

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.10.2016

Pronounced on : 26.10.2016

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

Writ Petition No.3585 of 2011 and
M.P.Nos.1 and 2 of 2011

V.Venkatesan

.. Petitioner

..vs..

1. The Principal Commissioner and
Commissioner of Municipal
Administration,
Chepauk, Chennai-600 005.

2. The District Revenue Officer,
Dharmapuri.

3. The Revenue Divisional Officer,
Dharmapuri.

.. Respondents

Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records connected with proceedings issued in Na.Ka.No.50754/2005/A5 dated 30.07.2010 passed by the 2nd respondent and quash the same and consequently, direct the respondents to reinstate the petitioner into service with all attendant benefits.

For Petitioner : Mr.S.Ilamvazhudhi

For Respondents : Mr.S.Gunasekaran,

Additional Government Pleader

ORDER

The Writ Petitioner had entered into service as Village Administrative Officer in the Revenue Unit of Dharmapuri in the year 1984. While he was in service, by Na.Ka.No.2072/97/E1 dated 24.03.1997, a Charge Memo under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, was issued by the 3rd respondent. Totally, 5 charges were framed, which are extracted hereunder :

Charge No.1	By absenting himself from 30.01.1996 caused dislocation to the Village Administration.
Charge No.2	One who proceeds medical leave, shall apply for leave with Medical Certificate within 7 days, but, he has submitted his Leave Application after 27 days.

Charge No.1	By absenting himself from 30.01.1996 caused dislocation to the Village Administration.
Charge No.3	While holding responsible position, absented himself affecting the Revenue Collection and thereby caused loss to Government.
Charge No.4	By absenting without permission, failed in his basic duties as a Village Administrative Officer and gave room for public complaint and caused inconvenience to the public.
Charge No.5	As he absented himself without permission, posting could not be issued to him and thereby, he has caused dislocation to Village Administration.

2. The petitioner would state that he had submitted his explanation and an Enquiry Officer was appointed to enquire into the charges. On 28.07.1997, the Enquiry Officer had conducted enquiry and the petitioner had submitted his explanation for each and every charge. The Enquiry Officer had held that the Charge Nos. 1, 4 and 5 were not proved and Charge Nos. 2 and 3 were held to be proved. The Enquiry Officer, after completing the enquiry, has sent his report to the 3rd respondent, who is the Disciplinary Authority. The 3rd respondent has dropped action against the Charge Nos.1, 4 and 5 and has decided to impose punishment against Charge Nos.2 and 3. However, in order to give an opportunity, he had offered personal hearing to the delinquent, namely, the writ petitioner, on 08.09.1997. Ultimately, the Disciplinary Authority has arrived at a punishment of removal from service by his Order in Pro.Na.Ka.E1/2072/97 dated 30.09.1997.

3. Aggrieved by the order of the 3rd respondent, the Writ Petitioner has filed an appeal to the 2nd respondent. The 2nd respondent by his proceedings in Na.Ka.110497/97/A5 dated 30.04.1998, rejected the appeal, confirming the punishment imposed by the 3rd respondent.

4. Against the order of the Appellate Authority, namely, the 2nd respondent, the Writ Petitioner preferred a Writ Petition in W.P.No.48406/2006. This Hon'ble Court by its order dated 24.06.2009 had set aside the order of the 2nd respondent and remitted back the matter for fresh disposal, on merits, after taking into consideration of the relevant issues raised by the writ petitioner. Consequently, the 2nd respondent had given personal hearing on 21.05.2010 and recorded the statement of the writ petitioner and passed an order in Na.Ka.No.50754/2005/A5 dated 30.07.2010 which is under challenge in the present Writ Petition.

5. The 2nd respondent has filed a counter affidavit denying the averments made by the writ petitioner. It is contended that the writ petitioner has never submitted his explanation to the charges served on him on 08.09.1997. Against the order of the Appellate Authority, an alternative remedy of

filing revision before the Principal Commissioner and Commissioner of Revenue Administration is available. But, without exhausting the alternative remedy, the writ petitioner has approached this Hon'ble Court by way of this Writ Petition.

6. It is further contended that the writ petitioner has absented himself for 2 years and stayed away from duties without approaching his higher authorities. Therefore, on the basis of absence for a long time from the post of Village Administrative Officer was taken seriously and the punishment of removal has been rightly imposed. Therefore, the Writ Petition is liable to be dismissed.

7. Heard both sides.

8. The admitted facts are that the petitioner had joined service in the year 1994 and served till 03.01.1996 without any interruption. From a reading of the charges, it is seen that the 1st charge is that the writ petitioner had absented himself w.e.f. 03.01.1996 and thereby caused inconvenience to the Village Administration. From the materials available, it is seen that the writ petitioner had submitted application for leave after 27 days along with a Medical Certificate. The Enquiry Officer has found that a Qualified Medical Practitioner issued a certificate that the writ petitioner was advised to take complete rest. Accepting the explanation, he has held that the 1st charge is not proved. The Writ Petitioner had also submitted an explanation that he was suddenly admitted in Salem Shanmugha Hospital for 27 days. Therefore, he could not apply for leave in time. This explanation was accepted by both the Disciplinary Authority as well as the Appellate Authority and action against the Charge No.1 was dropped.

9. The Enquiry Officer has held that the Writ Petitioner ought to have submitted the leave application within 7 days as per the Government Rules. But, he had submitted his Leave Application after the delay of 27 days and thus, he has violated the Government Rules and Regulations in course and therefore, the Charge No.2 is held to be proved.

10. In so far as the Charge No.3 is concerned, it imputes the writ petitioner that he had caused revenue loss to the Government by staying away from duty. This charge was also held to be proved. The Charge Nos.4 and 5 were held not to be proved and does not have much impact to the discussions at present.

11. A reading of the order passed by this Court in W.P.No.48406 of 2006 dated 24.06.2009 reveals that the writ petitioner had contended that the charge Nos.2 and 3 were only consequential in nature and that they were connected to the 1st charge. Once it is found that the 1st charge has not been proved, all the other charges would also fail as unsustainable in the eyes of law. He would further contend that he had submitted his explanation to the charges and appeared for the enquiry before the Disciplinary Authority as well as before the

Appellate Authority. Considering the contentions raised by the writ petitioner, this Court has remitted the matter for fresh disposal on merits after taking into consideration all the relevant issues raised before the Appellate Authority. It is seen that the Appellate Authority has passed the impugned order dated 30.07.2010 after giving a personal hearing to the writ petitioner.

12. The rival contentions were considered on the basis of the materials available before this Court. Now, what is to be decided are as follows:

1. Whether the Disciplinary Authority as well as the Appellate Authority have considered all the materials available before them?

2. Whether the order is liable to be set aside for non-application of mind?

3. Whether the punishment imposed is disproportionate to the charges framed? and

4. Whether the punishment is liable to be set aside in view of the 1st charge is held to be not proved and the consequential charges are sustainable in the eyes of law?

13. From the perusal of the records, it is seen that the writ petitioner has repeatedly submitted before the Enquiry Officer, Disciplinary Authority as well as the Appellate Authority that he had submitted application for leave with medical certificate after a lapse of 27 days. After that, he had submitted his request for issuance of posting orders on 10.02.1996, 20.06.1996 and 28.02.1997 and subsequently. There is no answer to the request made by the writ petitioner for joining duty, either by the Disciplinary Authority or by the Appellate Authority. The counter affidavit filed by the 2nd respondent is silent on this aspect. Therefore, it is crystal clear that the writ petitioner was not given any posting orders. On the other hand, he was kept out of employment from 10.02.1996 much less from 05.04.1997, when the charge memo was served on him. Therefore, the statement made in the counter affidavit that the Disciplinary Authority had rightly dismissed the writ petitioner for having absented himself for several years is not correct.

14. The order passed by the Disciplinary Authority was also based on a finding that the delinquent had stayed away from duty for two years has no relevance to the charges framed. In other words, the charges do not state that the writ petitioner stayed away from duty for two years. Therefore, the findings of the Disciplinary Authority is based on no evidence.

15. The Appellate Authority in its order dated 30.03.1997 has come to the finding that the writ petitioner should have joined duty on or before 03.01.1997 in the event of refusal of leave. But the fact remains that the writ petitioner had submitted his leave application after 27 days and requested for posting orders from 10.02.1996 and thereafter. The Appellate Authority has not applied his mind to the fact that the writ petitioner was not given any posting orders. On the other hand,

the finding of the Appellate Authority is that the writ petitioner has not at all approached his higher authorities for issuance of the posting orders.

16. Even after, a specific direction was issued in W.P.No.48406 of 2006, the Appellate Authority should have applied his mind to these aspects. During the enquiry held by the Appellate Authority on 21.05.2010, the writ petitioner had submitted various factual aspects explaining the circumstances which led to his sudden absence from 03.01.1996 and the subsequent efforts taken by him for joining duty. But, the Appellate Authority had come to the conclusion that the writ petitioner has not given any explanation to the charges and that he has failed to avail the opportunity and also violated the Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules. The findings of the Appellate Authority in his Order dated 30.07.2010 is based on vague charges and without taking into consideration the materials available before him.

17. The Appellate Authority, even after the direction issued by this Hon'ble Court in W.P.No.48406/2006, dated 24.06.2009, has mechanically passed the order without application of mind. The graveness of the charge is that the writ petitioner has absented himself from duty on 03.01.1996 without submitting an application. While the action of the writ petitioner was condoned on the basis of the explanation submitted by him, further action, which are consequential in nature, ought not to have been given serious view. Moreover, the punishment given to the consequential charges are based on vague allegation, bereft of specific details. The Charge No.3 has been issued without any specific detail as to the quantum of loss of revenue due to the Government. The findings of the 2nd and 3rd respondents also not based on any material evidence, but, mechanically accepts the finding of the Enquiry Officer. From the perusal of the above materials, this Court is of the view that the punishment imposed is disproportionate to the said charge which is very vague.

18. The contention of the petitioner that the punishment imposed is disproportionate to the charges framed is substantiated by the Judgment of the Hon'ble Division Bench of this Court, dated 19.09.2007, in W.A.No.668 of 2007 and followed in the order, dated 02.07.2012, passed in a batch of writ petitions in W.P.Nos.93 of 2008 etc. Therefore, I have no hesitation to hold that the punishment imposed is disproportionate to the charges framed by the respondents.

19. On the basis of the above discussion, the impugned order passed by the 2nd respondent is set aside and the writ petitioner, by this time, ought to have reached the age of superannuation. Therefore, the respondents are directed to grant all attendant benefits on notional basis and to disburse the terminal benefits to the writ petitioner, within a period of twelve weeks from the date of receipt of a copy of this Order.

20. With the above observation, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

tsi

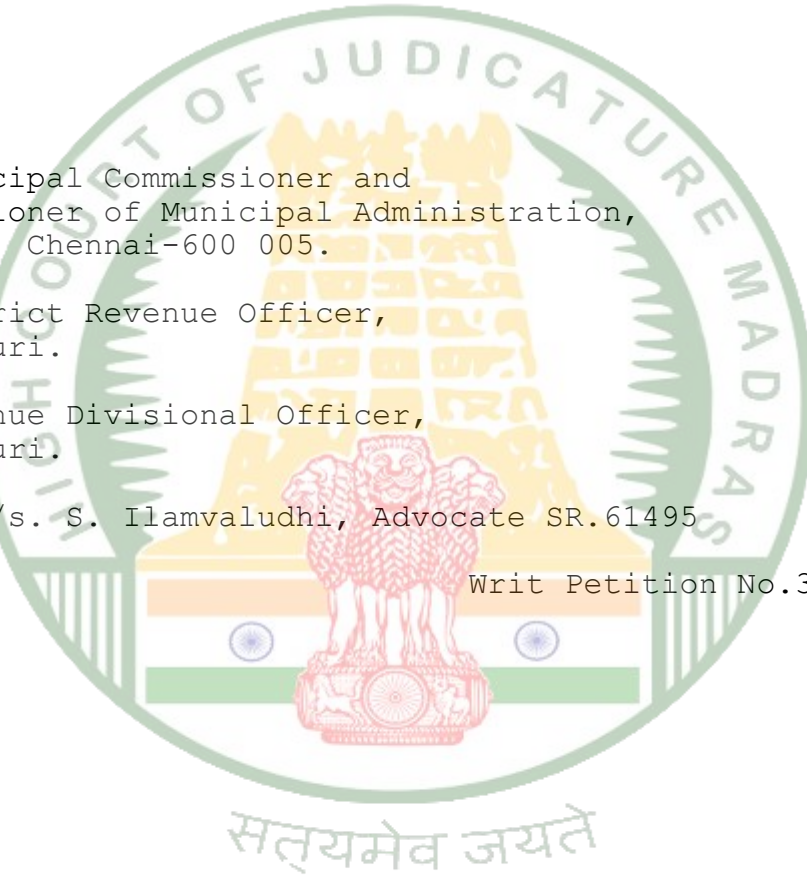
To

1. The Principal Commissioner and
Commissioner of Municipal Administration,
Chepauk, Chennai-600 005.
2. The District Revenue Officer,
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3. The Revenue Divisional Officer,
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+ 1 cc to M/s. S. Ilamvaludhi, Advocate SR.61495

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NR(CO)
EU 24.11.16



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