

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1362 of 2014
and MP No.1 of 2014

The Commissioner
Palani Municipality
Palani, Dindigul District ... Appellant

versus

1. N. Sampathkumar
2. The Secretary to Government,
Municipal Administration and Water Supply,
Department, Chennai 9.
3. The Director of Municipal Administration,
Chepauk, Chennai 5. ... Respondents

Appeal filed against the order passed by this Court dated 19.06.2014 passed in W.P.No.14487 of 2014.

WP.No.14487 of 2014

Petition under Article 226 of the Constitution of India
Praying this Court to issue a writ of certiorarified Mandamus
to call for the records relating to the Charge Memorandum
issued by the third respondent in his Proceedings. Na.Ka.
No.2707/99/C1 dated 17.1.2001 and to quash the same and
consequently to treat the period of suspension as duty for all
Practical purposes and to allow the petitioner to retire from
service on Superannuation on the A.N. of 31.7.2013 and treat as
having retired from service on superannuation on the
A.N.31.7.2013 with all attendant service and retirement benefits

For Appellant :r.P.Srinivas

For Respondents : Mr.M.Ramdass
for M/s.R.S.Anandan for R1

Mr.V.Anandhamoorthy
Addl. Govt. Pleader for RR 2 & 3

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The appellant challenges the judgment of the learned Single Judge dated 19.06.2014 made in WP No.14487 of 2014, in and by which, the learned Single Judge while quashing the charge memo dated 17.01.2001, directed the appellant Municipality to treat the respondent to have retired from service on 31.07.2013 with all monetary benefits arising out of such retirement.

2. The challenge in the Writ Petition was to the Charge Memo dated 17.01.2001. The 1st respondent, who was working as Meter Reader, in the Palani Municipality, was suspended with effect from the forenoon of 17.01.2001 and a charge memo was issued to him in Na.Ka.No.2707/99/C1 on the charge of unauthorized absence from 11.12.2000, though the 1st respondent was directed to submit his explanation within 15 days from the date of receipt of the charge memo, no further proceedings were initiated by the Municipality.

3. The 1st respondent claims that he had submitted his explanation on 20.01.2001 and made several subsequent representations during the years 2003, 2004 and 2005 etc. None of the above representations seem to have evoked any response from the Appellant Municipality. By Lawyer's notice dated 19.12.2012, the appellant had called upon the Municipality to furnish copies of documents relating to the proceedings. In reply to the said legal notice, the Public Information Officer cum Manager of the Palani Municipality had informed the 1st respondent that the file relating to the Charge Memo and other proceedings is not available in the Municipality. Thereafter, on 08.06.2013, the appellant had sought for payment of subsistence allowance. Since the said claim for subsistence allowances was not complied with, the 1st respondent had filed WP No.16115 of 2013 seeking payment of subsistence allowances from 17.01.2001. This Court by an order dated 01.07.2013 directed the appellant Municipality to consider the claim made in the representation dated 08.06.2013 within a period of 6 weeks from the date of receipt of the copy of the order.

4. It is further case of the 1st respondent that the said order dated 01.07.2013 was also not complied with. In the meantime, the 1st respondent attained the age of superannuation on 31.07.2013. In the above circumstances, the 1st respondent came forward with the above Writ Petition No.14487 of 2014, seeking to quash the charge memo and to treat the period of

suspension as spent on duty for all practical purposes and for allowing him to retire from service from the afternoon of 31.07.2013.

5. It appears that there was an order made in the Writ Petition on 12.06.2014 directing the appellant Municipality to explain the delay in proceeding with the Departmental Enquiry. In answer to the said order, an affidavit was filed by one Mr.R.Senthil Kumar, who was functioning as a Commissioner incharge of the Municipality at the relevant point of time. It is claimed in the said affidavit that after the receipt of order of this Court in WP No.16115 of 2013, the Municipality had issued letters to the 1st respondent seeking proof of non employment. But those letters were returned un-served. Thereafter, the communication was sent on 08.11.2013 to the address of the 1st respondent at Thiruppur and to the counsel for the 1st respondent, only thereafter the 1st respondent received the communication. In the said affidavit, it is further stated that the files relating to the proceedings in the Charge Memo of the year 2001 were missing and an attempt was made to suggest that the 1st respondent is in possession of the files. It is in this back drop, the learned Single Judge, who heard the Writ Petition on 19.06.2014, allowed the Writ Petition on a ground of inordinate and unexplained delay in proceeding with the charges.

It is this order of the learned Single Judge quashing the charge Memorandum dated 17.01.2001 that is challenged by the Municipality in this Intra Court Appeal.

6. We have heard Mr.P.Srinivas, learned counsel appearing for the appellant, Mr.M.Ramdass learned counsel appearing for M/s.R.S.Anandan, for the 1st respondent and Mr.V.Anandhamoorthy, learned Additional Government Pleader appearing for the Respondents 2 and 3.

7. Admittedly, the charge memo was issued on 17.01.2001 and the 1st respondent was also placed under suspension from the said date. However, no proceedings were taken pursuant to the said charge memo. Though, the 1st respondent claims to have made several representations regarding the non completion of the enquiry and claiming subsistence allowance, there is no proof to show that these representations were received by the appellant, except one representation dated 02.07.2003 which bares the seal of the Commissioner Palani Municipality.

8. Be that as it may, we do not see any justification for the prolonged inaction on the part of the appellant Municipality. In the affidavit filed before the Writ Court on 19.06.2014, it is claimed that the files relating to the period of suspension are not available and it is not known as to what has been done in this Case. The affidavit does not disclose as to what action has been taken by the Municipality, after it had

discovered that the files are missing that too after a gap of nearly 10 years in the month of December 2012. It is also claimed that none of the representations alleged to have been sent by the 1st respondent are available with the appellant Municipality.

9. In para 11 of the said affidavit dated 19.06.2014, it is stated that the 1st respondent has not approach the Municipality and he has kept quite all through. It is claimed that the 1st respondent was not interested in serving the Municipality and it is only after reaching the age of Superannuation, he had come forward with the present Writ Petition.

10. Mr.P.Srinivas, learned counsel appearing for the appellant Municipality would contend that the 1st respondent has also contributed to the delay. Be that as it may, we are startled to find that the Municipality which had issued a Charge Memo as early as on 17.01.2001 had not chosen to proceed with the enquiry within a reasonable time. The only reason that is attributed for the delay is that the files relating to the Charge Memo went missing.

11. The affidavit dated 19.06.2014 is silent, as to the steps taken to trace the files and it is only, after the order of this Court in WP No.16115 of 2013 dated 01.07.2013, the Municipality seems to have woken up from deep slumber and realised that nothing has been done pursuant to the charge memo dated 17.01.2001. In view of the admitted position that the files relating to the charge memo are not available with the Municipality, it is clear that no further enquiry could be conducted and the only charge against the 1st respondent is unauthorized absence for the period of about 40 days. Taking into account the nature of the delinquency, we do not think that any useful purpose to be served by interfering with the order of the learned Single Judge quashing the charge memo.

12. The learned Single Judge had also taken note of the fact that there is nothing in the Service Rules to enable continuance of the disciplinary proceeding after the retirement of the delinquent employee. We should however point out that the delinquent employee, viz. the 1st respondent has also contributed to the delay. In view of the same, while confirming the order of the learned Single Judge quashing the charge memo, we only make it clear that the 1st respondent will not be entitled to any monetary benefits, as if he had been in service from 17.01.2001 to 31.07.2013. He would be deemed to have retired on 31.07.2013 on attaining the age of superannuation. He would be entitled to only monetary benefits arising out of such retirement sans any interest.

13. Hence the Writ Appeal is disposed of with the above direction. The Municipality will work out retirement benefits payable to the 1st respondent, within a period of eight (8) weeks from the date of receipt of a copy of the order and pay the same to the 1st respondent. It is made clear that the 1st respondent will not be entitled to any salary or subsistence allowances for the period between 17.01.2001 and 31.07.2013. However in the circumstances there will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

jv

To

1. The Commissioner
Palani Municipality
Palani, Dindigul District
2. The Secretary to Government,
Municipal Administration and Water Supply,
Department, Chennai 9.
3. The Director of Municipal Administration,
Chepauk, Chennai 5.

+lcc to Mr.R.S.Anandan, Advocate, S.R.No.

+lcc to the Government Pleader, S.R.No.44956

W.A.No.1362 of 2014
and MP No.1 of 2014

GP(CO)
GSP(24/07/2018)

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