IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 23.10.2018
CORAM
THE HON'BLE MR. JUSTICE R.SURESH KUMAR
W.P.No.34762 of 2002

R.Muthurajan ..Petitioner

Vs.

1. The Managing Director,
Tamil Nadu Water Supply
and Drainage Board,
No.31, Kamarajar Salai,
Chepauk, Chennai-5.

2. Tamil Nadu Water Supply
and Drainage Board, rep.
By its Chairman,
No.31, Kamarajar Salai,
Chepauk, Chennai-5.

3. The Secretary to Government,
Municipality Administration and
Water Supply Department,
Fort. St.George,
Chennai-9. ...Respondent

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records connected with the Board Proceedings B.P.Ms.No.208 TWAD-Estt(D.P.) Wing dated 13.11.2001 passed by the first respondent by the order of the second respondents one and two to give all attendant benefits including seniority, promotion and consequential benefits from the date of issuing the charge memo dated 26.07.1993.

For Petitioner : Mr.S.Arunachalam

For Respondents
For R1 & R2: Mr.R.Gandhimadhi
For R3 : Mr.K.Ravikumar,
Additional Government Pleader

O R D E R

The prayer sought for in this Writ Petition is for issuance of a Writ of Certiorarified Mandamus calling for the records connected with the Board Proceedings in B.P.Ms.No.208 TWAD-Estt(D.P.) Wing dated 13.11.2001, passed by the first respondent by the order of the second respondents ad direct the respondents one and two to give all attendant benefits including seniority, promotion and consequential benefits to the petitioner from the date of issuing the charge memo dated 26.07.1993.

2. The short facts which are required to be noticed for the disposal of the writ petition are as follows:-

The petitioner had joined in the services of Tamil Nadu Water Supply and Drainage Board (in short 'TWAD Board'), the respondents herein, as Assistant Engineer on 01.06.1967 and he was then promoted as Assistant Executive Engineer on 09.01.1975 and thereafter he was promoted as Executive Engineer on 02.01.1982. On superannuation he was allowed to retire on 31.07.2001. However, in the meanwhile, a disciplinary proceedings was initiated against the petitioner by issuing the charge memo dated 26.07.1993. Based on the said charges, the petitioner was directed to give his explanation, which he had given. However, the said charges had been withdrawn on 09.03.2000 and prior to which on 25.02.2000, a fresh charge memo was issued against the petitioner wherein the following four charges were framed:

> "Charge No.1: that he had accumulated assets to the value of Rs.97,208.20 during the period from 1.1.84 to 31.12.88 which is disproportionate to his known sources of income.
>
> Charge No.2: that he had constructed first floor of his house at Plot No.104, Municipal Colony, Dindigul without obtaining prior permission from the competent authority during 1986 and thereby violated Regulation 14(1) of TWAD Board Officers' & Servants Conduct Regulations, 1972.
>
> Charge No.3: that he had obtained Rs.27,000/- and Rs.24,500/- as hand loan from private individuals without obtaining prior permission from the competent authority during 1986 and thereby violated the Regulation 14(1) of TWAD Board Officers' and Servants' Conduct Regulations, 1972.
>
> Charge No.4: that he had disposed off 41/2 soverign of gold jewel for a sum of Rs.10,000/- during 1986 to the wife of a TWAD Board contractor, without obtaining prior permission from the competent authority and thereby violated Regulation 14(1) of TWAD Board Officers' and Servants' Conduct Regulations, 1972."

3. Pursuant to the said charges, an enquiry was conducted and the petitioner participated in the enquiry and full opportunity had been given to the petitioner and ultimately the enquiry officer has given his report on 14.09.2000, stating that all the charges were proved. A copy of the enquiry officer's report was served to the petitioner seeking further explanation or defense statement from the petitioner, which the petitioner had given on 28.11.2000. Considering the enquiry officer's report and the veracity of the charges framed against the petitioner and also the defense statement given by the petitioner, the first respondent has passed an order of punishment of reduction in one rank against the petitioner on 16.02.2001. As against the said order of punishment, the petitioner preferred an appeal to the Chairman, TWAD Board i.e., the second respondent herein, on 21.03.2001 and the said appeal was also rejected by confirming the order passed by the first respondent on 13.11.2001. Assailing the said order of punishment as confirmed by the second respondent by order dated 13.11.2001, this writ petition has been filed.

4. Heard, Mr.S.Arunachalam, learned Counsel appearing for the petitioner, who would submit that, insofar as the first charge is concerned with regard to the accumulation of assets to the value of Rs.97,208.20 during the period between 01.01.1984 to 31.12.1988, the respondents have not considered the defense statement given by the petitioner. The hand loan and the gifts received by the petitioner from his father-in-law at the time of his marriage and subsequently on various occasions, had not been taken into account. He would further submit that since the father-in-law of the petitioner was a merchant and on the various occasions, for the welfare of his daughter i.e., wife of the petitioner and his grand-children i.e., the children of the petitioner, jewels had been gifted. When that being the position, all those gifts, which were received by the wife and children of the petitioner, at various point of time from their father/grandfather was not taken into account by the Enquiry Officer.

5. In respect of charge Nos. 2, 3 and 4 are concerned, the learned counsel appearing for the petitioner would submit that, the said charges made against the petitioner only on the ground that the petitioner did not get permission for constructing the first floor of his house and also for obtaining hand loans of Rs. 27,000/- and Rs.24,500/- from private individuals and also for disposal of 4½ soverign of gold worth about Rs.10,000/-. In this context, the learned Counsel appearing for the petitioner would submit that, in fact for the construction of the house, permission was sought for by the petitioner from the respondents. The respondents on considering the said request

made by the petitioner, had issued such permission and in the fact, a loan to the extend of Rs.86,300/- was also sanctioned by the respondents in the proceedings dated 20.11.1985. Only based on the permission given by the TWAD Board and out of the amount sanctioned by way of loan and also with the personal savings of the petitioner, the house was constructed for the worth of Rs.1,04,000/- only. Therefore, the charges framed against the petitioner that he did not get the permission for construction of his house and to get the private loan, are without any basis.

6. The learned counsel appearing for the petitioner would further submit that, in spite of these infirmities and illegalities in framing the charges itself, which in fact framed in second time after the period of seven years from the first charge memo, the Enquiry Officer had wrongly concluded that the charges were proved. The defence statement given by the petitioner was not considered by the first respondent in proper perspective and also by the second respondent in the appeal, filed before him. Therefore by citing all these reasons, the learned counsel appearing for the petitioner would submit that, the punishment awarded against the petitioner is unwarranted and because of which, the petitioner had been reduced to one rank, thereby all his promotional benefit during his service and thereafter his pensional benefits as well as the retirement benefits got affected. Therefore the said order of punishment awarded against the petitioner as confirmed by the second respondent in the impugned order is liable to be interfered with.

7. Per contra, the learned counsel appearing for the respondents would submit that, four charges were framed against the petitioner and all the four charges were proved after conducting proper enquiry by the Enquiry Officer before whom the petitioner had appeared. The petitioner had been given all opportunities while conducting the domestic enquiry and after receiving the report from the Enquiry Officer, the same was served on the petitioner by issuing second show cause notice and therefore that opportunity was given to him. Since four charges framed against him have been proved by the enquiry, the first respondent instead of inflicting major punishment of removal of service against the petitioner, had only imposed minimum punishment of reduction in one rank, only by this, his service benefits including retirement benefits would not affect, as he would get all these benefits as per the salary prescribed for that rank, where he has been reduced by way of punishment. Therefore this order of punishment as confirmed by the appellate authority would require no interference from this Court.

8. I have considered the said submission made by the learned counsel appearing for both sides.

9. All the four charges are related to the accumulation of assets which is disproportionate to the known source of income, during the particular period, by way of constructing a portion of house and also claimed to obtain private loan and arrange money by selling the jewels without the permission of the Board are interconnect with each other. In this context the respondents have heavily relied upon the Tamil Nadu Water Supply and Drainage Board Officers' and Servants' Conduct Regulations, 1972 (herein after referred to as "Conduct Regulations"). Certain provisions of the Conduct Regulations are relevant for the purpose of this Writ Petition, which are here by extracted:

> "10. Gifts- (1) Save as otherwise provided in these regulations no employee shall, except with the previous sanctions of the Managing Director accept or permit his wife, or any other member of his family to accept from any person any gift:
>
> provided that the sanction of the managing Director shall not be necessary for the acceptance of-
>
> (a) Gifts from a person other than a personal friend or relative of a value not exceeding Rs.50(rupees fifty only) or ¼ (one-fourth) of the monthly emoluments of the employee concerned whichever is less, on occasions other than those covered by sub-clause (b).
>
> (b) Gifts from the personal friend of a value not exceeding Rs.200 (rupees two hundred only) on special occasions such as weddings, anniversaries, funerals and religious functions when the making or receiving of such gifts is in conformity with the prevailing religious or social customs;
>
> (c) gifts from relatives without any monetary limit regarding their value on special occasions such as wedding, anniversaries, funerals and religious functions when the making or receiving of such gifts is in conformity with the prevailing religious or social customs.
>
> (d) Explanation-For the purpose of this sub-regulation, any trowel , key or other similar articles offered to an employee at the laying of a foundation stone or the opening of a public building or any ceremonial function shall be deemed to be a gift.
>
> (2) If any question arises whether any gift

is one which can be accepted without the permission of the Managing Director or if an employee is in any doubt whether a gift offered to him is one which can be accepted without the permission of the Managing Director, a reference shall be made to the Managing Director by such employee and the decisions of the Managing Director thereon shall be final.
....

14.Movable, Immovable and Valuable Property,-(1) No employee shall except after notice to the prescribed authority, acquire or dispose any Immovable property by lease, mortgage, purchase, sale, gift, exchange or otherwise, either in his own name or in the name of any member of his family.

Provided that any such transaction conducted otherwise than through a regular or reputed dealer, shall require the previous sanction of the prescribed authority.

(2) An employee who enters into any transaction concerning any movable property exceeding five hundred rupees in value, whether by way or purchase, sale or otherwise, shall forthwith report such transaction.

Provided that no employee shall entered into any such transactions except with or through a regular or reputed dealer or agent or with the previous sanction of the said prescribed authority:

Provided further that an employee he is about to quit the local limits of his official authority may without reference to the prescribed authority, dispose of any of his movable property by circulating lists of it among the general public or by causing it to be sold by public auction.

Explanation (1)-For the purpose of this sub-regulation, the expression 'Movable property' includes the following property, namely:-

(a) Jewellery, insurance policies, shares, securities and debentures:

(b) Loans advanced by such employee whether secured or not.

(c) Motor cars, motor cycles, horses or any other means of conveyances and

(d) refrigerators, radios and radiograms.

Explanation (2)-For the purpose of sub-regulations (1) and (2), a society registered or deemed to be registered as a co-operative Society under the Madras Co-operative Societies Act, 1961 (Madras Act 63 of 1961) or any other law for the time being in force shall be deemed to be a regular or reputed dealer.

(3) Every employee shall, on his first appointment to any post in connection with the affairs of the Board, submit a return as required by Sub-regulation (7) in Form A appended to those regulations of all immovable properties owned, acquired or inherited by him or held by him on lease or mortgage either in his own name or in the name of any member of his family or in the name of any other person

....

(7) Every employee other than a peon or deffadar or Record clerk shall submit not later than the 15th January each year, through the usual channel to the prescribed authority, a statement in Form A appended to these regulations showing all the immovable property of which he stood possessed or in which he had an interest at the close of the preceding calender year: Provided that, if in any year an employee has neither acquired for relinquished or otherwise disposed of, any immovable property, or any interest in immovable property he need not submit the statement referred to in this sub-regulation."

10. No doubt, the petitioner is governed by the said Conduct Regulations under which, certain mandatory procedure have to be followed by the employee and by the TWAD Board. As per the Regulation 10 under the head of "Gift", even if any gift is received by the petitioner or his family members other than the personal friend of a value not exceeding Rs.50/-, need not to get any permission from the Managing Director of the TWAD Board. It means that if the employee received gift worth more than Rs.50/- such permission should have been obtained. Here the case in hand, there had been 4½ Sovereign gifted to the petitioner's wife and children from the father-in-law and other relatives on various occasion including the marriage occasion. However, the said gift had not been informed by the petitioner or the possession of the gifted jewels by the petitioner's family was not disclosed, at the time of petitioner joining in service, which is in violation of Regulation 14(3). Also every year not later than 15th of January Annual Statement in Form-A has to be given by the employees. That apart under 14(1) of the Conduct Regulations, no employee shall except after notice to the prescribed authority, acquire or dispose of any immovable

property.

11. Here in the case in hand, even though it was claimed that the permission was obtained for the construction for the worth Rs.1,04,000/-, additional construction admittedly made in the first floor, for which the source of income, according to the petitioner was that he obtained loan from two private individuals for Rs.27,000/- and for Rs.24,500/- respectively and also mobilized the sum of Rs.10,000/- by selling 4½ sovereign of gold. If these are the source for mobilize the additional funds to make additional construction, all these needs to be informed to the TAWD Board and after getting the permission, these could have been done. Admittedly, no such permission was obtained by the petitioner and not even the same had been informed, till the charge memo had been issued against the petitioner.

12. These aspects have been considered by the Enquiry Officer and after having considered the defense given by the petitioner as well as the evidence produced before him, he had given his findings that all the four charges were proved. Very detailed consideration has been shown by the Enquiry Officer and he has given his finding in detail. For instance, with regard to charge No.3, for obtaining loan from two individuals, the following findings have been given by the Enquiry Officer :-

> "Charge No.3 :-
>
> The Accused officer in his reply has stated that Thiru Narayanasamy, Madras and Tmt.Sangunthala, Thiruvanmiyur from whom he has received Rs.27,000/- and Rs.24,500/- respectively are close relative and personal friend. Hence he has not violated the regulation 13(6) of TWAD Board. However when going to the Regulation 13 (6) which clearly states as follows:-
>
> No employees shall save in the ordinary course of business that a bank or firm of standing borrow money from or otherwise place himself under pecuniary obligation to any person within the local limit of his authority or any other person with whom he is likely to have official deadlings nor shall be permit any member of his family except with the previous sanction of the Managing Director to enter into any such transactions.
>
> Provided that an employee may accept a purely temporary loan of small amount free of interest from a personal friend or relative or operate a credit amount that a bonafide trademan.
>
> In this connection, the loan amount obtained from Thiru Narayanasamy, the loan amount obtained

> from Thiru Narayanasamy, Madras and Tmt.Saguntala, Thiruvanmiyur is not small amount to get exemption under 13 (6) class of the TWAD Board Act 1972."

Like that in respect of all three charges, such findings have been given and accordingly Enquiry Officer has given his report stating all the charges were proved.

13. After the said Enquiry Officer's report, a copy of the same was given to the petitioner for giving opportunity, by way of second show cause notice. Thereafter, on getting the defence statement of the petitioner, the disciplinary authority after having considered all those aspects, has passed detailed order of punishment, by thus, he has inflicted the punishment of reduction of one rank on the petitioner. While inflicting the punishment, the disciplinary authority has stated that, considering the gravity of the charges and circumstances of the cases and also in view of the short length of services viz., six months for his date of retirement on 31.07.2001, the punishment of reduction in rank by one level till his retirement and his pay shall be fixed in the minimum of the pay scale in the reduced rank for the proven charges, has been given.

14. When appeal was preferred by the petitioner against the said order of punishment, the appellate authority has constituted an Appeal Sub Committee, before which, the appeal of the petitioner had been placed for consideration and after having considered the same, the Appeal Sub Committee has given its recommendation to the Board and after having considered the Sub Committee's recommendation, the Board has resolved to accept the same and accordingly, the punishment have been confirmed by the Appellate Board.

15. After having perused all these materials, I am of the view that, there is no procedural infirmity or illegalities attached with the entire disciplinary proceedings conducted against the petitioner. In view of all the four proven charges, though some major punishment could have been inflicted against the petitioner, the disciplinary authority inflicted the punishment of reduction in one rank, which has been confirmed by the appellate authority. Considering the grave in nature of proven charges against the petitioner the punishment inflicted against him is not disproportionate. Moreover, because of this punishment his retirement benefits and pensionary benefits have not been affected as rightly pointed out by the learned counsel appearing for the respondent/Board. In view of the same, this Court is of the considered view that the impugned orders do not require any interference from this Court and therefore the writ petition fails.

16. Accordingly, this Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rts/rst

To

1. The Managing Director,
   Tamil Nadu Water Supply
   and Drainage Board,
   No.31, Kamarajar Salai,
   Chepauk, Chennai-5.

2. Tamil Nadu Water Supply
   and Drainage Board, rep.
   By its Chairman,
   No.31, Kamarajar Salai,
   Chepauk, Chennai-5.

3. The Secretary to Government,
   Municipality Administration and
   Water Supply Department,
   Fort. St.George,
   Chennai-9.

+1cc to M/s.R.Ghandhimathi, Advocate sr.72957
+1cc to Mr.S.Arunachalam, Advocate sr.72269

W.P.No.34762 of 2002

nrl(co)
nr 28/01/2020