



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.06.2024

Pronounced on : 31.07.2024

WEB COPY

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR**W.P.No.31229 of 2017**

K.Chitra

... Petitioner

Vs.

1. The Secretary to Government,
Municipal Administration & Water Supply Department,
Fort St. George, Chennai – 600 009.

2. The Commissioner of Municipal Administration,
Chepauk, Chennai – 600 005.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to G.O (2D) No.56, Municipal Administration and Watery Supply Department dated 01.09.2017 of the 1st respondent and quash the same and consequently re-instate the petitioner with backwages with all service benefits and pass such further or other orders as this Hon'ble Court may deem fit.

For Petitioner : Mr.A.E.Ravichandran
For Respondents : Mr.S.P.Karthik,
Government Advocate

ORDER

While the petitioner was working as Community Organizer in Hosur



Municipality, the petitioner was subjected to disciplinary proceedings by placing her under suspension through proceedings bearing ROC.No.42942/2010/C2 dated 09.09.2010 issued by the 2nd respondent. Thereafter, the petitioner was issued a charge-memo bearing ந.க.எண்.42942/2010/சீ2(2) dated 13.11.2010 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules containing two charges. The said two charges reads as under:

குற்றச்சாட்டு எண்.1

“திருமதி சித்ரா, சுமுதாய அமைப்பாளர் (தற்காலிக பணிநீக்கம்) ஆகிய தாங்கள் ஓசூர் நகராட்சியில் சுமுதாய அமைப்பாளராகப் பணிபுரிந்த காலத்தில், பொன்விழா ஆண்டு நகர்ப்புர வேலை வாய்ப்புத் திட்டத்தின் கீழ் 2008 09 (ம) 2009 10ம் ஆண்டுகளில் ஓசூர் நகராட்சிக்கு ஒதுக்கீடு செய்யப்பட்ட தொகைக்கான பணிகள் மேற்கொள்ளாமலும், பயனீட்டுச்சான்று ஏதும் வழங்கப்படாமலும் இணைப்பு 2ல் குறிப்பிடப்பட்டுள்ள காசோலைகளில் ரூ.2.95 இலட்சம் கையாடல் செய்து நகராட்சிக்கு நிதியிழப்பு ஏற்படுத்தியுள்ளீர்.

குற்றச்சாட்டு எண்.2

திருமதி சித்ரா, சுமுதாய அமைப்பாளர் (தற்காலிக பணிநீக்கம்) ஆகிய தாங்கள் மேற்குறிப்பிட்ட குற்றச்சாட்டுகள் மூலம் தமிழ்நாடு அரசு பணியாளர் நன்னடத்தை விதிகள் 1973ல் வரையறுக்கப்பட்ட பொறுப்புகளை எல்லாம் சரிவர நிறைவேற்றாமல் எதிர்பார்க்கப்பட்ட நேர்மையான நடத்தை, குடமையில்



ஈடுபாடு அரசு நலனில் அக்கரை ஆகியவற்றிலிருந்து தவறி பொறுப்பின்றி பணிபுரிந்துள்ளார்.”

2. In response to the said charge-memo, the petitioner submitted her explanation denying the charge. Thereafter, an Enquiry Officer was appointed through Proceedings bearing ROC.No.42942/2010/C2 dated 05.01.2011 of the 2nd respondent and after conducting an enquiry, the Enquiry Officer submitted his report and the same was communicated to the petitioner through Letter bearing கடித.எண்.15406/நப.2/2011-3 dated 26.08.2021 of the 1st respondent. In response to the same, the petitioner submitted her further explanation denying the charge once again. Thereafter, the suspension orders were revoked on 06.02.2012 and the petitioner was transferred to Arini Municipality on 06.03.2012.

3. While the matter stood thus, the impugned order dated 01.09.2017 came to be issued imposing the punishment of removal from service against the petitioner. It is aggrieved by the said order dated 01.09.2017, the petitioner approached this Court by filing the present Writ Petition.

4. The 1st respondent filed counter-affidavit.



5. Heard Mr.A.E.Ravichandran, learned counsel for the petitioner and Mr.S.P.Karthik, learned Government Advocate appearing for the respondent and perused the entire material on record.

6. The 1st charge that is framed against the petitioner is that the petitioner has caused financial loss to the Municipality to a tune of Rs.2,95,000/-, while she was working as Community Organizer in Hosur Municipality by drawing the same through cheques without executing any work and without submitting any utilization certificate. The details of the said cheques are furnished in Annexure-II of the said charge-memo. In Annexure-II, it is stated that the petitioner has received Rs.2,95,000/- through Cheque Nos.135050, 1305051, 135054 dated 13.06.2009, 16.06.2009 and 12.08.2009 for an amount of Rs.1,00,000/-, Rs.1,20,000/- and Rs.75,000/-, totalling to Rs.2,95,000/-, thereby the petitioner has acted in violation of the Code of Conduct. The said three cheques are shown to have been drawn in favour of the petitioner. The 2nd charge is a consequential charge alleging that the petitioner has acted irresponsibly in discharging her responsibilities in violation of the Tamil Nadu Government Servants Code of Conduct Rules, 1973 and failed to maintain honesty, conduct, commitment to duty etc.,

7. In the explanation submitted in response to the charge-memo, the petitioner categorically stated that the petitioner was not at Namakkal on 15.06.2009 and



16.06.2009, during which period, one of the cheques i.e., Cheque No.135051 dated 16.06.2009 for Rs.1,20,000/- was stated to have been encashed, as she was on training at Namakkal on official duty. The petitioner also further stated that the abbreviation that is mentioned as 'CH' in the passbook issued by the Indian Bank in respect of the amounts drawn under the three cheques, the same was taken as Chitra, the petitioner herein, though the said letter 'CH' mentioned in the said passbooks is meant for the cheque. She also further stated that all the three cheques were self-cheques, but not the cheques drawn in the name of the petitioner and she also further contended that she has no power to draw the cheque. Thus, she denied the charge in so many terms. She also further placed reliance on a letter dated 09.12.2010 issued by the Manager of Indian Bank to say that the said cheques are self-drawn cheques but not the cheques drawn in favour of the petitioner. As already noted above, the Charge No.2 is only a consequential charge basing on the allegations made in Charge No.1 and therefore, no independent examination needs to be made insofar as Charge No.2 is concerned.

8. The petitioner has participated in the enquiry that was conducted by the Enquiry Officer and accordingly, the Enquiry Officer has submitted his report dated 04.05.2011. In the enquiry report, the Enquiry Officer has framed three issues for consideration which reads as under:-



WEB COPY

W.P.No



7

“1. திருமதி சித்ரா அவர்களின் பெயருக்கு
காசோலை வழங்கப்பட்டுள்ளதா?

2. பயனச்சீட்டுச் சான்ற வழங்காமல் இருந்தபோது
திருமதி சித்ராவின் பெயரில் எதன் அடிப்படையில்
காசோலை வழங்கப்பட்டுள்ளது?

3. காசோலை வங்கியில் பணமாக மாற்றம்
செய்யப்பட்டுள்ளதா? ”

9. The Enquiry Officer having framed the issues for decision as above, failed to record any finding on the said issues in the entire enquiry report. If the said issues are answered by the Enquiry Officer, the Enquiry Officer would have arrived at a proper conclusion. As against a specific charge of the petitioner drawing the amounts covered by the three cheques, which are stated to have been issued in her name, the petitioner categorically denied the same stating that the said cheques are all self-drawn checks, but not the cheques issued in favour of the petitioner. The Enquiry Officer failed to advert to the said contention raised by the petitioner. In support of her contention, the petitioner also placed reliance on a letter dated 09.12.2010 issued by the Manager of the Indian Bank, Hosur confirming that the three cheques alleged to have been drawn by the petitioner were all self-cheques and cash payments were made by the Bank. In spite of such a specific contention raised by the petitioner, the Enquiry Officer failed to consider the said aspect, but the Enquiry Officer without there being any basis,



proceeded to conclude that the Commissioner of Hosur Municipality issued cheques in the name of the petitioner for Rs.2,95,000/- and proceeded to conclude that the said cheques were credited to the account of the petitioner. Further, when a mention was made in the Bank passbook as 'paid to CH', the Enquiry Officer construed the said 'CH' as the name of the petitioner 'Chitra'. When the petitioner has placed a substantial material in the shape of the letter issued by the Manager of the concerned Bank stating that the three subject cheques were all self-drawn cheques, the question of mentioning the name of the petitioner as 'CH' in the passbook does not arise. The same is nothing but baseless assumption drawn by the Enquiry Officer.

10. All the three cheques were encashed during the year 2009 and immediately thereafter, the same has come to the notice of the respondents resulting in initiation of disciplinary proceedings by placing the petitioner under suspension on 09.09.2010, the respondents in all fairness ought to have required the bank concerned to furnish the original cheques under which the amounts were drawn, before framing the charges against the petitioner herein. But, for the reasons best known, neither the respondents nor Enquiry Officer has chosen to call for the cheques in question or to examine the Manager or any official of the Bank to say that the amounts to a tune of Rs.2,95,000/- were paid to the petitioner. Had the respondents nor the Enquiry Officer taken steps to



summon the cheques in question during the course of enquiry, it would have been clear as to who in-fact drawn the amounts covered by the said three cheques. It is only by taking note of the entry made in the passbook as 'paid to CH', an inference was drawn as if the said amounts were paid to the petitioner herein.

11. Further, as seen from the findings of the Enquiry Officer, the Enquiry Officer without recording any finding that the cheques were issued in the name of the petitioner, recorded a finding that the cheques issued in the name of 'Chitra' are not returned by her to the Municipality, but encashed the said cheques, thereby she planned to misappropriate the Municipal funds. Absolutely there is no basis for arriving at such a conclusion. The entire finding of the Enquiry Officer in this regard is perverse. In spite of the petitioner raised her objections against the report of the Enquiry Officer, the 1st respondent failed to take into consideration the said objections and in a mechanical manner, accepted the findings of the Enquiry Officer and issued the impugned order removing the petitioner from service. Thus, the entire disciplinary proceedings that were initiated resulting in imposing the punishment of removal from service on the petitioner are vitiated.



12. It is also necessary to notice that the respondents have also initiated disciplinary proceedings against the Commissioner of the Hosur Municipality along with the petitioner and one of the charges framed against the Commissioner of Hosur Municipality is relevant for the case on hand. The said charge viz., Charge No.2 framed against the Commissioner of Hosur Municipality, by name Thiru.A.P.Paneer Selvam reads as under:-

“ குற்றச்சாட்டு 2

திரு ஆ.ப.பன்னீர்செல்வம் நகராட்சி ஆணையர் (தற்காலிக பணிநீக்கம்) ஆகிய தாங்கள் ஓசூர் நகராட்சியில் ஆணையராகப் பணிபுரிந்த காலத்தில், பொன்விழா ஆண்டு நகர்ப்புர வேலை வாய்ப்புத் திட்டத்திற்காக 2008-09 மற்றும் 2009-10ம் ஆண்டுகளில் ஓசூர் நகராட்சிக்கு ஒதுக்கீடு செய்யப்பட்ட தொகைக்கான பணிகள் ஏதும் செய்யப்படாமலும் பயனீட்டு சான்று ஏதும் வழங்காத நிலையில் ஓசூர் நகராட்சியில் சமுதாய அமைப்பாளராகப் பணிபுரிந்த திருமதி சித்ரா என்பவரின் பெயருக்கு இணைப்பு 2ல் குறிப்பிடப்பட்டுள்ள தேதிகளில் ரூ.2.95 இலட்சத்திற்கான காசோலைகளை வழங்கி நகராட்சி நிதியை கையாடல் செய்துள்ளார்.”

13. From the above, it is evident that the said Thiru.A.P.Paneer Selvam, the then Municipal Commissioner of Hosur Municipality during the Golden Jubilee Year i.e.,



2008-2009 and 2009-2010, drawn an amount of Rs.2,95,000/- through cheques in the name of the petitioner herein and misappropriated the same.

WEB COPY

14. In the teeth of the above charge framed against the then Commissioner, the charge that is framed against the petitioner cannot stand for legal scrutiny. It is not permissible for the respondents to contend that the very same amount of Rs.2,95,000/- was misappropriated by the petitioner as well as the then Commissioner of Hosur Municipality. Either of these two charges only one can stand. As seen from the ந.க.எண்.42942/2010/சீ2(2), the said charge framed against the then Commissioner was held proved and he was also punished appropriately.

15. In the normal course, this Court will not interfere with the order of punishment imposed in the disciplinary proceedings and this Court also cannot act as an appellate authority. But, in the peculiar fact and circumstances of the case, as discussed above, this Court is of the considered view that in the light of the perverse and absurd approach of the Enquiry Officer and the Disciplinary Authority, it is a fit case to interfere in exercise of the jurisdiction of this Court under Article 226 of the Constitution of India.



16. In the light of the above, the charges that are framed against the petitioner through charge-memo ந.க.எண்.42942/2010/சீ2(2) dated 13.11.2010, resulting in imposing the punishment of removal from service through impugned G.O (2D) No.56, Municipal Administration and Watery Supply Department dated 01.09.2017 are wholly unsustainable and are liable to be set aside. Accordingly, the impugned Government Order in G.O (2D) No.56, Municipal Administration and Watery Supply Department, dated 01.09.2017 is set aside and the Writ Petition is allowed directing the respondents to reinstate the petitioner into service as 'Community Organizer' forthwith and extend all consequential benefits including continuity of service, monetary benefits and also further directed to regularize the period of suspension of the petitioner and the period she was out of service till the date of reinstatement as 'On Duty' with all consequential benefits. The entire exercise as directed above shall be completed by the respondents within a period of two months from the date of receipt of a copy of this order. No costs. Connected Miscellaneous Petitions, if any shall stand closed.

31.07.2024

skr

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To



W.P.No

7

1. The Secretary to Government,
Municipal Administration & Water Supply Department,
Fort St. George, Chennai – 600 009.

2. The Commissioner of Municipal Administration,
Chepauk, Chennai – 600 005.



WEB COPY

W.P.No



7

MUMMINENI SUDHEER KUMAR, J.

skr

Pre-Delivery Order made in
W.P.No.31229 of 2017

31.07.2024