

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11-08-2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

WRIT PETITION No.24162 of 2015

and

M.P.No.1 of 2015

V.Jinnah

...Petitioner

vs

1. The Director of Municipal Administration  
Chepauk, Chennai 600 005

2. The Commissioner  
Puliyankudi Municipality  
Tirunelveli District

...Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records relating to the impugned order of the Director of Municipal Administration, the first respondent herein, issued in Na.Ka.No.87634/2002/C2 dated 29.5.2015, and quashing the same.

For Petitioner : Mr.T.Ranganathan

For Respondents : Mr.V.Jayaprakash Narayanan  
Special Government Pleader

ORDER

By consent, the writ petition itself is taken up for final disposal.

2.The petitioner would state that he while working as a Town Planning Inspector in Tenkasi Municipality, was visited with the Disciplinary Proceedings in the form of charge memo dated 29.9.2003, and has submitted his written statement of defence on 12.11.2003, and not satisfied with the same, the Regional Director of Municipal Administration, Tirunelveli, was appointed as the Enquiry Officer to conduct the Disciplinary Proceedings and the Enquiry Officer, after it's conclusion, has submitted a report during October, 2014, to the first respondent. The petitioner would further state that the first respondent has accepted the findings given in the enquiry report, and passed the impugned order dated 29.5.2015, imposing the punishment

of postponement of increment for a period of five years with cumulative effect, and challenging the legality of the same, the petitioner came forward to file this writ petition.

3.The learned Counsel appearing for the petitioner, has drawn the attention of this Court to Rule 8 (3) of the Tamil Nadu Municipal Services (Discipline and Appeal) Rules, 1970, and would submit that as per the said Rule, before imposing an order of penalty, a copy of the enquiry report has to be furnished to the concerned delinquent calling upon him to submit his/her further representation if any, and thereafter, appropriate orders be passed and in the case on hand, admittedly, copy of the enquiry report has not been furnished to the petitioner and hence, on the sole ground, the impugned order warrants interference and prays for setting aside the same.

4.Per contra, Mr.V.Jayaprakash Narayanan, Special Government Pleader, who accepted notice on behalf of the respondents, would submit that the allegations levelled against the petitioner in the form of charge memo, are very serious in nature and however, the Disciplinary Authority was very lenient in imposing the punishment of postponement of increment for a period of five years with cumulative effect and all reasonable opportunities have been afforded to the petitioner and thereafter only, the order of punishment came to be passed and prays for dismissal of this writ petition.

5.This Court has carefully considered the rival submissions and also perused the materials placed before it.

6.It is relevant to extract Rule 8(3) of the Tamil Nadu Municipal Services (Discipline and Appeal) Rules, 1970, as under:-

"8.Procedure for imposing penalties:-

(1)....

(2)....

(3) After the inquiry or personal hearing referred to in sub-rule (2) has been completed, the authority competent to impose the penalty specified in that sub-rule is of the opinion on the basis of the evidence adduced during the inquiry that any of the penalties specified in rule 3 should be imposed on the person charged it shall before making an order imposing such penalty, furnish to him a copy of inquiry or personal hearing or both as the case may be, and call upon him to submit his further representation if any, within a reasonable time not exceeding fifteen days. Any representation received in this behalf within the period shall be taken into consideration before making any order imposing the penalty provided that such

representation shall be based on the evidence adduced during the inquiry only. It shall not be necessary to give the person charged any opportunity of making representation on the penalty proposed to be imposed."

7.A perusal of the impugned order passed by the first respondent, would disclose that no reference has been made to the furnishing of the enquiry report to the petitioner and granting him an opportunity to put forth his explanation. In the considered opinion of the Court, the said procedure is mandated in the above said Rule. Admittedly, it has not been followed before passing the impugned order and hence, on this sole ground, the impugned order warrants interference.

8.In the result, the writ petition is partly allowed and the impugned order dated 29.5.2015, passed by the first respondent, is set aside and the first respondent is directed to furnish a copy of the enquiry report dated 17.11.2014, to the petitioner within a period of two weeks from the date of receipt of a copy of this order and the petitioner, on receipt of the same, is directed to submit his further explanation within a period of two weeks thereafter and the first respondent, on receipt of the same, is directed to consider it in accordance with law, and pass appropriate orders within a period of six weeks thereafter, and communicate the decision taken, to the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

nsv

To

1. The Director of Municipal Administration  
Chepauk, Chennai 600 005
2. The Commissioner  
Puliyankudi Municipality  
Tirunelveli District

1 CC to Mr.T.Ranganathan, Advocate SR.No. 41779  
1 CC to the Government Pleader, SR.No. 42065

W.P.No.24162 of 2015

LRS (CO) PSI (31.08.2015)