

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.17527 of 2013

N.Sampath

.. Petitioner

Vs.

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

2.The Director of Town Panchayats,
Kuralagam, Chennai - 108. .. Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the proceedings of the first respondent in G.O.No.183 Municipal Administration and Water Supply Department dated 05.04.2013 confirming the order passed by the second respondent in its Na.Ka.No.13711/2005/A4-2 dated 06.06.2011 and quash the same and consequently direct the respondents to reinstate the petitioner to service with all consequential and attendant benefits.

For Petitioner .. Mr.V.Vijay Shankar

For Respondent .. Mr.T.M.Pappiah,
Spl. Govt. Pleader

ORDER

The petitioner has approached this Court seeking the following relief:

to issue a writ of certiorarified mandamus to call for the proceedings of the first respondent in G.O.No.183 Municipal Administration and Water Supply Department dated 05.04.2013 confirming the order passed by the second respondent in its Na.Ka.No.13711/2005/A4-2 dated 06.06.2011 and quash

the same and consequently direct the respondents to reinstate the petitioner to service with all consequential and attendant benefits.

2.The case of the petitioner is that while he was working as Head Clerk at Chengam Special Village Panchayat, he was placed under suspension by proceedings of the District Collector on 29.06.2005 in respect of certain acts of misconduct on the part of the petitioner. A charge memo was issued on the same day i.e. 29.06.2005 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The substance of the charges is that he has tampered with the entries in the minutes book of the panchayat meeting with the connivance of the Executive Officer concerned. In response to the charge memo, the petitioner had demanded furnishing of copies of the documents relied on by the respondents in order to submit an effective statement of defence by his letter dated 05.07.2005. However, the copies were not furnished to him and the petitioner had indeed submitted his written statement of defence on 17.08.2005.

3.Not satisfied with the written statement of defence, an enquiry was ordered and the petitioner was directed to appear for the enquiry on 28.01.2008. On that day, statements were obtained from the petitioner in respect of each article of charge. No witnesses were examined nor documents were marked in the enquiry. The said fact has not been disputed by the respondents herein. Thereafter, the petitioner was hoping that there would be further action for thorough enquiry into the matter since the proceedings initiated against him was a major penalty proceedings. However, to the petitioner's shock, a report was submitted by the enquiry officer on 03.12.2008 wherein he held all the charges proved. The enquiry officer came to the conclusion only on the basis of the statement obtained from the petitioner himself as admittedly no witnesses were examined nor any documents were marked in the enquiry.

4.On being furnished with the enquiry report, the petitioner submitted a detailed representation on 12.01.2009 pointing out the infirmities in the conduct of the enquiry and the report. However, notwithstanding the defective enquiry conducted by the enquiry officer, the second respondent, who was the disciplinary authority, without proper application of mind and without addressing the infirmities pointed out by the petitioner in his explanation, passed an order on 06.06.2011 imposing the punishment of removal from service. The petitioner preferred an appeal to the first respondent against the order of removal from service on 01.08.2011 and the first respondent mechanically rejected the appeal on 05.04.2013 by a non-speaking order. The first respondent, in the concluding paragraph, had stated that the Tamil Nadu Public Service Commission was consulted and the Commission had opined that

there was no merit in the appeal and therefore, the appeal has to be rejected. Against the orders of the disciplinary authority and the appellate authority, the petitioner is before this Court.

5. Upon notice, Mr. T. M. Pappiah, learned Special Government Pleader entered appearance on behalf of the respondents and filed a detailed counter.

6. Mr. V. Vijay Shankar, learned counsel appearing for the petitioner would at the outset contend that the enquiry conducted by the enquiry officer is in violation of Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules since no proper opportunities were afforded to the petitioner for defending his case. According to him, there has been a wholesale violation of the rules and therefore the eventual enquiry report holding the charges proved cannot be countenanced in law. It is the admitted case that no witnesses were examined in the enquiry nor any documents were marked. As such, the enquiry findings against the petitioner cannot be sustained in law in any event.

7. Moreover, the disciplinary authority, who passed the order of removal from service has not applied his mind to the infirmities in the conduct of the enquiry and the findings rendered thereon. The disciplinary authority, the second respondent herein, without addressing the issues pointed out in the explanation submitted by the petitioner, has passed the order of punishment, which is impugned in the present writ petition. Further, the appellate authority, who rejected the appeal has mechanically followed the opinion rendered by the Tamil Nadu Public Service Commission by abdicating his statutory responsibility vested in him under the rules. The appellate authority's order is plainly non-speaking and it followed the opinion of the Tamil Nadu Public Service Commission in that regard.

8. Learned counsel appearing for the petitioner would submit that in the entire disciplinary action, from the stage of enquiry report until the rejection of the appeal, has to necessarily go because of lack of substance and since admittedly, no semblance of enquiry, which is contemplated under the mandatory rules has been followed.

9. At this, learned Special Government Pleader would submit that the charges framed against the petitioner are quite serious and therefore the punishment of removal from service was called for and the enquiry was conducted against the petitioner, in

which charges came to be proved.

10. This Court considered the rival submissions of the learned counsels and perused the materials and pleadings placed on record. This Court finds that there is considerable force in the contention put forth by the learned counsel for the petitioner that there has been a complete violation of the procedure contemplated in the rules, while the administration had initiated the major penalty proceedings against the petitioner which mandate following the procedure in all respects in strict sense. In the instant case, unfortunately, the enquiry officer has held the charges proved without any iota of evidence let in in the enquiry and such findings, which this Court can safely construe that as one of perverse finding. Admittedly, no witnesses were examined nor documents were marked in the enquiry and in such an event, the findings cannot have any legal sanctity, which can be held against the petitioner. However, the disciplinary authority, who is vested with the responsibility and exercising quasi judicial power cannot abdicate his responsibility of addressing the issues raised by the petitioner in his explanation to the enquiry report. But, in the instant case, he has chosen to ignore the same and slapped the petitioner with the major penalty of removal from service. The disciplinary authority's impugned action therefore cannot be countenanced both in law and on facts. Further, adding to the defective proceedings by both the enquiry officer and the disciplinary authority, the appellate authority has passed a non-speaking order in total violation of the rule provision as according to Rule 27 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, he is expected to consider each and every objection and apply his mind but in the instant case, there appears to be no application of mind at all. Moreover, as could be seen from the appellate authority's order dated 05.04.2013, the first respondent the appellate authority had merely followed the opinion given by the Tamil Nadu Public Service Commission and without independent application of mind. Such action on the part of the appellate authority amounts to clear abdication of statutory duty cast upon him under the rules. Learned counsel for the petitioner in support of his contention would rely on the decision in Tamil Nadu Housing Board Vs. R.Chakrapani (2012 (6) CTC 69), wherein a Division Bench of this Court, after relying on the order passed by the Supreme Court in identical circumstances has confirmed the order passed by the learned single Judge. The operative portion of the order passed by the Division Bench is extracted below:

6. As far as the procedure adopted by the enquiry officer in putting questions and eliciting answers from the delinquent employee is concerned, we may again refer to the judgment of the Apex Court

in State of Uttaranchal and others v. Kharak Singh, (2008) 8 SCC 236, where the Court laid down the following principles:-

"11. From the above decisions, the following principles would emerge:

i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.

ii) If an officer is a witness to any of the incidents which is the subject matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the Enquiry Officer. If the said position becomes known after the appointment of the Enquiry Officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.

iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged, give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.

iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any."

The learned Judge, after referring to the above law laid down by the Apex Court, held that the punishment imposed on the delinquent employee cannot be sustained and accordingly set aside the orders impugned in the writ petition. In our opinion, in view of the settled law by the Apex Court, the finding of the learned Judge on this aspect also requires no interference. Accordingly, we find no merit in the writ appeal and the same is dismissed. Consequently, M.P.No.1 of 2012 is also dismissed. No costs.

11.Learned counsel would also submit that during the pendency of the writ petition before this Court, the petitioner has attained the age of superannuation on 31.07.2016.

12.In all the above circumstances, this Court has no hesitation in allowing the writ petition. The impugned orders passed by the second respondent and first respondent dated 06.06.2011 and 05.04.2013 are hereby set aside. There shall be a consequential direction to the respondents to notionally reinstate the petitioner in service with all service benefits including pay and arrears of salary till the date of his retirement and also calculate the pension as such and pay arrears of pension. The consequential direction passed by this Court shall be complied with by the respondents within a period of two months from the date of receipt of a copy of this order.

13.The writ petition stands allowed on the above terms. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to Government of Tamil Nadu,
Municipal Administration and Water
Supply Department,
Fort St. George, Chennai.
- 2.The Director of Town Panchayats,
Kuralagam, Chennai - 108.

+1 cc to the Government Pleader sr64131

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