

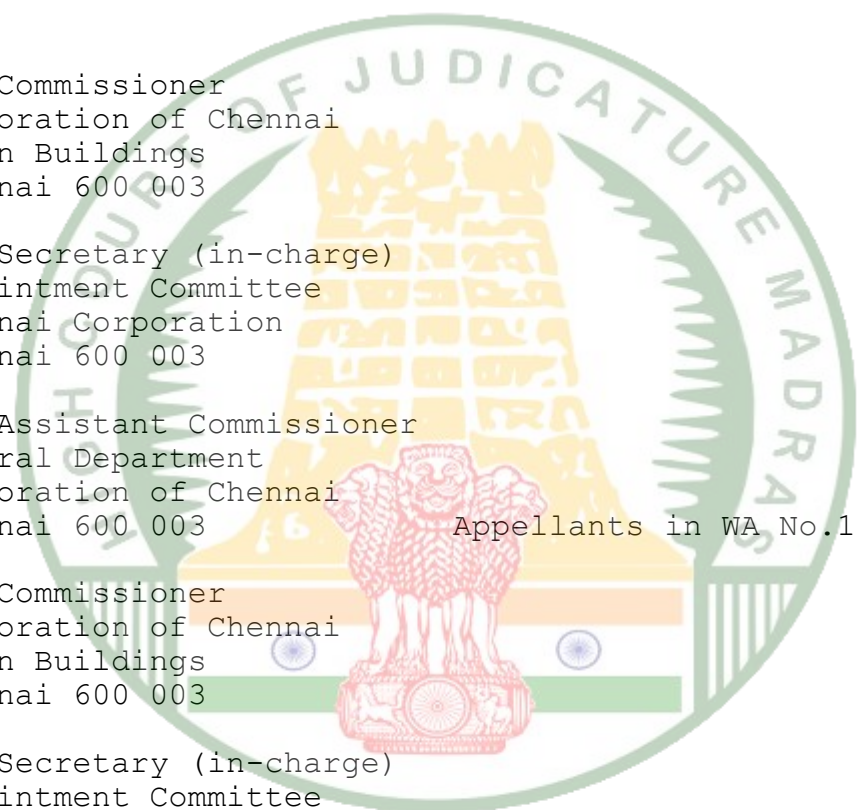
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2015

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
and
THE HON'BLE DR. JUSTICE P. DEVADASS

W.A. Nos.1557 to 1559 of 2015 and M.P. Nos.1 of 2015

- 
- 1 The Commissioner
Corporation of Chennai
Ripon Buildings
Chennai 600 003
- 2 The Secretary (in-charge)
Appointment Committee
Chennai Corporation
Chennai 600 003
- 3 The Assistant Commissioner
General Department
Corporation of Chennai
Chennai 600 003 Appellants in WA No.1557 of 2015
- 1 The Commissioner
Corporation of Chennai
Ripon Buildings
Chennai 600 003
- 2 The Secretary (in-charge)
Appointment Committee
Chennai Corporation
Chennai 600 003 Appellants in WA Nos.1558 & 1559 of 2015

Vs.

- A. Johnson Respondent in WA No.1557 of 2015
- R. Gangadevi Respondent in WA No.1558 of 2015
- E. Govindaraj Respondent in WA No.1559 of 2015

Writ Appeals preferred against the common order dated 23.03.2015 passed in W.P. Nos.18533 to 18535 of 2013 respectively.

PRAYER: W.P.No.18533 of 2013 filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus Calling for the records of the 2nd Respondent in Resolution No.300/2012 dated 24.11.2012 in so far as it directs the conversion of charge under the rule 9(1) into charge under the rule 9(2) of the Chennai Corporation Class III and Class IV Service (Discipline and Appeal) By-Laws 1983 and the order of the 1st Respondent in Po.Thu.Na.Ka.No. E2/7684/2011 dated 07.06.2013 and the order of the 3rd Respondent in Po.Thu.Na.Ka.No. E1/22644/2013 dated 18.6.2013 and quash the same and consequently direct the 1st and 3rd Respondents to include the name of the petitioner in the panel of Assistant Accounts Officer for the year 2012-13 and promote the petitioner as Assistant Accounts Officer on par with his immediate Junior.

W.P.No.18534 of 2013 filed under Article 226 of the Constitution of India praying for a Writ of Certiorari Calling for the records of the 2nd Respondent in Resolution No.300/2012 dated 24.11.2012 in so far as it directs the conversion of charge under the rule 9(1) into charge under the rule 9(2) of the Chennai Corporation Class III and Class IV Service (Discipline and Appeal) By-Laws 1983 and the order of the 1st Respondent in Po.Thu.Na.Ka.No. E2/7684/2011 dated 07.06.2013 and quash the same

W.P.No.18535 of 2013 filed under Article 226 of the Constitution of India praying for a Writ of Certiorari Calling for the records of the 2nd Respondent in Resolution No.300/2012 dated 24.11.2012 in so far as it directs the conversion of charge under the rule 9(1) into charge under the rule 9(2) of the Chennai Corporation Class III and Class IV Service (Discipline and Appeal) By-Laws 1983 and the order of the 1st Respondent in Po.Thu.Na.Ka.No. E2/7684/2011 dated 07.06.2013 and quash the same and consequently to direct the 1st Respondent to promote the petitioner as Superintendent on par with his immediate Juniors.

For appellants in Ms. Karthikaa Ashok
all the writ appeals Standing Counsel

For respondent in Mr. K. Doraisamy, Sr. Counsel
all the writ appeals for M/s. Muthumani Doraisami

COMMON JUDGMENT

(delivered by SATISH K. AGNIHOTRI, J.)

M/s. Muthumani Doraisamy, learned counsel, accept notice for the respondents.

2 The instant intra-Court appeals are directed against the common order dated 23 March 2015 rendered by the learned Single Judge in W.P.Nos.18533 to 18535 of 2013 respectively. Thus, since all the instant intra-Court appeals arise from the common order, the same are considered and decided by this common judgment.

3 For the sake of brevity, clarity and convenience, the parties are referred to as per their arraignment in the instant intra-Court appeals.

4 While the respondents in W.P. Nos. 1557 and 1559 of 2015 filed the instant writ petitions, being W.P. Nos.18533 and 18535 of 2013 respectively, calling in question, the legality and validity of the Charge Memos dated 07 June 2013 and for a consequential direction to the first appellant to promote them as Assistant Accounts Officer and Superintendent respectively, on par with their juniors, the respondent in W.A. No.1558 of 2015 filed the instant writ petition being W.P.No.18534 of 2013, assailing the second respondent's resolution dated 24 November 2012 insofar as it directs conversion of charge under Clause 9 (1) into one under Clause 9(2) of the Chennai Corporation Class III and Class IV Service (Discipline and Appeal) By-laws, 1983 (for short "the By-laws") and the order dated 07 June 2013 passed by the first respondent.

5 The indisputable facts in nutshell are that while the respondent in W.A. No.1559 of 2015 was working as Assistant, Pa.Ka.Ku. Zone-V, he was issued with a charge memo dated 26 May 2011 under the provisions of Clause 9(1) of the By-laws, containing two charges, viz., (i) causing loss of revenue to Chennai Corporation in collusion with one S. Thangaprakasam, Assistant, by altering the actual measurements entered in measurement book qua construction work of buildings at Ward No.76 and thereby facilitating extra payment to the contractor and (ii) thus, violated Clause 20 of the by-laws. Followed by issuance of charge memo, a proper enquiry proceedings was initiated and on conclusion of the enquiry proceedings, the respondent was imposed with the punishment of stoppage of increment for a period of two years without cumulative effect vide order dated 28 November 2011. (While the translated version of the punishment orders dated 28 November 2011 produced before us indicates stoppage of increment for a period of two years with cumulative effect, the counter affidavit and the impugned order rendered by the learned Single Judge indicate stoppage of increment for a period of two years without cumulative effect). Thereagainst, the respondent preferred an appeal before the second appellant. During the pendency of the appeal, a resolution being Resolution No.207 of 2012 was passed on 19 July 2012 in the Meeting of the Recruitment Committee, stating that the nature of punishment imposed was not in accordance with the

charge levelled and as such, it was resolved to initiate further proceedings. Feeling aggrieved, the respondent in W.A. No.1599 of 2015 had come up with the writ petition being W.P. No.18535 of 2013. The other two respondents, viz., R. Gangadevi and A. Johnson were also treated in the identical lines and they also filed the instant writ petitions being W.P. Nos.18533 and 18534 of 2013, as aforesaid. All the three writ petitions were taken up together by the learned Single Judge and disposed of by a common order.

6 The learned Single Judge examined the facts of the case from all angles and recorded the finding that the respondents had already undergone the punishment of stoppage of increment for two years without cumulative effect before a decision was taken to initiate fresh enquiry for major punishment for the same incident. The learned Single Judge, relying on the judgment rendered in D. Narayanan vs. District Revenue Officer, Virudhunagar District and Others¹, by a Division Bench of this Court, came to the conclusion that the appellants are not permitted to initiate a second enquiry on the same allegations, which led to imposition of punishment on the respondents, especially, when the respondents had already undergone the punishment imposed on them.

7 We have heard the learned counsel for the parties. We have also examined the pleadings and documents appended thereto.

8 Incontrovertibly, the allegation of misconduct made in the charge memo dated 26 May 2011 was examined under proper disciplinary proceedings, which eventually held the respondents guilty. Accordingly, the punishment of stoppage of increment for a period of two years without cumulative effect was imposed on the respondents vide separate proceedings dated 28 November 2011, which were given effect to immediately and the respondents had undergone the said punishment imposed on them. During the pendency of appeals, the appellants have decided to initiate a fresh enquiry on the same set of allegations which stood concluded. The learned Single Judge has rightly held that a fresh enquiry on the same allegations is not permissible and it amounts to double jeopardy.

9 We are in complete agreement with the view taken by the learned Single Judge. The impugned order rendered by the learned Single Judge is unexceptionable and proper warranting no interference.

1 2009 (4) MLJ 708

Resultantly, the intra-Court appeals stand dismissed. Costs made easy. Connected Miscellaneous Petitions are closed.

cad

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

- 1 The Commissioner
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Chennai 600 003
- 2 The Secretary (in-charge)
Appointment Committee
Chennai Corporation
Chennai 600 003
- 3 The Assistant Commissioner
General Department
Corporation of Chennai
Chennai 600 003

+ 3 ccs to Mr.Kandan Duraisami, Advocate SR 60339

+ 1 cc to M/s.Karthikaa Ashok, Advocate SR 60009

vsn(co)
prk26/11

Common judgment in
W.A. Nos.1557 to 1559 of 2015

सत्यमेव जयते

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