 18.09.2019 and he had by his letter dated 04.10.2019 requested for thirty days time for his reply. Further he had also filed a writ petition in WP(MD)No.21452 of 2019 challenging the said letter dated 06.08.2019. Therefore, the petitioner having received the letter, having filed a writ petition challenging the said letter and having failed to submit his reply, cannot plead that he was not provided with opportunity to put forth his case. Therefore this contention of the petitioner is not accepted.



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17. Insofar as ground of non-furnishing of the views of the TNPSC to the petitioner before passing the impugned punishment order is concerned, Article 320 of the Constitution of India deals with the functions of the Public Service Commission. Clause (3) of Article 320 of Constitution of India, mandates the consultation of Union Public Service Commission or State Public Service Commission as under:

a) on all matters relating to methods of recruitment to civil services and for civil posts;

b) on the principles to be followed in making appointments to civil services and posts in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;

c) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters;



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d) on any claim or in respect of a person who is serving or has served under the Government of India or the Government of State or under the Crown in India or under the Government of an Indian State, in a civil capacity that any costs incurred by him in defending legal proceedings instituted against him in respect of acts or purporting to be done in the execution of his duty should be paid out of Consolidated Fund of India, or as the case may be, out of the Consolidated Fund of the State.

e) on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of an Indian State, in a civil capacity, and any question as to the amount of any such award and it shall be the duty of Public Service Commission to advise on any matter so referred to them and any other matter which the President, or, as the case may be, the Governor of the State, may refer to them;

provided that the President as respects the all-India services and also as



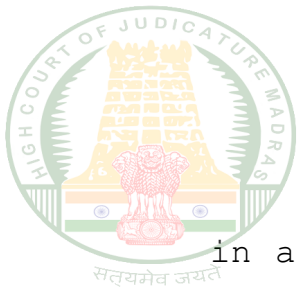
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respects other services and posts in connection with the affairs of the Union and the Governor as respects other services and posts in connection with the affairs of a State, may make regulations specifying matters in which either generally or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted.

18.The authority is expected to obtain the views of the Public Service Commission. The advice of the State Public Service Commission is only recommendatory in nature and it is not binding on the disciplinary authority in imposing the punishment. The Public Service Commission is an advisory body, which cannot insist upon the State Government to impose any kind of punishment. The opinion of the Public Service Commission is not binding upon the State and the State can come to its own conclusion based on the available records. It can also take a different view to that of the opinion rendered by the Public Service Commission. The Hon'ble Supreme Court



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in a similar issue **in A.N.D'Silva Vs Union of India**,
reported in **AIR 1962 SC 1130** has discussed as under:

"4. By **Art. 320(3)** of the Constitution it is provided that the Union Public Service Commission shall be consulted in all disciplinary matters affecting a person serving under the Government of India in a civil capacity, but the Union Public Service Commission is not an appellate authority over the Enquiry Officer. It is unnecessary for the purpose of this case to consider whether in making their recommendations or tendering their advice the Union Public Service Commission may express a conclusion on the merits of the case as to the misdemeanour alleged to have been committed by a public servant different from the conclusion of the Enquiry Officer."

19.The Hon'ble Supreme Court in **Union of India and others Vs. R.P.Singh** reported in **(2014) 7 SCC 340** after following the judgment in **S.N.Narula Vs. Union of India and others** reported in **(2011) 4 SCC 591** in paragraph No.12 has held as follows:

"12.....The said decision of **S.N.Narula** case is an authority for the proposition that the advice of UPSC, if sought and accepted, the same, regard



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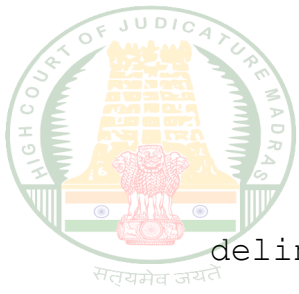
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being had to the principles of natural justice, is to be communicated before imposition of punishment."

20.The Hon'ble Supreme Court in ***Union of India and others Vs.S.K.Kapoor*** reported in ***(2011) 4 SCC 589*** in paragraph No.8 has held as follows:

"8.There may be a case where the report of the Union Public Service Commission is not relied upon by the disciplinary authority and in that case it is certainly not necessary to supply a copy of the same to the employee concerned. However, if it is relied upon, then a copy of the same must be supplied in advance to the employee concerned, otherwise, there will be violation of the principles of natural justice. This is also the view taken by this Court in the case of S.N.Narula vs Union of India."

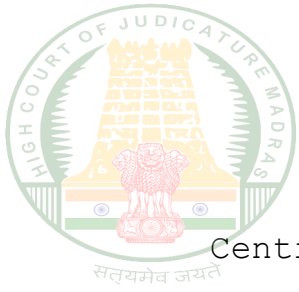
21.The Hon'ble Supreme court made it clear that whenever the authority relies upon the report of Public Service Commission, a copy of the same has to be furnished. If the same is not furnished to the



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delinquent before imposition of punishment that would be in violation of principle of natural justice.

In the event if the government has imposed punishment solely based on the views of the public service commission, then it ought to have furnished the same to the delinquent officer. Whereas in this case the government independently considered the report of the enquiry officer, further representation of this petitioner and all connected records and held that the charge as proved and for the proven charge , the government have arrived at a provisional a decision to impose the punishment of compulsory retirement and then only obtained the views of TNPSC on the provisional decision as per Regulation 18(1)(b)(iii) of the Tamil Nadu Public Service Commission Regulations, 1954 and thereafter passed the impugned order. The government have held that on a perusal of the records, it is clearly established that the delinquent officer apart from demanding money to prepare salary bill and to prepare LPC, SR, Pay roll from Dr.N.Raguraman, has also been habitual in demanding the other staff of the Primary Health

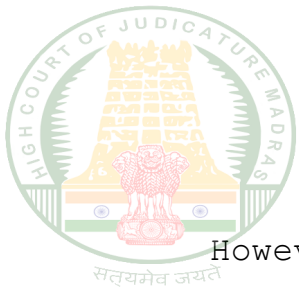


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Centre, Chinnalapatti, Rs.100/- for filing of income

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tax returns and for settlement of pending bills in treasury and further held that an employee holding the post that requires trust and confidence is expected to behave with discipline, loyalty and also maintain the fiscal sanctity and the whole act of the delinquent officer is reprehensible and such a situation does not even remotely commend any licence and has violated Rule 20 of the Tamil Nadu Government Service Conduct Rules, 1973. Therefore, the contention of the petitioner that without assigning any valid reason, the punishment was enhanced is not accepted. Further Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules prescribes the nature of punishment proportionate to the gravity of the delinquencies committed by an employee. The proven charge and the enhanced punishment on the petitioner fall under this Rule. Further the Hon'ble Supreme Court in **NEKRTC VS H.Amaresh (AIR 2006 SC 2730)** and **UPSRTC Vs Vinodh Kumar (2008 1 SCC 115)** has held that the punishment should always be proportionate to the gravity of the misconduct.



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However a case of corruption / misappropriation, the

only punishment is a dismissal from service.

Therefore, the petitioner has not made out any ground to interfere with the orders impugned herein.

22.In view of the above discussion, this Court is not inclined to entertain this writ petition on the grounds raised by the petitioner. Accordingly, this writ petition is dismissed. No costs. Consequently connected miscellaneous petitions are closed.

.01.2025

DSK

To

- 1.The Principal Secretary
to the Government,
Health and Family Welfare (D1)
Department,
Secretariat,
Chennai - 600 009.
- 2.The Director of Public Health and
Preventive Medicine,
Office of the Director of Public Health
and Preventive Medicine,
Chennai - 6.
- 3.The Deputy Director of Health Services,
Office of the Deputy Director
of Health Services,
Dindigul - 624 002.

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