



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 24.03.2017

CORAM :

THE HONOURABLE MR. JUSTICE R. SUBRAMANIAN

Writ Petition (MD) No. 849 of 2014 and
M.P (MD) No. 1 of 2014

Agasthilingam

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Represented by the Secretary to Government,
Municipal Administration & Water Supply
(T.P.IV) Department, Secretariat,
Fort St. George, Chennai-600 009.

2. The Director of Town Panchayat,
Directorate of Town Panchayats,
Kuralagam, Chennai-600 108.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for records relating to the impugned proceeding of the second respondent dated 09.07.2007 in No.5187/07/A4-2 and the subsequent proceeding of the second respondent dated 23.11.2011 in Na.Ka.No.5187/07/A3 and quash the same and consequently direct the respondents to provide all service benefits including promotion with retrospective effect from the date, his immediate junior was promoted with all attendant, monetary and consequential benefits.

For Petitioner : Mr.N.Dilip Kumar
For Respondents : Mr.S.Kumar,
Additional Government Pleader.

ORDER

The petitioner seeks issuance of Writ of Certiorarified Mandamus to quash the charge memo, dated 09.07.2007 as well as the subsequent proceedings of the second respondent namely, the Director of Town Panchayat.

2.The petitioner was originally appointed as Bill Collector in the Panchayat service on 20.07.1983 and after serving in various posts, the petitioner, was appointed as Executive Officer, Grade I on 12.11.2001 and posted as the Executive Officer, Kollencode Town Panchayat on 01.10.2004 and he was relieved from the said station on 19.10.2004. While so, in the year 2007, precisely on 09.07.2007, a charge memo was served on the petitioner.

<https://hcservices.ecourts.gov.in/hcservices/>

3.The sum and substance of the charge is that the



petitioner has failed to ensure the quality of the road work carried out and entered boosted measurement in the measurement book which has resulted in loss of revenue to the Government. The details of the road work are as follows:-

"On 12.07.2002, the Town Panchayat passes a resolution for carrying out the road work and other civil work.

On 08.06.2004, the Assistant Director of Town Panchayat accords sanction for carrying out the said work.

On 16.06.2004 a tender notice was issued and the tender was accepted on 29.06.2004.

The local body approves the work on 05.07.2004 and the work order has been issued on 08.07.2004.

The work commenced on 19.07.2004 and was completed on 19.10.2004."

4. During the above said period, it could be seen that the petitioner has worked in the said station from 01.10.2004 to 19.10.2004. The petitioner has submitted his explanation for the charges and a regular enquiry was conducted by the Assistant Executive Engineer of Town Panchayat who was appointed as Enquiry Officer. The Enquiry Officer has submitted his report on 06.04.2009 with a finding that the charges had not been proved because the entire sanction and approval of the work was done prior to the petitioner being posted at Kollemcode and the payments were also released after the petitioner had moved out of the said station on 19.10.2004. Though the Enquiry Officer submitted his report to the Director of Town Panchayat as early as on 06.04.2009, no final orders were passed, pursuant to the same. After several representations made by the petitioner, the second respondent namely, the Director of Town Panchayat informed the petitioner that it is proposed to take disciplinary proceedings against two other employees namely, former Assistant Executive Engineer Mr. Kanagaaraj and former Assistant Executive Engineer Mr. Dharmaraj and therefore, final decision regarding the charges made against the petitioner would be taken only after the proceedings are completed against the said two officers.

5. According to the petitioner, even thereafter, he has been making representations to the second respondent. Since there was no response and there was an attempt by the Government to have a *de novo* enquiry by a combined proceedings against all the delinquents, the petitioner has come forward with this writ petition.

6. While admitting this writ petition, this Court has granted stay of *de novo* enquiry on 21.01.2014. The second respondent namely, the Director of Town Panchayat has filed a counter affidavit wherein he has reiterated the facts and has also set out the steps are on to take common proceedings against all the delinquents under Rule 9A of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1953. Rule 9A of the Tamil Nadu Civil Service (Discipline and



Appeal) Rules, 1953 is an enabling provision and it was brought into force with effect from 15.02.2008.

7. Admittedly, the delinquencies complained of in this case took place in 2004 and the charge memo was issued to the petitioner even in the year 2007 and therefore, Rule 9A cannot be invoked in the present case. Now that the enquiry against the petitioner has been completed and the report of the Enquiry Officer was laid before the appropriate authority eight years back, the appropriate authority must take a decision on the basis of the enquiry report. It cannot await the conclusion of contemplated enquiry against several other persons which are yet to be initiated. Though the petitioner has found to be not guilty by the Enquiry Officer by keeping the proceedings pending, the respondents have denied several promotions to the petitioner. This, in my opinion, is unjust and improper. Even though the petitioner seeks to quash the charge memo, now that the enquiry itself is over, a direction to the second respondent to pass final orders on the enquiry report would meet the ends of justice.

8. Accordingly, the writ petition stands disposed of with a direction to the second respondent to pass appropriate orders on the basis of the enquiry report dated 06.04.2009 submitted by the enquiry officer, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, M.P(MD) No.1 of 2014 is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
Government of Tamil Nadu,
Municipal Administration & Water Supply
(T.P.IV) Department,
Secretariat, Fort St. George,
Chennai-600 009.

2. The Director of Town Panchayat,
Directorate of Town Panchayats,
Kuralagam, Chennai-600 108.

+ 1 CC TO Mr.N.DILIP KUMAR, ADVOCATE IN SR No. 17937
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 18171

SMS/VSG

TE/MR/SAR-II : 25/04/2017 : 3P/5C

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