

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.7.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

Writ Appeal No.576 of 2017

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. ... Appellants/Respondents
- Vs.
- C.Vijayakumar ... Respondent/Petitioner

Appeal under Clause 15 of Letters Patent filed against the order dated 21.10.2016 made in W.P.No.17533 of 2016. which was filed to issue a writ of certiorarified Mandamus, to call for 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 affendant benefits including arrears of salary.

For Appellants : Mr.K.Venkataramani
Addl. Advocate General
Assisted by

For Respondent : Mr.V.Jayaprakash Narayanan, Spl.G.P.
Mr.AR.L.Sundaresan, S.C.
For Mr.A.P.Balasubramani

J U D G M E N T

(Delivered by Hluvadi G.Ramesh,J)

This writ appeal has been directed against the order of the learned single Judge dated 21.10.2016 made in W.P.No.17533 of 2016.

2. Heard Mr.K.Venkataramani, learned Additional Advocate General appearing for the appellants and Mr.AR.L.Sundaresan, learned senior counsel appearing for the respondent.

3. The facts which led to the filing of the appeal are as under:

It appears that the respondent, while working as Municipal Commissioner of Nagapattinam Municipality, had cast vote of 16 Councillors on 28.10.2006 in the election held for the post of Chairman of the Municipality. The respondent was the Returning Officer then. In 2006, a writ petition was filed to declare the election null and void and the same was dismissed, against which a Special Leave Petition was filed in 2007 and the same was also dismissed. In the meanwhile, the person who was elected as Chairman resigned the post. Thereafter, another writ petition came to be filed for direction to the Central Bureau of Investigation to prosecute the election agents and the same was also dismissed. Subsequently, the respondent was given Special Grade promotion and transferred to Kodaikanal Municipality in the year 2008.

4. In May 2010, the State Election Commission issued show cause notice to the respondent, to which, the respondent submitted his explanation. In December 2010, the respondent was issued with a charge memo and the respondent submitted his explanation. Not satisfied with the explanation offered by the respondent, an Enquiry Officer was appointed to enquire into the charges framed against the respondent. The Enquiry Officer held the charges not proved. The first appellant, after calling for additional explanation and not satisfying with the same, deviated from the findings of the Enquiry Officer and holding that the charges were proved, imposed a punishment of stoppage of three increments with cumulative effect, on the respondent. Aggrieved by the said punishment, the respondent filed a writ petition, in which, the order of punishment was set aside as no reason was given in the order deviating from the report of the Enquiry Officer, with liberty to the first appellant to pass appropriate order.

5. Thereafter, the respondent made a detailed representation to the first appellant and the same was also rejected, confirming the punishment imposed on him. Therefore, the respondent filed a review application before the first appellant and the same was rejected. Hence, the respondent was forced to file another writ petition, which was allowed, quashing the punishment order and directing the appellants to promote the respondent above his juniors with all attendant benefits. Assailing the said order, the appellants have come up with the above appeal.

6. The learned Additional Advocate General contended that as per Rule 109 of the Tamil Nadu Town Panchayats, 3rd Grade Municipalities, Municipalities and Corporations (Election) Rules, 2006, (in short "the Rules"), the Returning Officer is expected to record the vote on behalf of Councillors, only in case of the member who is supposed to cast vote being an illiterate or blind or suffers from any other physical infirmity. But, the respondent had cast vote on behalf of 16 Councillors who were neither illiterate nor blind nor suffer from physical infirmity and thus, the respondent had violated Rule 109 and therefore, the order imposing punishment has to be restored.

7. The learned Additional Advocate General further contended that though the learned single Judge set aside the order of punishment on the ground of delay in issuing the charge memo, such delay cannot be attributed against the appellants, as it was only due to the filing of writ petition by a Ward Councillor, followed by Special Leave Petition and another writ petition seeking a direction to Central Bureau of Investigation for prosecution of Election Agents and therefore, he contended that the order of the learned single Judge quashing the order of punishment is liable to be set aside.

8. Per contra, learned senior counsel appearing for the respondent submitted that the respondent, as the Returning Officer, on the oral request made by the 16 Councillors that they could not appear in person and cast vote due to heavy rain, had cast vote on their behalf and therefore, such action cannot be stated to be in violation of Rule 109.

9. The learned senior counsel further contended that the Apex Court, while dismissing the Special Leave Petition, did not observe anything as to any violation committed by the respondent while conducting the election and therefore, it is crystal clear that the respondent had not committed any violation of Rule 109.

10. It is also the contention of the learned senior counsel that since the Public Prosecutor had opined that no criminal

prosecution could be launched against the delinquent officer on the ground of violation of Rule 109 and therefore, no flaw can be attributed against the respondent, the order setting aside the punishment imposed has to be upheld.

11. Before going into the merits of the contentions of both the parties, it would be pertinent to refer to Rule 109 of the Rules, which reads as follows:

" 109. 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 and 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."

12. As per Rule 109, the Returning Officer can record the vote in ballot paper, as per the wish of the Member, only if the Member is illiterate or blind or suffers from any physical infirmity. However, after the Returning Officer records the vote in the ballot paper, the said ballot paper should be inserted into the ballot box by the Member itself or with the assistance of the Returning Officer.

13. In the instant case, admittedly, the respondent, while discharging his duties as the Returning Officer of the Nagapattinam Municipality, had cast vote on behalf of 16 Councillors in the election conducted for the post of Chairman of the Municipality. It appears that the respondent had cast vote only on the oral request made by the 16 Councillors as they could not appear in person and cast their vote in view of heavy rain in the morning.

14. Though it is contended by the learned Additional Advocate General that the 16 Councillors who could appear in the afternoon and cast their vote for the post of Vice Chairman, could not appear in the morning to cast their vote for the post of Chairman, would by itself reveal that it is only to favour one person, namely to elect one person as Chairman and therefore, the action of the Returning Officer in casting the

vote of 16 Councillors who were neither blind nor illiterate nor suffer from any physical infirmity, is in violation of Rule 109, we cannot lose sight of the fact that there was heavy rain in the morning and the Councillors could not cast their vote in person and therefore, they had requested the respondent to cast their vote.

15. That apart, admittedly, none of the 16 Councillors were neither blind nor illiterate nor suffer from any physical infirmity nor did they complain about the respondent for casting vote on their behalf. But, the fact that the appellants did not refute or deny the statement of the respondent that there was heavy rain in the morning and therefore, the Councillors orally requested the respondent to cast votes on their behalf as they could not come in person, would make it clear that the act of respondent is not an intentional one and that it was out of anxiety. At the same time, it cannot be stated that the action of the respondent is not in violation of Rule 109 of the Rules.

16. Coming to the next contention of the learned Additional Advocate General that the learned single Judge has erred in setting aside the order of punishment on the ground of delay, it is necessary to look into the details regarding the filing of cases which led to the delay in issuing charge memo.

17. After the conduct of election, the first writ petition filed by one Arivazhagan in W.P.No.43658 of 2006 was dismissed on 23.3.2007. The said matter was taken up to Supreme Court by way of Special Leave Petition in SLP(C) No.6675 of 2007 and the same was also dismissed on 23.4.2007. Further, another writ petition filed by one Chandramohan in the year 2007 for a direction to the Central Bureau of Investigation to prosecute the respondent, was also dismissed on 04.6.2007. But, the appellants chose to issue show cause notice only on 18.5.2010 and the charge memo on 04.12.2010. Not satisfied with the explanation, an Enquiry Officer was appointed on 07.3.2011, who submitted his report on 09.6.2011. Thereafter, additional explanation was called for on 13.8.2011. However, the order of punishment was imposed only 10.4.2014, deviating from the report of the Enquiry Officer that the charges were not proved.

18. From a perusal of the above dates, it would be clear that all the cases filed either before this Court or before the Apex Court got concluded on 04.6.2007. But, the appellants had chosen to issue show cause notice only on 18.5.2010, after nearly three years. If the appellants were awaiting the decision of either this Court or the Apex Court for initiating disciplinary action, they could have issued the show cause notice immediately after 04.6.2007. Further, after the submission of report by the Enquiry Officer on 09.6.2011, the

order imposing punishment on the respondent was issued only on 10.4.2014, which is also after nearly three years. Thus, it is clear that there is an inordinate delay on the part of the appellants, both in initiating the disciplinary proceedings and in concluding the same.

19. At this juncture, it is necessary to refer to the decision of the Supreme Court in P.V.Mahadevan v. M.D., T.N. Housing Board [(2005) 6 SCC 636], wherein it is held that inordinate delay in the initiation of the departmental disciplinary proceedings would cause unbearable mental agony and distress to the officer concerned and the protracted disciplinary proceedings would be much more than the punishment and that for the mistakes committed by the Department in the procedure for initiating the disciplinary proceedings, the officer concerned should not be made to suffer.

20. Furthermore, one important fact has been taken note of at this juncture, namely, the respondent has been granted Special Grade promotion in the year 2008. If the statement of the appellant that they were awaiting the decision of the Court for initiating disciplinary proceedings for the misconduct committed in 2006, is true, then, the appellants would not have granted Special Grade promotion in the year 2008. Therefore, it is patent that the appellants had not thought of initiating disciplinary proceedings at the time of granting Special Grade promotion to the respondent.

21. Thus, we are of the considered view that both the appellants and the respondent must be equally held accountable for the lapses on their part, namely that the lethargic attitude on the part of the appellants in initiating the disciplinary proceedings and concluding the same, resulting in the inordinate delay and that the act of the respondent, though unintentional and out of anxiety, is in violation of Rule 109 of the Rules. Therefore, in our considered opinion, the punishment imposed by the appellants, namely stoppage of three increments with cumulative effect, is a major one and that the negligence on the part of the appellants resulting in inordinate delay, thereby causing unbearable mental agony and distress to the respondent, which is much more than the punishment, would substantially mitigate the punishment imposed by the appellants. At the same time, we cannot let the respondent go scot free.

22. In view of the above and considering the fact situation, the punishment of stoppage of three increments with cumulative effect imposed on the respondent is modified to the one of Censure. Thus, during the currency of Censure, namely one year from 10.4.2014, the respondent cannot be considered for promotion, namely from 10.4.2014 till 09.4.2015, namely the

currency of one year period of Censure. Thereafter, the appellants shall give promotion to the respondent, if due, and shall maintain seniority as per law, within a period of three months from the date of receipt of a copy of this order. The respondent is hereby warned to be very careful while discharging his duties, in future. We make it clear that the above order which has been passed taking into consideration the fact situation of the case, shall not be taken as precedent.

23. In the result, the writ appeal is allowed in part. However, there shall be no order as to costs. Consequently, CMP Nos.8162 and 10169 of 2017 are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

kpl

To

1. The 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.

+2cc to Mr.A.P.Balasubramani, Advocate, S.R.No.49002
+1cc to the Government Pleader, S.R.No.48642

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W.A.No.576 of 2017.

LRS(CO)
CS/25/07/17