IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2015

CORAM :

THE HONOURABLE MR. JUSTICE T. RAJA

W.P.NOs. 8493 & 8494 OF 2007
(O.A.NOs. 5043/2001 & 6392/2002)

S. Palanivelu .. Petitioner in both Wps

Vs.

1. The Secretary to Government
Municipal Administration and
Water Supply Department
Fort St. George
Chennai - 600 009. .. 1st respondent in WP.8494/07
and Respondent in WP.8493/07

2. The Director of Town Panchayat
Kuralagam, Chennai - 104. .. 2nd respondent in W.P.
No.8494 of 2007

PRAYER in W.P. No. 8493/2007: This Writ Petition came to be numbered under Article 226 of the Constitution of India by way of transfer of O.A.No. 5043 of 2001 from the file of Tamil Nadu Administrative Tribunal with a prayer to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent relating to its proceedings G.O. (2D) No.20 dated 12.03.2001 and quash the same and pass other orders.

PRAYER in W.P. No. 8494/2007: This Writ Petition came to be numbered under Article 226 of the Constitution of India by way of transfer of O.A.No. 6392 of 2002 from the file of Tamil Nadu Administrative Tribunal with a prayer to issue a Writ of Mandamus, to direct the respondents to consider and promote the applicant to the post of Executive Officer (Selection Grade) with effect from the date of his immediate juniors were promoted with all consequential benefits.

For Petitioner : Mr. V. Vijayshankar
in both Wps

For Respondents : Mr. N. Srinivasan, AGP
in both WPs

O R D E R

The petitioner S. Palanivelu, filed O.A. No. 5043 of 2001 before the learned Tamilnadu Administrative Tribunal challenging the impugned order in G.O. (2D) No.20 dated 12.03.2001, imposing the punishment of withholding of increment for 1 year with cumulative effect, issued by the respondent, the Secretary to Government, Municipal Administration and Water Supply Department, Chennai on the ground that the disciplinary authority had not applied their mind to the facts and circumstances of the case, since the audit objection itself has been dropped on 22.01.1993. Subsequently, the petitioner filed O.A.No. 6392 of 2002 before learned Tamil Nadu Administrative Tribunal seeking for a direction to the respondents to consider and promote him to the post of Executive Officer (Selection Grade) with effect from the date of his immediate juniors were promoted with all consequential benefits. These O.As came to be transferred as W.P. Nos.8493 and 8494 of 2007 to this Court.

2. While assailing the impugned order, learned counsel appearing for the petitioner would submit that the petitioner who joined service in the respondent office as Junior Assistant in the year 1968 was promoted as Head Clerk in the year 1986 and subsequently he was promoted as Executive Officer Grade I in the year 1994 in Vellattamparappu Town Panchayat. Whileso, he was issued with a charge memo on 04.11.1992 for an incident said to have taken place during the year 1989 - 1990 while he was working as an Executive Officer in Sivagiri Town Panchayat, alleging that he had committed irregularities in purchasing spare parts for street lights by not following the procedures and thereby causing loss to the Panchayat to the tune of Rs.3,103.50. Four charges were framed for the above said incident and all were inter related. The petitioner submitted a detailed representation on 24.11.1992 refuting the allegations contained in the charge memo. However, finding that the explanation offered by the petitioner was not satisfactory, an enquiry officer was appointed and the said enquiry officer held charges 1, 3 & 4 as not proved. However, he held charge No.2 alone as proved. In the meanwhile, the audit objection itself was dropped on 22.01.1993.

3. Adding further, learned counsel appearing for the petitioner would submit that the charge, alleging the irregularities while purchasing the street lights as stated in Paragraph 33 of the Audit Report, have been dropped based on the

ratification issued in G.O. Ms. No. 172 Rural Development (D) Department dated 07.03.1990, goes without saying that charge No.2 also cannot be proceeded with. The enquiry officer also found him not guilty of the charges 1, 3 & 4, but erroneously ignored the supplementary explanation offered by the petitioner on 31.03.1999, stating that the audit objection itself has been dropped on 22.01.1993 specifically mentioning that the irregularities stated in paragraph 33 of the audit report has been ratified in G.O. Ms. No. 172 Rural Development (D) Department dated 07.03.1990 and hence the second charge should also be dropped. But, the Enquiry officer had wrongly held the second charge as proved. However, the petitioner again brought to the notice of the disciplinary authority about the dropping of the audit objection on 22.01.1993 and requested to set aside the second charge based on the Collector's remarks to accept the explanation offered by the petitioner. Even that was not properly considered by the disciplinary authority. When the District Collector has accepted the case of the petitioner that he has not violated any of the procedures, since the procedures mentioned in paragraph 33 of the Audit Objection, has been ratified in G.O. Ms. No. 172 Rural Development (D) Department dated 07.03.1990, the allegations against the petitioner that he has not followed the procedures in purchasing the street lights, that too from another cooperative society cannot be a charge. However, when this crucial and vital aspect are lost sight of by the disciplinary authority, the imposition of the punishment of withholding of one increment for one year with cumulative effect has no basis to stand, hence, the petitioner challenges the impugned order dated 12.03.2001.

4. In the counter filed before this Court, the respondents have not even stated as to how charge No.2 can be held against the petitioner, when Charge No.2 has been levelled against the petitioner only on the basis of the audit objection, stating that the petitioner had failed to follow the procedure in purchase of street lights, more particularly, when the audit objection itself has been completely dropped on 22.01.1993 and the same has also been approved by the District Collector in his proceedings. When the petitioner submitted his detailed explanation saying that he has purchased the street lights only from the Erode Cooperative Society and therefore there cannot be any doubt or suspicion against the petitioner that he had mishandled the Panchayat Fund and further more the said explanation has been rightly accepted by the District Collector and subsequently, the audit objection also has been dropped, as rightly held by the Enquiry Officer that Charges 1, 3 & 4 are not proved, the enquiry officer should have also held the charge No.2 cannot stand. Surprisingly, the enquiry officer has wrongly held the charge No.2 as proved against the petitioner and the disciplinary authority also ignoring the District Collector's remarks to close the issue, erroneously overlooked the fact that the District Collector has accepted the

explanation offered by the petitioner to the charge memo and dropping the of the audit objection dated 22.01.1993 and thereby closing the foundation for framing the charge, therefore, the disciplinary authority ought not to have held the second charge as proved.

5. As this was not considered, the imposition of punishment of withholding of increment for one year with cumulative effect is neither legally tenable nor maintainable. Arguing further, he contended that by setting aside the same, direction should be issued to the respondents to give him further promotion since he had retired as Selection Grade Executive Officer. For, had there been no punishment, the petitioner would have been promoted as Special Grade Executive Officer and retired in the said post. As the petitioner had lost the promotional avenues and the consequential monetary benefits, suitable direction may be given, he pleaded.

6. Counter affidavit has been filed by the respondents. Learned Additional Government Pleader appearing for the respondents would submit that the petitioner was initially appointed as Junior Assistant in Vadugapatti Town Panchayat and subsequently he was promoted as Selection Grade Executive Officer in the year 2003. Thereafter he was permitted to retire from service on 30.04.2007. However, when he was working as Head Clerk in Sivagiri Town Panchayat he was given additional charge of the post of Executive Officer during the year 1989-1990 and as Executive Officer (in-charge) he had committed serious irregularities in the purchase of street lights causing a loss of Rs.13,783/- to Town Panchayat funds. These irregularities were found out by the Local Fund Department during the audit objection. Based on the audit report, the District Collector of erstwhile Periyar District now Erode District had framed four charges with regard to the above irregularities on 04.11.1992. The petitioner also submitted his explanation. However, finding the explanation not satisfactory an enquiry officer was appointed. The enquiry officer after holding a detailed enquiry, came to the conclusion that out of four charges, the second charge alone was proved, namely, violating the procedure in getting approval of District Town Panchayat Officer (now Assistant Director of Town Panchayats) for the expenditure made in excess of Rs.1000/- . With regard to charge Nos. 1, 3 & 4 the enquiry officer found him not guilty. Based on the report of the enquiry officer and after considering his written representation, he was imposed with the punishment of withholding of increment for one year with cumulative effect, therefore, there is no infirmity or illegality in the imposition of the punishment. Adding further, learned Additional Government Pleader contended that the arguments advanced by the petitioner that subsequently the audit objection has been dropped is only an after thought argument, since the Government have come to the

conclusion that charge No.2 was already proved against the petitioner accepting the finding that he had violated the procedure in purchasing the street lights without prior approval of the District Town Panchayat Officer.

7. But this Court is not able to appreciate the reasoning and the conclusion arrived by the disciplinary authority, in imposing the punishment of withholding of increment for one year with cumulative effect. The reason is, the petitioner was issued with a charge memo dated 04.11.1992 containing four charges. Charge No.1 alleges that the petitioner had purchased spares for street lights for Sivagiri Town Panchayat during the year 1989 - 1990, without calling for tenders, from Erode Co-operative Society by paying an excess price and thereby causing a loss of Rs.3,163.50 to the Panchayat. The second charge shows that the petitioner should have obtained prior approval from the District Town Panchayat Officer for the expenditure beyond Rs.1000/-, as per G.O. Ms. No.892 Rural Development department dated 12.04.1971. Since the petitioner has purchased without complying the conditions mentioned in the said G.O it was alleged that he had acted unilaterally. Charge No. 3 and 4 also alleged that the petitioner had violated the procedures before making any purchase for the Town Panchayat. All these four charges are proceeded on the basis of the audit objection. But, when the petitioner submitted his detailed explanation to the District Collector of the erstwhile Periyar District, stating that he had not violated any of the procedures while purchasing the spares for the street lights and that he had purchased the same only from the Erode District Cooperative Society, the allegations raised against the petitioner that he had violated the rules and regulations and had committed loss to the Panchayat cannot be put against him, for a sole reason that the District Collector has accepted his explanation. Besides, the Collector also has informed the Audit authorities to accept the explanation and close the issue. Accordingly, the Audit Authorities also considering the representation and also the remarks made by the District Collector of erstwhile Periyar District on 21.11.1993, had dropped the audit objection itself on 22.11.1993. Once the audit objection had been dropped, then charge No.2 levelled against the petitioner based on the audit objection also cannot be put against the petitioner.

8. That apart, as already mentioned, out of the four charges levelled against the petitioner, charge Nos. 1,3 & 4 were found not proved against the petitioner. However, when charge No.2 was held proved by the Enquiry officer on 18.01.1999, ignoring dropping of the audit objection dated 22.01.1993, the disciplinary authority ought not to have accepted the report of the enquiry officer and passed the impugned order on 12.03.2001. When the very foundation of the audit objection has been dropped

way back on 22.01.1993, the charges also disappeared. As this significant aspect has been completely lost sight of by the enquiry officer and the disciplinary authority, finding him guilty of charge No.2 is wholly unjustifiable. Therefore, I am of the considered view that the punishment of withholding of increment for one year with cumulative effect imposed on 12.03.2001, necessarily should fall to ground, accordingly the same is liable to be set aside and accordingly the same is set aside.

9. It is also an admitted fact that the petitioner was given promotion as Executive Officer Grade I with effect from 24.02.1993 and posted in Salangapalayam Town Panchayat, Erode during the currency of the said charges. On coming to know of the said promotion, the District Collector vide his proceedings in Na.Ka. No. 17593/93/V2 dated 12.07.1993 reverted the petitioner as Head Clerk in Muthur Town Panchayat, Erode and he had also joined duty on 14.07.1993. Only thereafter, he was given promotion as Executive Officer Grade I with effect from 16.02.1994 and was posted in Puthalam Town Panchayat, Kanyakumari District. In the meanwhile, a proposal was forwarded by the District Collector, Erode for approval of panel to the posts of Executive Officer (Selection Grade) for the year 2000-2001. But the name of the petitioner was deferred due to the currency of charges and punishment till 2002-2003, as per G.O. Ms. No. 368 Personnel and Administrative Reforms Department dated 18.10.1993 and Lr. No.248 dated 20.10.1997. Therefore, it is amply clear that the petitioner had suffered loss of promotion in view of the charge memo and also the imposition of wrong punishment. As this Court has found that the charges and punishment subsequently imposed are not legally sustainable, it goes without saying that the petitioner's promotion should be considered on par with his juniors, Tvl. Chenniappan, Kandasamy and Kaliappan, who were promoted as Selection Grade Executive Officer in the year 1999-2000. Therefore, the respondents are directed to consider the petitioner as an Officer without facing any punishment and give him due promotion to which he is legally entitled, on par with his juniors, along with monetary benefits.

10. In view of the above, both the writ petitions stand allowed. The above said exercise shall be carried out within a period of 10 weeks from the date of receipt of a copy of this order. No order as to costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

1. The Secretary to Government
   Municipal Administration and
   Water Supply Department
   Fort St. George
   Chennai - 600 009.

2. The Director of Town Panchayat
   Kuralagam, Chennai - 104.

+1 CC to Mr.V.Vijay Shankar, Advocate Sr.6550
+1 CC to The Government Pleader, Sr.6358

CO-SK
ths : 20.03.2015

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(O.A.NOs. 5043/2001
& 6392/2002)
05.02.2015