

In the High Court of Judicature at Madras

(Orders reserved on 23.09.2016)

Dated : 21.10.2016

Coram

The Honourable Mr. Justice R. SUBBIAH

W.P.No.17533 of 2016

and

M.P.No.14987 of 2016

C.Vijayakumar

.... Petitioner

..vs..

1.The State of Tamil Nadu,
rep. By its Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai-600 009.

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

Writ petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 1st respondent in G.O.(D).No.164, Municipal administration and Water Supply Department, dated 07.03.2016 and to quash the same and consequently, to direct the respondents to promote the petitioner to the post of Joint Director of Municipal administration above his juniors with all consequential and other attendant benefits including arrears of salary.

For Petitioner : Mr.AR.L.Sundaresan, Senior Counsel
for Mr.N.Rajasenthoo Pandian

For Respondents : Mr.S.Gunasekaran, AGP

ORDER

This writ petition has been filed by the petitioner, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 1st respondent in G.O.(D).No.164, Municipal administration

and Water Supply Department, dated 07.03.2016 and to quash the same and consequently, to direct the respondents to promote the petitioner to the post of Joint Director of Municipal Administration, above his juniors, with all consequential and other attendant benefits, including arrears of salary.

2. In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows_

2-1. The petitioner was initially appointed as Municipal Commissioner Grade-III on 15.05.1996 through Group-II Examination conducted by Tamil Nadu Public Service Commission (TNPSC). Subsequently, the post of Municipal Commissioner Grade-III has been converted/redesignated as Municipal Commissioner Grade-II, based on which the petitioner's service has been regularized in the post of Municipal Commissioner Grade-II, as per G.O.Ms.No.221, dated 23.09.1999. Thereafter, the petitioner was promoted to the post of Grade-I Municipal Commissioner in the year 2001. Subsequently, he has been conferred with Selection Grade in the year 2004 and Special Grade in the year 2008 based on his seniority and eligibility. He was subsequently posted as Zonal Officer (Assistant Commissioner), in the Corporation of Chennai from October, 2012 and presently, working in Zone-IX, Teynampet, Chennai as Zonal Officer (Assistant Commissioner).

2-2. During the period from August 2006 to November 2008, the petitioner was posted as Municipal Commissioner of Nagapattinam Selection Grade Municipality and then, he was transferred to Kodaikkanal Municipality and further, transferred to Pallavapam Municipality in the year 2010. While working in Pallavapuram Municipality, the petitioner was issued with the charge memo by the 2nd respondent in Roc.No.65050/2008/C4 dated 04.12.2010, stating that while in the office of Municipal Commissioner, Nagapattinam, he was responsible for casting the votes of sixteen councilors in the election to the post of Chairman at Nagapattinam Municipality held on 28.10.2006 and he had misused the power when he was holding the post of Municipal Commissioner and accordingly, he had contravened the Tamil Nadu Government Servants Conduct Rules. The charges levelled against the petitioner vide charge memo issued by the 2nd respondent dated 04.12.2012, read as follows_

Charge 1:- that the said Thiru.C.Vijaykumar during the aforesaid period and while functioning in the office of Municipal Administration, Nagapattinam is responsible for allowing himself to cast the votes of 16 councilors who were healthy, without any disability held on 28.10.2006, thereby misused his power in the post of Municipal Commissioner.

Charge 2:- that the said Thiru.C.Vijayakumar while functioning as Municipal commissioner, Nagapattinam was responsible for misusing the provisions of Election Rules on his own accord which contravened the provisions laid down in the Rule 20 of Tamil Nadu Government Servants' Conduct Rules, 1973.

Thereupon, the 2nd respondent had conducted an enquiry on the above said charges by appointing an Inquiry Officer, who was holding the office of the Addl. Director Municipal Administrative. After conducting detailed enquiry, the Inquiry Officer in his findings vide order dated 09.06.2011 had held that both the charges were not proved. But, the Disciplinary Authority/1st respondent herein had deviated from the findings of the Inquiry Officer and concluded that both the charges were found proved for the reason that the 16 councilors, who had opted for assistance when voting was held for the Chairman election on the forenoon of 28.10.2006, did not opt any assistance in the afternoon when the election was held for electing Vice-Chairman. Thus, having deviated from the findings of the Enquiry Office, 1st respondent had sought additional explanation from the petitioner, to which a detailed explanation was submitted by the petitioner on 19.09.2011. But, the 1st respondent without examining the grounds raised in the additional defense statement, issued an order vide Government Order in G.O.No.143, MAWS Dept dated 10.04.2014, awarding a punishment of stoppage of 3 increments with cumulative effect. Earlier, the said order was challenged by the petitioner by filing a writ petition in W.P.No.12501 of 2014 before this Court and this Court by order dated 10.12.2014, had set aside the said impugned order dated 10.04.2014 passed by the 1st respondent, with a liberty to the 1st respondent to pass fresh orders by taking note of the various grounds raised by the petitioner by way of his representations. The operative portion of the order dated 10.12.2014 passed by this Court reads as follows_

"Admittedly, the order impugned has got civil consequences. Reasoning is the heart beat of any order having civil consequences. By the order impugned the petitioner has been imposed punishment. The report of the Enquiry Officer is only a piece of evidence to be appreciated by the 1st respondent. The petitioner has given a detailed explanation. In the order impugned, the 1st respondent has accepted the findings of the Enquiry Officer. Merely stating in the impugned order that records have been perused and the explanation of the petitioner has been considered cannot be construed to mean that the said exercise

has been done. What the 1st respondent has perceived will have to be reflected in the impugned order by way of reasoning, which has not been done. Accordingly, the order impugned is set aside and the liberty is given to the 1st respondent to pass appropriate orders by taking note of the various grounds raised by the petitioner by way of his representations."

In the above said order of this Court, it was mentioned as if the charges were proved. But, in fact, the Inquiry Officer held that both the charges were not proved. Hence, a clarification petition was filed by the petitioner in the said writ petition in W.P.No.12501 of 2014 and this Court, by order dated 09.01.2015 has clarified the earlier order dated 10.12.2014. The clarification order dated 09.01.2015 reads as follows_

"3.Learned counsel appearing for the petitioner submitted that in paragraphs 3 and 5 of the order passed on 10.12.2014, it has been noted as if the first respondent has accepted the findings of the Enquiry Officer whereas, according to him, the Enquiry officer has held that the charges are not proved. However, the 1st respondent while not accepting the findings given by the Enquiry Officer, has passed the order impugned.

4.Considering the same, the fact noted in paragraphs 3 and 5 of the order dated 10.12.2014, will have to be construed to the effect that the first respondent has not accepted the findings of the Enquiry Officer."

Pursuant to the said order, the petitioner sent a representation on 23.02.2015 to the 1st respondent by enclosing a copy of the order in W.P.No.12501 of 2014 passed by this Court and requested to drop the charges after analysing the findings of the Inquiry Officer and the grounds raised by the petitioner. But, the 1st respondent considered the petitioner's representation dated 23.02.2015 as an appeal and examined the grounds stated therein on his own accord and again passed an order in G.O.(D).No.510, Municipal Administration and Water Supply Department, dated 03.08.2015, awarding a punishment of stoppage of three increments with cumulative effect. Thus, the petitioner's representation dated 23.02.2015 was rejected by the 1st respondent. Thereafter, the petitioner has filed a revision petition on 11.09.2015, questioning the order in G.O.(D).No.510, dated 03.08.2015. But, the said revision petition was dismissed by the impugned order in G.O.(D).No.164, Municipal Administration and Water Supply (ME2) Department, dated

07.03.2016 and the same was communicated to the petitioner by the 2nd respondent vide letter dated 22.03.2016. Hence, challenging the same, the petitioner has filed the present writ petition.

3. The learned senior counsel appearing for the petitioner would submit that the petitioner was working as Municipal Commissioner of Nagapattinam Selection Grade Municipality for the period from August 2006 to November 2008 and then, he was transferred to Kodaikkanal Municipality and further, transferred to Pallavapuram Municipality in the year 2010. While working in Pallavapuram Municipality, the petitioner was issued with the charge memo by the 2nd respondent in Roc.No.65050/2008/C4 dated 04.12.2010, alleging that while in the office of Municipal Commissioner, Nagapattinam, he was responsible for casting the votes of sixteen councilors in the election to the post of Chairman at Nagapattinam Municipality held on 28.10.2006 and he had misused the power in the post of Municipal Commissioner when he was holding the said post and accordingly, he had contravened the Tamil Nadu Government Servants Conduct Rules. In this regard, the learned senior counsel for the petitioner, by inviting the attention of this Court to Rule 109 of the Tamil Nadu Town Panchayats, 3rd Grade Municipalities, Municipalities and Corporations (Election) Rules, 2006, submitted that the said Rule makes it mandatory for the Returning Officer to cast the votes of the Councillors on request and according to their wishes. The said Rule does not have any provision to examine the request of the Councillors and take decision about their request on merits. The said Rule itself says that the Returning Officer shall cast the votes of the Councillors according to their wishes. In fact, in the instant case, only on the request made by the Councilors, the petitioner had casted their votes. The petitioner did not act against the wishes of the Councillors and did not fail to maintain the secrecy of the voting. Moreover, none of the 16 Councillors on whose behalf the petitioner had casted votes, made any complaint that the petitioner had acted on his own or against their wishes or failed to maintain secrecy of voting. In fact, the Inquiry Officer, after completing the enquiry, has come to the conclusion that both the charges levelled against the petitioner have not been proved. But, the 1st respondent deviated from the findings of the Inquiry Officer and concluded that the charges levelled against the petitioner were found proved for the reason that 16 Councilors, who have opted for assistance in voting in the Chairman election held on the forenoon of 28.10.2006, did not opt for any assistance in the afternoon when the election was held for electing Vice-Chairman. The petitioner had also given additional explanation; but, in spite of that, the order was passed by the 1st respondent on 10.04.2014 awarding punishment of stoppage three increments with cumulative effect.

4. In this regard, the learned senior counsel for the petitioner would submit that one Mr.P.Arivazhagan had filed a Writ Petition in W.P.No.43658 of 2006 against the State Election Commissioner, Tamil Nadu State Election Commissioner, the petitioner and others, challenging the election of Tmt.P.Thangapillai as Chairman, Nagapattinam Municipality. In the said writ petition, the elected Chairman Tmt.P.Thangapillai had been arrayed as one of the respondents. When the writ petition came up for final hearing the said Tmt.P.Thangapillai had given a letter to the Commissioner, Nagapattinam Municipality, resigning from the Chairman post of Nagapattinam Municipality. Based on that, this Court granted liberty to the Official Respondents to act upon the resignation of the Tmt.Thangapillai and the said writ petition was disposed off on 23.03.2007. Against the said order, the said Arivazhagan had preferred a Special Leave Petition in S.L.P.(Civil).No.6675 of 2007, before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court dismissed the said SLP by order dated 23.04.2007 and confirmed the orders passed this Court in the said writ petition. Further, the Hon'ble Supreme Court has not made any finding in its order dated 23.04.2007 to the effect that the petitioner has committed violations in conducting election to the post of Chairman to Nagapattinam Municipality.

5. The learned senior counsel for the petitioner has further submitted that similarly, one R.Chandramohan had also filed a writ petition in W.P.No.18138 of 2007 against the petitioner and others praying to direct the Central Bureau of Investigation to prosecute the petitioner and others under Section 134-A of the Representation of the People Act, 1950 for the alleged illegal action of acting as an election agent in the Nagapattinam Municipality Chairman election held on 28.10.2006. But, the said writ petition was also dismissed by this Court by order dated 04.06.2007.

6. It is further submitted by the learned senior counsel for the petitioner that the 2nd respondent had sought for a legal opinion dated 03.11.2011 from the Public Prosecutor, who had offered a legal opinion to the Commissioner of Municipal Administration, stating that no successful criminal prosecution can be launched against the delinquent officer/petitioner herein for the alleged offence under Section 409 IPC on the ground that there had been violation of the said Rule by the petitioner. By referring to the above orders of this Court and the opinion of the Public prosecutor, the learned senior counsel for the petitioner submitted that absolutely there is no flaw on the part of the petitioner; but, inspite of the orders passed by this Court, the 1st respondent has passed the impugned order imposing punishment of stoppage of three increments with cumulative effect.

7. That apart, the learned senior counsel for the petitioner has also made a submission that election was conducted on 28.10.2006, but the charge-memo was issued only on 04.12.2010, ie. after a period of four years. Since there is an inordinate delay in initiating proceedings, the petitioner shall not be made to suffer any further. In support of his contention, the learned senior counsel for the petitioner has also relied upon the judgment reported in (2006) 3 MLJ 621 [M.Elangovan Vs. Trichy District Central Co-operative Bank Ltd]. Thus, the learned counsel for the petitioner sought for quashing the impugned orders.

8. Countering the submissions made by the learned senior counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the respondents, would contend that Rule 109 of the Tamil Nadu Town Panchayats, 3rd Grade Municipalities, Municipalities and Corporations (Election) Rules, 2006, empowers the Returning Officer to record the vote in the ballot paper only in respect of the member, who is an illiterate or blind or physically challenged. In this regard, the learned Additional Government Pleader has also invited the attention of this Court to Rule 109 of the Tamil Nadu Town Panchayats, 3rd Grade Municipalities, Municipalities and Corporations (Election) Rules, 2006, which reads as follows—

"Recording of votes of illiterate, blind or infirm voters:—

(1) If, owing to illiteracy or blindness or other physical infirmity, a member is unable to read the ballot paper or make a mark thereon and applies for assistance in doing so, the Returning Officer shall record the vote or votes in the ballot paper in accordance with the wishes of the member and fold it so as to conceal the vote. The member shall then himself or with the assistance of the Returning Officer insert the ballot paper into the ballot box.

(2) While acting under this rule, the Returning Officer shall observe as much secrecy as is feasible and shall keep a brief record of each instance but shall not indicate therein for whom any vote has been given."

The learned Additional Government Pleader submitted that as far as the present case is concerned, none of the 16 councilors, on behalf whom the petitioner had casted votes, was illiterate or blind or physically challenge. In fact, all the said 16 councilors had casted their votes in the afternoon in the election for Vice-Chairman on the same day ie., on 28.10.2006; therefore, the petitioner should not have casted the votes for

the said 16 councilors. It is clear that the petitioner has violated Rule 109 of the said Rules. By misinterpreting the Rule 109, the petitioner has obtained the signatures of the 16 Councillors for casting their votes by himself and acted as 'proxy' to the Councillors and voted on behalf of them, which is against the said Rule, that is why the 1st respondent has deviated from the findings of the Inquiry Officer and concluded that the charges levelled against the petitioner have been proved, since the petitioner abused and misused his position, being the Returning Officer, and acted illegally.

9. With regard to the delay in issuing the charge memo, the learned Additional Government Pleader would submit that the election was held on 28.10.2006 and thereafter, one Mr. P. Arivazhagan, Ward Councilor, had filed a Writ Petition in W.P.No.43658 of 2006, with a prayer to declare the election held on 28.10.2006 to the post of Chairman, Nagapattinam Municipality as null and void. The said writ petition was disposed of on 23.03.2007 as the candidate who was selected as Chairman submitted resignation from the said post. Aggrieved over the order dated 23.03.2007, the petitioner had filed SLP (Civil).No.6675 of 2007 before the Hon'ble Supreme Court and the said SLP was dismissed only on 23.04.2007. In the meantime, one R. Chandramohan had also filed a writ petition in W.P.No.18138 of 2007 against the petitioner and others praying to direct the Central Bureau of Investigation to prosecute the petitioner and others under Section 134-A of the Representation of the People Act, 1950 for the alleged illegal action of acting as an election agent in the Nagapattinam Municipality Chairman election held on 28.10.2006. But, the said writ petition was also dismissed by this Court only on 04.06.2007. Due to the pendency of the above said writ petitions, the respondents could not issue any charge-memo immediately after the election. Therefore, the delay in issuance of charge-memo cannot be taken as a ground to quash the impugned order. Thus, the learned Additional Government Pleader sought for dismissal of the writ petition.

10. Keeping in mind the submissions made on either side, I have carefully gone through the entire materials available on record.

11. So far as the casting of vote is concerned, the Rule 109 of the Tamil Nadu Town Panchayats, 3rd Grade Municipalities, Municipalities and Corporations (Election) Rules, 2006, is very clear that the Returning Officer can record the vote in the ballot only in respect of the members, who are illiterate, blind or physically challenged. But, in the instant case, none of the 16 councilors will fall within the category mentioned in Rule 109. Therefore, the submission made by the learned senior counsel for the petitioner based on Rule 109 cannot be

accepted.

12.However, I find that the election was conducted as early as on 28.10.2006, but the charge-memo was issued only on 04.12.2010. There is a delay of more than four years. According to the learned Additional Government Advocate, since one Arivazhagan and Chandramohan had filed writ petitions challenging the election, there was a delay in issuing the charge-memo. But, I find that the writ petition filed by the said Arivazhagan was disposed of by this Court on 23.03.2007 and he filed SLP(Civil).No.6675 of 2007 before the Hon'ble Supreme Court and the said SLP was also dismissed on 23.04.2007. Similarly, the writ petition in W.P.No.18138 of 2007 filed by one R.Chandramohan was also dismissed by this Court as early as on 04.06.2007. Even after the dismissal of the said writ petitions, there was a delay of more than three years in issuing the charge-memo.

13.Considering the factual aspects of the case, I am of the opinion that as contended by the learned senior counsel for the petitioner, had the charge-memo been issued at an earlier point of time, by this time the punishment imposed on the petitioner would have come to an end. In view of the delay in issuing the charge-memo, the petitioner's chance for getting promotion has got further delayed. Therefore, for the inaction on the part of the respondents, the petitioner cannot be made to suffer. In this regard, a reference could be placed in the judgment reported in (2006) 3 MLJ 621 [M.Elangovan Vs. Trichy District Central Co-operative Bank Ltd, wherein it has been held by this Court, by following the decision of the Hon'ble Supreme Court in the case of P.V.Mahadevan Vs. M.D.Tamil Nadu Housing Board [2005(4) CTC 403], as follows

"16.Applying the said dictum in the present case, it can be safely concluded that the petitioner has already suffered enough on account of the disciplinary proceedings and as pointed out and the mental agony and sufferings of the petitioner due to the protracted disciplinary proceedings would be much more than the proposed punishment itself. For the mistakes committed by the department in inordinate delay in initiating proceedings and also during the conducting of the proceedings the petitioner shall not be made to suffer any further."

In P.V.Mahadevan VS. M.D., Tamil Nadu Housing Board [20095(4) CTC 403], the Hon'ble Supreme Court has held as follows:-

"Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher Government Official under charges of corruption and dispute integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer."

The dictum laid down in the above cited decisions would be squarely applicable to the present facts of the case. Even in the instant case also, the petitioner has suffered enough by the protracted disciplinary proceedings. Now, he cannot be made to suffer further, especially when there is no proper explanation for the inordinate delay in issuing the charge-memo. Hence, on this sole ground of inordinate delay in initiating the disciplinary proceedings, the present writ petition deserves to be allowed.

14. Accordingly, the writ petition is allowed as prayed for and the impugned order is quashed and the respondents are directed to promote the petitioner to the post of Joint Director of Municipal administration above his juniors with all consequential and other attendant benefits including arrears of salary. Consequently, connected Miscellaneous Petition is closed. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

To,

1.The Secretary to Government,
State of Tamil Nadu,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai-600 009.

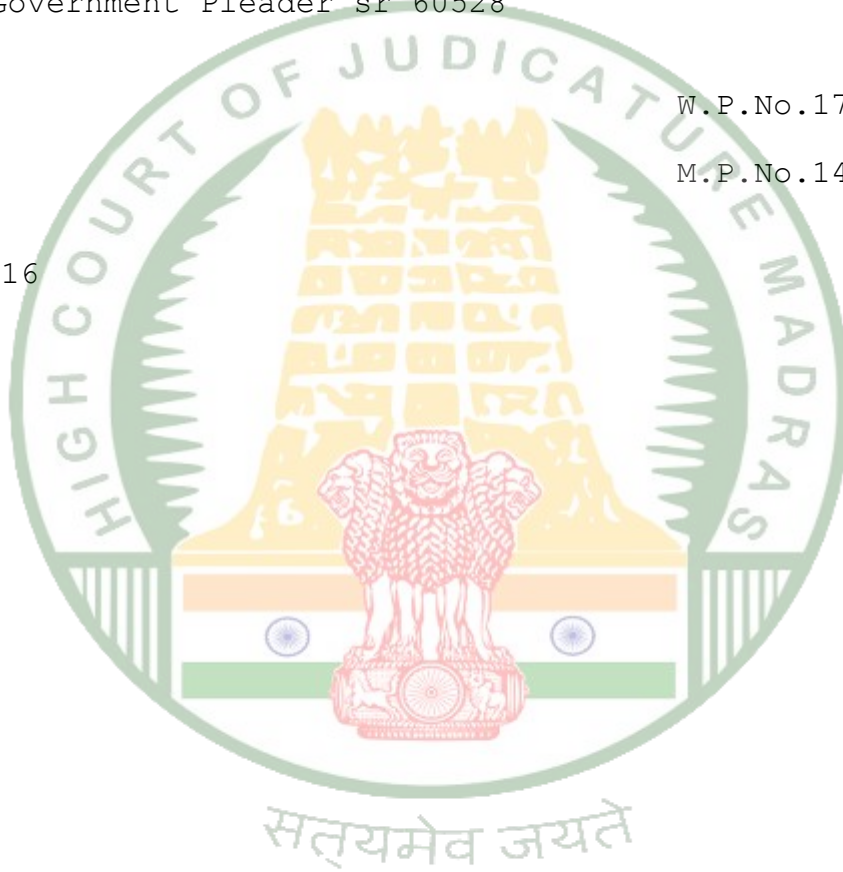
2.The Commissioner of Municipal Administration,
Chepauk, Chennai-600 005.

+1 cc to Mr.N.Raja Senthoo Pandian Advocate sr 59909

+1 cc to Government Pleader sr 60528

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