

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2017

CORAM

THE HONOURABLE MR. JUSTICE **V.PARTHIBAN**

W.P.No.6610 of 2014
and
M.P.No.2 of 2014

G.Pradeep Suryakar

..Petitioner

Versus

1. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai-600 003.

2. The Regional Deputy Commissioner (North),
Corporation of Chennai,
Rippon Buildings,
Chennai-600 003.

3. The Appointment Committee,
Corporation of Chennai,
Rippon Buildings,
Chennai-600 003.

.. Respondents

Prayer: This Writ Petition is filed under Article 226 of the

Constitution of India, praying for issuance of Certiorarified Mandamus, to call for the records of the first respondent relating to the impugned order issued in Proceedings Ma.thu.5.Va thu Na.Ka.No.R1/0341/2012 dated 14.2.2014 enhancing the order passed by the 2nd respondent in proceedings Ma.thu.5.Va thu Na.Ka.No.R1/0341/2012, dated 5.3.2013, quash the same and consequently, direct the first respondent to regularize the service of the petitioner with all service and monetary benefits.

For Petitioner : Mr.S.Ramanlaal
For Respondents : Mr.K.Venkatramani, AAG VII
assisted by
Mr.T.C.Gopalakrishnan

ORDER

The petitioner has approached this Court, seeking the following relief:

“To issue Certiorarified Mandamus, to call for the records of the first respondent relating to the impugned order issued in Proceedings Ma.thu.S.Va thu Na.Ka.No.R1/0341/2012 dated 14.2.2014 enhancing the order passed by the 2nd respondent in proceedings Ma.thu.S.Va thu Na.Ka.No.R1/0341/2012, dated 5.3.2013, quash

the same and consequently, direct the first respondent to regularize the service of the petitioner with all service and monetary benefits.

2. The case of the petitioner is that he was appointed on 12.6.1984 as Clerical Attender and was promoted as Record Clerk and thereafter as Assistant. He was further promoted as License Inspector and also once again promoted as Assessor with effect from 26.9.2008 and transferred to Old Zone V.

3. While working as Assessor, the petitioner was placed under suspension by proceedings dated 9.2.2012 pending enquiry into the charges framed against him. Thereafter, a charge memo was issued on 4.7.2012 containing five articles of charges. In order to submit his explanation, the petitioner had demanded for certain documents, but according to him, many of the documents have not been given to him for perusal. However, he submitted his explanation in order to avoid delay in the enquiry on 10.8.2012. However, not satisfied with the explanation offered by the petitioner, an enquiry was conducted.

He was directed to attend the enquiry on 5.9.2012. On that date, no witnesses were examined nor any documents were marked. The petitioner was, therefore, under bona fide impression that a full fledged enquiry would follow and he would be able to defend charges effectively.

4. Surprisingly, the Enquiry Officer submitted his report, holding that the charges 2 and 5 alone were proved and exonerated the petitioner of the charges 1, 3 and 4. The petitioner also submitted his explanation to the enquiry report on 10.1.2013. The petitioner, after conclusion of the enquiry, was also reinstated in service. The Disciplinary Authority, on the basis of the Enquiry Officer's findings, passed an order dated 5.3.2013 imposing a penalty of increment cut with cumulative effect. As against the imposition of penalty by the Disciplinary Authority, the petitioner preferred an appeal before the 3rd respondent. According to the petitioner, a detailed appeal has been filed setting out infirmities in the conduct of the enquiry as well as findings and also imposition of penalty by the Disciplinary

Authority. However, notwithstanding the detailed appeal, the 3rd respondent appellate authority, passed the impugned order dated 14.2.2014 rejecting the appeal. The 3rd respondent had enhanced the punishment imposed by the Disciplinary Authority and imposed a penalty of reversion to the lower rank as License Inspector for a period of three years. According to the petitioner, before enhancing the punishment, no notice has been issued to him, calling for his explanation in regard to the enhanced penalty. The petitioner herein, is therefore, before this Court, assailing both the orders of the Disciplinary Authority as well as the appellate authority dated 5.3.2013 and 14.2.2014 respectively.

5. Shri Ramanlal, learned counsel appearing for the petitioner would submit that the enquiry conducted by the Enquiry Officer is vitiated for several reasons. Admittedly, no witnesses were examined nor any documents were marked. There was absolutely no evidence made available in the enquiry for the Enquiry Officer to hold that the charges 2 and 5 were proved. According to him, the sketchy findings of the Enquiry

Officer is perverse and not supported by any material whatsoever and therefore, such findings cannot be the basis for imposition of penalty by the Disciplinary Authority. Moreover, he would submit that substantive portion of the charge memo, namely, charges 1, 3 and 4 were held not proved and charge No.2 alone was held proved for which, there was absolutely no evidence since the findings rendered in respect of second charge which was concluded without reference to the actual charge as framed against the petitioner. Charge No.5 being only violation of conduct rules, the findings in Enquiry Officer are *per se* arbitrary and unsubstantiated and cannot be relied upon for the purpose of imposition of any penalty.

6. Shri Ramanlaal, learned counsel further submit that even otherwise, the appellate authority without consideration of any of the infirmities which were pointed out by the petitioner, had passed the impugned order on 14.2.2014, having come to his own conclusion without any supportive material and while rejecting the appeal, has enhanced the penalty to that of

reversion to lower rank for a period of three years. The said penalty being major punishment, has been passed without any notice to the petitioner. Even otherwise, there is no proper consideration of all the points which were put forth by the petitioner in his appeal and therefore, the appellate authority's order, even otherwise, is contrary to the Rules which mandates the authority to consider every legitimate objection put forth in the appeal by the employee concerned. In any event, it is needless to mention that while enhancing the penalty, basic principles of natural justice required that the employee should be put on notice informing him about the proposed enhanced penalty. In the absence of such notice, the appellate authority's order cannot be countenanced in law.

7. Upon notice, Mr.T.C.Gopalakrishnan, learned counsel entered appearance on behalf of the respondents and filed a detailed counter.

8. Shri K.Venkataramani, learned Additional Advocate General appearing for the respondents would submit that there was some evidence available for imposition of penalty on the petitioner and since the appellate authority found that the original punishment of stoppage of one year increment with cumulative effect, was not commensurate to the gravity of the misconduct alleged against the petitioner, the same was enhanced. However, the learned Addl.Advocate General would agree that no notice was served on the petitioner before the appellate authority passed an order enhancing the punishment. Moreover, the learned Addl.Advocate General would have no quarrel with the proposition that the absence of notice before enhancing the penalty, the order passed by the appellate authority stands vitiated for non-adherence to the established principles of natural justice.

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9. This Court has given its anxious consideration to the rival submissions of the learned counsel appearing for the petitioner and the learned Addl.Advocate General for the respondents and

perused the materials and pleadings placed on record.

10. This Court finds that there is considerable force in the contention put forth by the learned counsel for the petitioner that the findings of the Enquiry Officer do not draw support from any material whatsoever and such findings cannot be the basis for imposition of penalty by the Disciplinary Authority. It is admitted position that neither witnesses nor documents were examined or marked in the enquiry and in the absence of the same, the findings of the Enquiry Officer cannot be held to be valid. Even otherwise, this Court has to take note of the fact that the appellate authority who passed the order enhancing the penalty to one reversion to the lower rank on the petitioner, is vitiated by the fact that no prior notice has been given to the petitioner, directing him to show cause as to why the punishment should not be enhanced. Even otherwise, it has to be seen that the appellate authority has not considered the various points and infirmities pointed out by the petitioner in the appeal and by non-consideration of those points and infirmities, the appellate

authority's order cannot be countenanced both on facts and in law.

11. However, considering the fact that enhancement of penalty by the appellate authority is per se illegal, unjust and unreasonable, the order passed by the appellate authority 14.2.2014 is set aside. The appellate authority, namely, the third respondent is directed to consider the appeal preferred by the petitioner afresh in terms of the observations made by this Court in the aforesaid paragraphs and give a detailed findings in respect of the points and infirmities pointed out by the petitioner in the appeal and pass a detailed order, within a period of two months from the date of receipt of copy of this order.

12. While considering the appeal, the appellate authority should also take into account the evidence which was made available in the enquiry and the findings thereon by the enquiry officer. It is also made clear that in the event of the petitioner became eligible for any promotion during the period when the

writ petition was pending before this Court, the same shall also be considered by the respondents in terms of their Rules and Regulations notwithstanding the punishment imposed on him.

On the above terms, the Writ Petition is allowed. No costs. Consequently, connected MP is closed.

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05.09.2017

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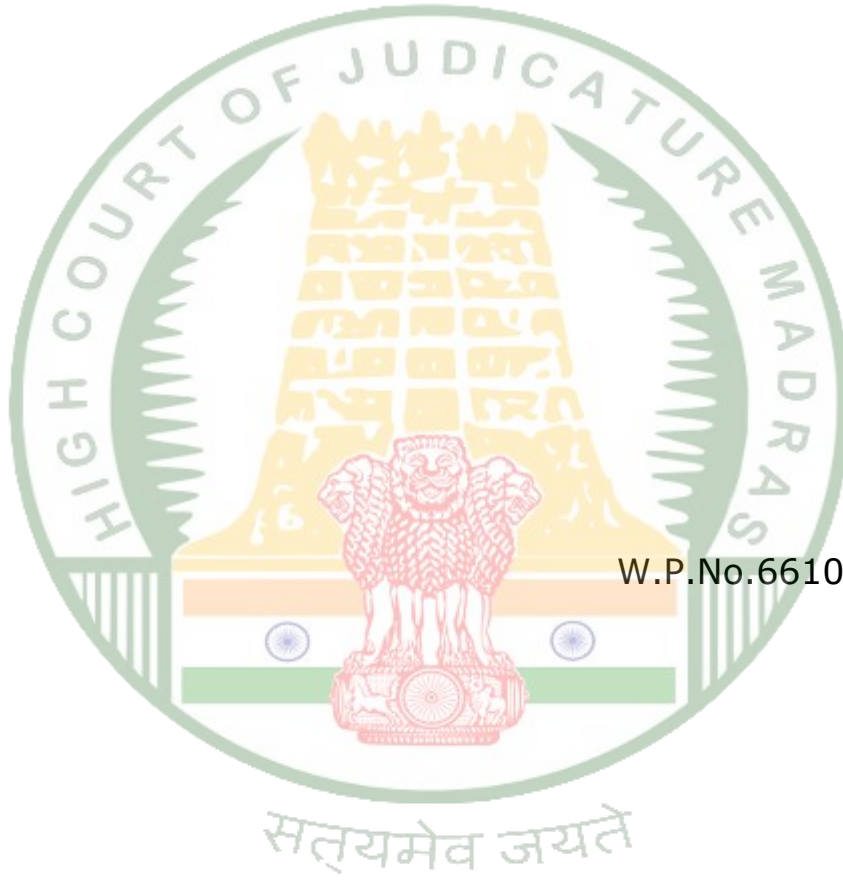
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V.PARTHIBAN, J.

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