

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 07.06.2017
JUDGMENT PRONOUNCED ON : 21.09.2017

CORAM:

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.281 of 2017
and C.M.P.No.4371 of 2017

1. The Government of Tamil Nadu,
Rep.by its Secretary,
Rural Development and
Panchayat Raj Department,
Secretariat,Chennai-9.
 2. The Government of Tamil Nadu,
Rep.by its Secretary,
Highways Department,
Secretariat,Chennai-9. ...Appellants/Respondents
- ... Vs ...
- S. Ramakrishnan ...Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 07.04.2014 made in W.P.No.29449 of 2010. Praying Calling for the records pertaining to the issue of the impugned order in GO.(D) No.386 Rural Development and Panchayat Raj (E3) Dept.dt.30.07.2010 and quash the same and promote as Assistant Divisional Engineer and Promote from the date of Promotion of his Junior Thiru.J.Shanmugam, with all consequent service and monitary benefit.

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For Appellants : Mr.P.S.Sivashanmugasundaram,
Special Government Pleader

For Respondent : Mrs.Dakshayani Reddy

JUDGMENT

RMT.TEEKAA RAMAN, J.

Mrs.Dakshayani Reddy, learned counsel takes notice on behalf of the respondent/Caveator and by consent of both the parties, the Writ Appeal itself is taken up for final disposal.

2. Challenging the correctness of the order passed in W.P.No.29449 of 2010, dated 07.04.2014, the State has preferred this appeal.

3. The respondent in this appeal has filed the writ petition praying for a writ of Certiorarified Mandamus to call for the records pertaining to the issue of the impugned order in G.O.(D) No.386 Rural Development and Panchayat Raj (E3) Department dated 30.07.2010 issued by the first respondent/The Secretary, Rural Development and Panchayatraj Department, and the letter issued by the Chief Secretary to first respondent in Letter No.248 Personnel and Administrative Reforms Department dated 20.10.97 and quash the same and further to direct the 2nd respondent/The Secretary, Highways Department, to consider the petitioner for promotion as Assistant Divisional Engineer retrospectively by including his name in the panel of Assistant Engineers fit for promotion to the post of Assistant Divisional Engineer approved in G.O.Ms.No.252 Highways Department dated 29.12.2003 and for consequential promotion from the date of promotion of his Junior Thiru.J.Shanmugam with all consequent service and monetary benefits with arrears of pay therefor with appropriate interest at the rate as may be fixed by this Court.

4. The short facts projected by the respondent/writ petitioner is that the petitioner, while serving as Union Engineer in Mudhukulathur Panchayat Union, was directed to hold additional charge of Kadaladi Panchayat Union for a short period from 22.08.1990 to 24.10.1990. In view of that, the writ petitioner was also attending to the said additional work in the Kadaladi Panchayat Union for one or two days as requested by the Block Development Officer (B.D.O). While so, a Scheme known as Jawahar Velai Vaippu Thittam was introduced, whereunder, group houses are to be constructed. In this connection, the Block Development Officer entrusted the construction work for 24 Nos. of group houses in Poolangulam Village to one Thiru.A.Thinnaar, former Panchayat President, who was given an advance of Rs.70,000/- and provided with 400 bags of cement before the writ petitioner took additional charge. After the writ petitioner took over the additional charge, the Block Development Officer (B.D.O) sought for his opinion as to the quantum of amount that is required for further works so as to make advance and to

complete the balance works. The writ petitioner, after verification of the full utilization of the advance amount of Rs.70,000/- already granted, found that the work executed was only upto the basement level, for which a minimum of Rs.3,000/- per house had to be spent and accordingly, for 24 houses, a sum of Rs.72,000/- should have to be spent.

5. In view of that, the writ petitioner recommended further advance of Rs.60,000/- for further work on 13.09.1990. Immediately, after the recommendation made by the writ petitioner on 13.09.1990, he was relieved from additional charge on 24.10.1990. But the amount was paid only on 29.09.1990 i.e., after the writ petitioner made recommendation for release of Rs.60,000/-. Adding further, it is stated that in fact, the said amount was paid five days after the writ petitioner handed over the charge and therefore, the writ petitioner cannot be held liable.

6. However, the respondent/writ petitioner was issued with charge memo dated 13.04.1991 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, levelling the following three charges:

(i) Contrary to Rules with intention, the writ petitioner had abetted the Additional B.D.O to issue huge amount of advance and cement bags to the contractor,

(ii) The writ petitioner had willfully participated in preparation of documents to cause the above said loss, and

(iii) The writ petitioner had failed to recover the advances paid in excess of the quantum utilized for the work and thereby failed from his duties.

7. After accepting the explanation given by the writ petitioner, the charges have been withdrawn. But, after four years, they re-issued the Charge Memo dated 06.07.1995. After receipt of the Charge Memo dated 06.07.1995, the writ petitioner submitted his reply on 11.11.1995 making it clear that he cannot be held responsible for the reason that while making recommendation on 13.06.1990, he has properly verified the fact that the earlier sanction amount of Rs.70,000/- was properly utilized. The Enquiry Officer also accepting the case of the writ petitioner, submitted his report holding that no charge was established against the writ petitioner. Thereafter, the first appellant issued second show cause notice on 18.03.2002, asking the writ petitioner to give explanation as to why the Disciplinary Authority should not disagree with the report of the Enquiry Officer in the three charges. The writ petitioner

also replied to the second show cause notice pointing out that the advance amount recommended by him was only after satisfying the fact that the earlier amount of Rs.70,000/- was properly utilized. But, without considering the detailed reply given by the writ petitioner, he was imposed with a punishment of stoppage of increment for one year without cumulative effect by G.O.(D).No.424, Rural Development Department, dated 18.08.2005.

8. Mrs.Dakshayani Reddy, learned counsel appearing for the respondent/Caveator has submitted that aggrieved by the order of punishment imposed by the Disciplinary Authority based on the second show cause notice on 18.03.2002, on a first round of litigation, W.P.No.4362 of 2006 filed by the respondent/writ petitioner was dismissed. However, in the Review Application in R.A.No.140 of 2008, the learned single Judge, after considering the submission of the respondent/Writ Petitioner and having found the factual position that amount of Rs.56,866/- was not released on the date of handing over of the charge by the Writ Petitioner, has set aside the order passed in the Writ Petition and remanded the matter back to the Disciplinary Authority with a direction to consider the fact that even before the release of Rupees 60,000/-, the subject matter of this petition, the Writ Petitioner who was holding additional post in Kadaladi Panchayat Union, was relieved. With the above said observation, the learned single Judge remanded back the matter to the Disciplinary Authority, after quashing the impugned punishment in the impugned G.O.(D).No.424, dated 18.08.2005. Learned counsel for the respondent/writ petitioner further submitted that after following the procedures, again, the very same order was passed.

9. The learned Special Government Pleader appearing for the appellants/State submitted that the first round of litigation has culminated in passing the order in Review Application No.140 of 2008 and thereafter, after following the procedures, the Disciplinary Authority, taking note of the misconduct, has held that the Enquiry Officer has wrongly submitted a report, whereby the writ petitioner has been exonerated of the charges and the appellants being the Disciplinary Authorities, are empowered to differ with the findings of the Enquiry Officer and before taking a decision thereon, second show cause notice was issued to the petitioner and thereafter, the order has been passed and hence, seeks for setting aside the order passed in the Writ Petition.

10. After hearing the rival submissions of both the parties, on factual matrix, it is seen that originally, three charges were levelled against the respondent herein and the same was held to be not proved by the Enquiry Officer. As per the report

of the Enquiry Officer, the Writ Petitioner/the respondent herein was holding additional charge of Kaddaladi Panchayat Union and has made recommendation for release of Rs.60,000/- under 'Jawahar Velai Vaippu Scheme' and he was holding the said post only for 64 days commencing from 22.08.1990 to 24.10.1990. In the said period, at the request made by the B.D.O, for completion of 24 houses in the said Scheme and based upon the recommendation made by the previous B.D.O dated 30.09.1990, he made recommendation for release of Rs.60,000/-. The respondent/Writ Petitioner has ordered for further payment of Rs.60,000/-. However, the said payment has been released only on 29.10.1990. Admittedly, only after, he was relieved from the post on 24.09.1990. Therefore, the findings of the Enquiry Officer on the above factual background, are found to be sound and reasonable and the same has been properly appreciated by the learned single Judge while dealing with the Review Application No.140 of 2008.

11. The Disciplinary Authority has issued a second show cause notice after the stage of the Enquiry Officer's report, wherein, the respondent/Writ Petitioner was found not guilty. However, the Disciplinary Authority differed from the findings of the report of the Enquiry Officer and has not given proper explanation. It is trite in law that the Disciplinary Authority is entitled to differ from the Enquiry Officer. However, in exercise of such suo-motu power, the Disciplinary Authority cannot introduce any fresh or new charges that was not found in the original charge memo. When the legal position being so, it is seen from the records that in the instant case, the appellants have introduced a new charge and allegation thereon is also found to be factually erroneous. Besides, for want of legal sanction, the learned single Judge has applied the above said legal provision as enunciated by the Apex Court in various decisions regarding the powers of the Disciplinary Authority.

12. While, exercising suo-motu power, the Disciplinary Authority has exceeded the limits by framing a new charge and under the guise of exercising the suo-motu power, the Disciplinary Authority cannot entertain the new charge without legal sanctity and hence, the order passed in Writ Petition is well merited and well considered and does not suffer from any irregularity or illegality, either on facts or in law and the same cannot be interfered with.

13. It is not in dispute that one Mr. Shanmugam, who is said to be the junior of the Writ petitioner, was promoted by including his name in the panel dated 29.12.2003 as Additional Divisional Engineer and the Writ Petitioner was denied promotion for about more than 12 years and hence, the learned single Judge

has rightly directed the State, the appellants herein to promote the writ petitioner after verification and directed to pay all monthly benefits including arrears to the writ petitioner, which does not suffer from any illegality or irregularity and same cannot be interfered by us.

14. Viewing from any stand point either on facts or on legality , we do not find any material to interfere in this Writ Appeal. The upshot of the above discussion clearly demonstrate that the appeal is devoid of merits and liable to be dismissed.

15. In the result, this Writ Appeal is dismissed and the appellants/State are directed to disburse the above said arrears of the amount to the respondent herein (writ petitioner) within a period of twelve weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Rural Development and
Panchayat Raj Department,
Secretariat, Chennai-9.
2. The Secretary,
Highways Department,
Secretariat, Chennai-9

+1cc to Mrs.Dakshayani Reddy, Advocate, S.R.No.69562
+1cc to the Government Pleader, S.R.No.69865

W.A.No.281 of 2017

CS/10/10/17