

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.3.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P. Nos.18533 to 18535 of 2013

A. Johnson ... petitioner in W.P.No.18533/2013

R.Gangadevi ... petitioner in W.P.No.18534/2013

E.Govindaraji ... petitioner in W.P.No.18535/2013

versus

1.The Corporation of Chennai,
rep. By its Commissioner,
Chennai 600 003.

2.The Secretary (in-charge)
Appointment Committee,
Chennai Corporation,
Chennai 600 003.

... respondents 1 and 2 in all Writ Petitions

3.The Asst. Commissioner,
General Department,
Corporation of Chennai,
Chennai 600 003.

... 3rd respondent in W.P.No.18533/2013

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 insofar as it directs the conversion of charge under the rule 9(1) into charge under 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 7.6.2013 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 respondents 1 and 3 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 insofar

as it directs the conversion of charge under the rule 9(1) into charge under 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 7.6.2013 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 insofar as it directs the conversion of charge under the rule 9(1) into charge under 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 7.6.2013 and quash the same and consequently direct the 1st respondent to promote the petitioner as Superintendent on par with his immediate juniors.

For petitioner : Mr.K.Doraisami, Senior Counsel,
for Mr.Muthumani Doraisami

For respondent : Mrs.Karthika Ashok

COMMON ORDER

The petitioners are aggrieved by the order dated 7 June 2013 on the file of Corporation of Chennai, initiating fresh disciplinary proceedings in respect of the very same charges, notwithstanding the culmination of earlier proceedings and punishment undergone by them.

Facts in brief :-

2. The petitioner in W.P.No.18533 of 2013 was initially appointed as Junior Assistant. He was later promoted as Administrative Officer. The petitioner in W.P.No.18534 of 2013 was initially appointed as Basic Health Worker and thereafter, he was promoted as Junior Assistant, Assistant and Section Manager (now re-designated as Superintendent). The petitioner in W.P.No.18535 of 2013 was initially appointed as Basic Health Officer and thereafter, he was promoted as Junior Assistant and Assistant.

3. While the petitioners were working in different capacities in Chennai Corporation, the Commissioner, Chennai Corporation issued a charge memo dated 26 May 2011 under Rule 9(1) of the Chennai Corporation Class III and Class IV Service (Discipline and Appeal) By laws, 1983, alleging that without verifying the bills, they have permitted the release of amount and thereby, jointly caused revenue loss to a tune of Rs.5,12,140/-. The Disciplinary Authority ultimately passed individual orders imposing punishment of stoppage of increment for a period of two years without cumulative effect. The petitioners have preferred appeals against the said order before the second respondent. In the meantime, the second respondent passed a resolution dated 19 July 2012, resolving to initiate fresh

proceedings against the petitioners on the basis of very same charges. The second respondent, pursuant to the resolution, decided to withdraw the earlier charge memo and issued a fresh charge memo on 7 June 2013 under Rule 9(2) of the Chennai Corporation Class III and Class IV Service (Discipline and Appeal) By-laws, 1983. The charge memo dated 7 June 2013 is challenged in this Writ Petition by the individual petitioners.

4. The Chennai Corporation has filed a counter affidavit justifying the impugned charge memo. According to the Corporation, on verification of proceedings, it was found that the charges were grave in nature and as such, a decision was taken to issue fresh charge memo under section 9(2) of the Chennai Corporation Class III and Class IV Service (Discipline and Appeal) By-laws, 1983.

5. Heard the learned Senior counsel for the petitioners and the learned Standing Counsel for the Corporation.

Discussion :-

6. The Corporation of Chennai initiated disciplinary proceedings against the petitioners by issuing charge memo on 26 May 2011. The petitioners defended the proceedings and ultimately, the Disciplinary Authority imposed the punishment of stoppage of increment for two years without cumulative effect. The petitioners have undergone the said punishment. It was only during the currency of the appeal preferred against the punishment, the second respondent passed a resolution on 19 July 2012, for initiating fresh proceedings on the ground that charges levelled against the petitioners were all grave in nature and appropriate punishment was not given to them. The second respondent pursuant to the decision taken on 19 July 2012, issued a charge memo on 7 June 2013 to the individual petitioners under rule 9(2) of the Chennai Corporation Class III and Class IV Service (Discipline and Appeal) By-laws, 1983.

7. The only question that arises for consideration is whether the Corporation was correct in issuing a fresh charge memo with respect to the very same incident after undergoing punishment by the delinquents.

8. A comparison of the charge memo dated 26 May 2011 and the impugned charge memo dated 7 June 2013 would clearly prove that very same charges are now framed against the petitioners. The petitioners have already undergone the punishment of stoppage of increment for two years, pursuant to the charge memo dated 26 May 2011 and the related enquiry. In case, a fresh proceeding are taken in the very same matter, it would amount to double jeopardy. Nothing prevented the Chennai Corporation from initiating proceedings under rule 9(2) of the Chennai Corporation Class III and Class IV Service (Discipline and Appeal) By-laws, 1983, against the petitioners initially. The

Corporation has taken a conscious decision to initiate proceedings only under Rule 9(1) of the Chennai Corporation Class III and Class IV Service (Discipline and Appeal) By-laws, 1983. It is also matter of record that the concerned contractor has paid the entire amount to the Corporation and as such, there is no revenue loss.

9. In D.Narayanan vs. District Revenue Officer, Virudhunagar District and others, 2009(4) MLJ 708, identical question came up for consideration before a Division Bench of this Court. The Division Bench having found that the appellant therein has already been punished under rule 17(b) of Tamil Nadu Civil Servants (Discipline and Appeal) Rules, held that it was not open to initiate a fresh proceedings under rule 17(c) of the Rules, as it would amount to double jeopardy. The relevant observation reads thus :-

17. Rule 8 of TNCS(D&A) Rules contemplates the penalties which may be imposed upon a person who is a member of the civil service. Items (i) to (iii), (v) and (ix), that is to say censure, fine, withholding of increment or promotion and suspension, are considered as minor penalties; whereas Item Nos.(iv), (vi), (vii) and (viii), that is to say reduction to a lower rank in the seniority list or to a lower post or to a lower time-scale or compulsory retirement, removal from service or dismissal from service are considered to be major penalties. Rule 17(a) contemplates the procedure relating to imposing of minor penalties, as envisaged under Rule 8(i) to (iii), (v) and (ix); whereas Rule 17(b) contemplates the procedure relating to the imposition of major penalties. Rule 17(c) is only by way of exception to rule 17(b), as apparent from the opening words of Rule 17(c)(i)(1) to the effect that the requirements of sub-rule(b) shall not apply. In other words, a careful and combined reading of all the provisions would make it clear that it is open to the departmental authorities either to follow the procedure contemplated under Rule 17(b) or the procedure contemplated under Rule 17(c). However, when Rule 17(b) has already been followed and a punishment is imposed, it would not be permissible for the departmental authorities to again subject the very same delinquent to a fresh punishment on the self-same allegation on the ground that such conduct has led to his conviction in a criminal case, which, in our considered opinion, would amount to double jeopardy.

9. In case the respondents are permitted to initiate proceedings afresh on the basis of very same allegations and misconduct in spite of undergoing punishment, it would clearly amount to double jeopardy. I am therefore of the view that the petitioners are entitled to succeed.

10. In the result, the impugned charge memos dated 7 June 2013 challenged in the respective Writ Petitions are quashed.

11. In the upshot, I allow the Writ Petitions. No costs. Consequently, M.P.Nos.2 of 2013 (4 Mps) and 3 of 2013 (3 Mps) are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

tar

To

1.The Commissioner,
Corporation of Chennai,
Chennai 600 003.

2.The Secretary (in-charge)
Appointment Committee,
Chennai Corporation,
Chennai 600 003.

3.The Asst. Commissioner,
General Department,
Corporation of Chennai,
Chennai 600 003.

3 cc to M/s.Muthumani Doraisami ,Advocate, SR.No.16178

kgk(co)
pmk.8.4.2015

W.P. Nos.18533 to 18535 of 2013

WEB COPY