

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2018

CORAM

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.39084 of 2005

Velan Kandasamy,
No.60, IInd Avenue, Indira Nagar,
Chennai - 600 020.

... Petitioner

Vs.

1. Government of Tamil Nadu,
rep by its Secretary,
Municipal Administration and
Water Supply Department,
Fort St.George, Chennai - 600 009.

2. Chennai Metropolitan Water Supply
and Sewerage Board,
rep by its Board of Directors,
No.1, Pumping Station Road,
Chindatripet, Chennai - 600 002.

3. Managing Director,
Chennai Metropolitan Water Supply
and Sewerage Board,
No.1, Pumping Station Road,
Chindatripet, Chennai - 600 002.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a WRIT OF CERTIORARIFIED MANDAMUS, calling for the concerned records from the respondents, quash the charge memo dated 18.11.1999 bearing Memo No. CMWSSB / P&A / VC2 / 46945/99 issued by the 3rd respondent, the order of punishment imposed by the 3rd respondent bearing Proc. No. CMWSSB / P&A / VC2/46945/99 dated 29.01.2001, the order of the 2nd respondent bearing Proc. No. CMWSSB / P&A / VC(A) / 8885/2001 dated 08.11.2002 and the order of the 1st respondent dated 22.05.2003 bearing Letter No.49568/Metro Water/2002-03 rejecting the appeal and consequently direct the respondents to pay all the monetary benefits and other attended benefits to the petitioner.

For Petitioner : Mr.Balan Haridas

For Respondents : Mr.K.Ravi Kumar, AGP for R1
Mr.T.Gowthaman for R2 & R3

O R D E R

The prayer sought for herein is for a writ of certiorarified mandamus, to call for the records from the respondents, quash the charge memo dated 18.11.1999 bearing Memo No.CMWSSB / P&A / VC2 / 46945/99 issued by the 3rd respondent, the order of punishment imposed by the 3rd respondent bearing Proc.No. CMWSSB / P&A / VC2 /46945/99 dated 29.01.2001, the order of the 2nd respondent bearing Proc. No. CMWSSB / P&A / VC(A) / 8885/2001 dated 08.11.2002 and the order of the 1st respondent dated 22.05.2003 bearing Letter No.49568/Metro Water/2002-03 rejecting the appeal and consequently direct the respondents to pay all the monetary benefits and other attended benefits to the petitioner.

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

(i) The petitioner is a Diploma Holder in Electrical Engineering. With that qualification, he joined the services of the second respondent Board during the year 1985 as Electrical Operator. While he was working as such, a charge memo had been issued, dated 31.08.1999, where, the respondents has framed the charge that, he is indirectly engaged in the trade or business with the board by operating two water lorries in the name of his wife and also he failed to report the involvement of his family member in the trade or business in the board, which amounts to violation of Regulation 17 and 20(1) of the CMWSS Board Employees (Conduct) Regulations, 1978. Therefore, the said alleged violation on the part of the petitioner is a misconduct under Regulations 6(20), 6(30) and 6(38) of the CMWSS Board Employees (Discipline and Appeal) Regulations, 1978.

(ii) Based on the said charge, an explanation was called for and the petitioner had given his explanation on 15.12.1999.

(iii) Not satisfying with the said explanation given by the petitioner, an enquiry was conducted and after having given the opportunity to the petitioner, the enquiry officer completed the enquiry and had given his report on 26.05.2000. Thereafter, the petitioner has given his defence and comments on the said enquiry officer's report. Thereafter order of punishment was imposed by the third respondent against the petitioner on 29.01.2001, whereby the third respondent imposed the punishment of stoppage of increment of the petitioner for a period of 5 years with cumulative effect.

(iv) Aggrieved over the said order of punishment imposed by the third respondent, the petitioner preferred appeal to the second respondent on 22.02.2001 and the second respondent on

considering the appeal, rejected the same, by order dated 08.11.2002, whereby the second respondent confirmed the order of punishment awarded against the petitioner by the third respondent.

(v) Further appeal was filed by the petitioner to the first respondent on 17.12.2002 and the said further appeal filed by the petitioner to the first respondent had been rejected by the first respondent, by a cryptic order on 22.05.2003. Therefore challenging all these orders passed by the Disciplinary Authority, Appellate Authority and further Appellate Authority, the petitioner has filed the present writ petition with the aforesaid prayer.

3. I have heard Mr. Balan Haridas, learned counsel appearing for the petitioner, who has made submissions on the merits of the issue and also he had raised a preliminary objection on the ground of jurisdiction of the respondent to conduct disciplinary proceedings and concluded the same against the petitioner by invoking the provisions of the regulations, namely Chennai Metropolitan Water Supply and Sewerage Board Employees (Discipline and Appeal) Regulations 1978.

4. In this regard, the learned counsel appearing for the petitioner submitted that, since the petitioner, even though was designated as Electrical Operator, his nature of job is only in the field level work category and therefore for all purposes, he can be treated only as a workman.

5. If the petitioner is a workman, certainly the disciplinary proceedings, if at all anything to be undertaken by the respondent Board, that should be made only under the standing orders available in this regard. Therefore, since the provisions of the regulations of the Board, is meant for supervisory cadre employees as well as managerial cadre employees and officials, invoking the said provisions, disciplinary proceedings ought not to have been taken by the respondents. Therefore the learned counsel appearing for the petitioner would submit that, the entire disciplinary proceedings should get vitiated for want of jurisdiction.

6. Apart from the said objection on the point of jurisdiction, the learned counsel appearing for the petitioner would submit that, in so far as the first part of the charge is concerned, the wife of the petitioner is an independent assessee and she had been running business of water supply. Therefore, it goes without saying that, she can very well be one of the contractor to participate in the water supply work taking such contract from the respondent board.

7. In this context, the learned counsel appearing for the petitioner has brought to the notice of this Court, the order passed by this Court dated 08.10.1999 made in W.P.Nos.15321 and 15322 of 1999. He would also submit that, in fact the wife of the petitioner, who was owning transport vehicle for water supply, had applied for taking contract from the respondent board, which was not granted. In fact in participating that tender work to take contract for water supply, since the petitioner's wife was prohibited, stating that since her husband, i.e., the petitioner was working as an employee in the respondent board, the wife of the petitioner shall not be entitled to take contract.

8. As against the said stand taken by the respondent board, when the wife of the petitioner filed writ petition, this Court by order, dated 08.10.1999 has passed the order stating that, when the tender condition does not say or it does not have any prohibiting clause, prohibiting the wife or any family member of the employees of the Board from participating in the tender for getting the contract in the Board, the contract obtained by the petitioner's wife, who was the petitioner in the writ petition cannot be cancelled and therefore, in this regard, a mandamus was issued by this Court.

9. By relying upon the said decision taken by this Court, the learned counsel would submit that, had there been no disqualification attached with the petitioner's wife for participating in the tender, merely because her husband, the present petitioner, who is an employee in the Board, the very same reason cannot be made once again by way of charge memo in the first part of the charge against the petitioner merely stating that, the petitioner has involved in a business in the name of his wife by taking contract. Therefore, the learned counsel appearing for the petitioner would submit that, the first part of the impugned charge cannot be sustained and therefore whatever finding given in this regard by the enquiry officer cannot be put against the petitioner as the very charge itself would not stand.

10. The learned counsel appearing for the petitioner would also submit that, insofar as the second part of the charge is concerned, i.e., his non-disclosure of the involvement of the contract work by the wife of the petitioner to the employer Board, the learned counsel for the petitioner would fairly admit that, the said factor has not been disclosed by the petitioner. However, the learned counsel appearing for the petitioner, latter to add that, it is a known factor to everyone of the respondent Board that, the wife of the petitioner had been in the business of water supply and had taken the contract, as she had gone to the Court and obtained orders, the petitioner

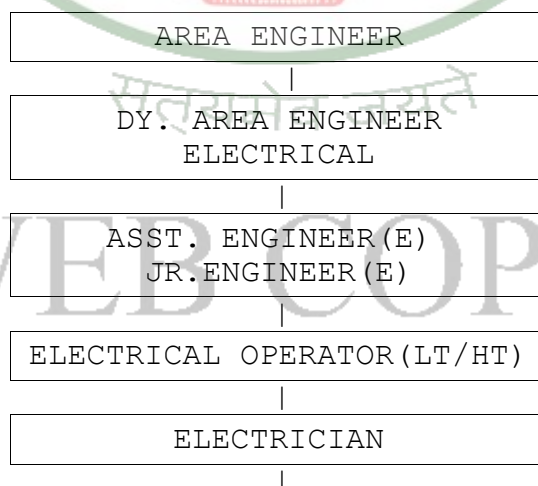
thought of, that the said fact need not to be particularly informed to the Board, as according to the petitioner it is a known factor.

11. Therefore, the learned counsel appearing for the petitioner would submit that, since the first part of the charge and the second part of the charge is trivial one and also for want of jurisdiction, since the entire disciplinary proceedings got vitiated, the impugned order cannot sustain and therefore, the learned counsel seeks indulgence of this Court against the impugned order.

12. Per contra, Mr.T.Gowthaman, learned standing counsel appearing for the respondent board would submit that, insofar as the first and preliminary issue raised by the petitioner that the entire disciplinary proceedings is vitiated because of want of jurisdiction is concerned, no doubt if any workman of the board is dealt with by the disciplinary proceeding, such disciplinary proceeding can be conducted and concluded only as contemplated under the standing orders.

13. Here in the case in hand, the petitioner is a Electrical Operator, which is directly under the control of Deputy Area Engineer and Assistant Area Engineer (Electrical) of the respondent board. His very job is supervisory in nature, because under him there are line or hierarchy of workers, such as Electrician, under whom Electrical Pumpsman and under whom field workers are working.

14. In this context, the learned standing counsel has relied upon the organisational chart of the area officer of the respondent board, which reads thus :



ELECTRICAL
PUMPS MAN

FIELD WORKERS

15. Even though it was argued by the learned counsel for the petitioner that, the job of the petitioner is only to switch on and switch off the meter, the same has been stoutly denied by the learned standing counsel and he would state that, apart from the said job, he shall also attend electrical problem, for which he replied that, the petitioner is not expected to attend the work and he will call only the electricians and other technical people working under him and direct them to attend the work. Therefore such kind of work being undertaken by the petitioner is only in supervisory capacity and not as a workman.

16. Since the Chennai Metropolitan Water Supply and Sewerage Board Employees (Conduct) Regulations, 1978 and Chennai Metropolitan Water Supply and Sewerage Board Employees (Discipline and Appeal) Regulations 1978 are the complete procedure with regard to conduct regulations as well as the discipline and appeal procedure to be conducted in respect of all employees by the respondent board, the petitioner cannot take any exemption for being subjected under the said regulations, i.e., conduct regulation as well as the discipline and appeal regulations, 1978.

17. The learned standing counsel appearing for the respondent board on merits of the case would submit that, in so far as the first part of the charge is concerned, even though the petitioner's wife already approached this Court and got an order against the Board for cancelling the contract taken by her on the ground that her husband, the present petitioner is the employee of the Board, would not ipso facto give a leverage to the petitioner to conduct the business in the name of his wife.

18. Even though the transport lorries stand in the name of the wife of the petitioner, the actual business, according to the information received by the respondent board, had been conducted or supervised effectively only by the petitioner. Therefore, the said involvement of the petitioner in running the business in the name of the wife with the respondent board, while he being an employee of the Board, is directly in violation of the conduct regulations. Therefore, the first part of the charge even without enquiry can be said to be proved as there could be no contra documents available with the petitioner.

19. Insofar as the second part of the charge of non-disclosure of the said business conducted by the wife of the petitioner to the respondent board is concerned, since the said charge had been admitted, as admittedly the petitioner had not disclosed the same, also is proved and therefore the first limb as well as the second limb of the charge since have been proved, which are very serious in nature, as it could affect the very smooth functioning of the respondent Board, it has decided to impose the punishment of withholding the increment for 5 years with cumulative effect having bearing in mind on the pensionary benefits of the petitioner.

20. Though the appeal remedies are available to the petitioner, he cannot make out a cry on the ground that, the first respondent has not properly considered his appeal, as the very order passed by the disciplinary authority is strictly in accordance with the regulations, as no violation whatsoever is noticed in conducting disciplinary proceedings in violation of principles of natural justice, the petitioner cannot take out any shelter on the ground that, the first respondent has not considered the appeal in proper perspective. Therefore in that aspect also, he cannot make out a case. Therefore, the learned standing counsel appearing for the respondent Board, by relying upon all these materials would submit that, the petitioner would be deserved to get inflicted with the aforesaid punishment for the proven charge against him and therefore this Court need not have any indulgence on these impugned orders.

21. The learned standing counsel would also submits that, the feeder category for the Electrical Operator is Electrician and the feeder category for the post of Electrician is Electrical Pumpsmen. Once the Electrical Pumpsmen puts in 7 years of service, he shall be eligible to get promotion of service and he shall be eligible to get promotion to the post of Electrician and in turn, an Electrician put in 5 years of service would be entitled to get promotion to the post of Electrical Operator. Therefore, the learned standing counsel would submit that, certainly the post of Electrical Operator is not a workman, since it is a promoted post, after two hierarchy of feeder category and certainly it is to be treated either as an administrative post or at least as a supervisory post.

22. I have considered the said submissions made by the learned counsel appearing for the petitioner as well as the learned standing counsel appearing for the respondent board.

23. Insofar as the preliminary objection raised by the petitioner on the ground that, he is only a workman and therefore he should have been dealt with only on the standing orders and not by the conduct regulations and Disciplinary and

Appeal Regulations of the Board is concerned, I have perused the organisation chart produced by the learned standing counsel appearing for the respondents.

24. Under the Area Engineer, there are three Deputy Area Engineers, two are for the department of Civil and Mechanical and one Deputy Area Engineer is for Electrical. Under the Deputy Area Engineer for Civil and Mechanical, the next hierarchy of post are Deputy Engineer and thereafter the Field Workers are working.

25. However, insofar as the Deputy Area Engineer Electrical is concerned, the next cadre is Assistant Engineer, thereafter Junior Engineer and next to the post is called Electrical Operator, where the petitioner is working. Under the post of Electrical Operator, there are three hierarchy of position, such as Electrician, then Electrical Pumps Man and thereafter Field Workers. Therefore, it makes abundantly clear that, under the post of Electrical Operator, where the petitioner was working, there is at least three hierarchy of employees / workers working in the respondent board.

26. Moreover, it is the definite case of the respondent Board as has been submitted by the learned standing counsel that, the job of the Electrical Operator is not operating the electrical motor, but whenever situation arises he has to issue instructions to the Electrical and other technical people working under him to attend the work to rectify the repair in the electrical motors.

27. Therefore, by and large, the job of the petitioner was supervisory in nature and not merely as a workmen, since, under him two other category of people are working like Electrician, Electrical Pumps Man and only thereafter the Field Workers, i.e., workman are coming. Therefore, the plea raised by the learned counsel for the petitioner that, he is in the workman cadre and he has not been placed in supervisory cadre and therefore he should have been dealt with under the standard orders cannot be accepted. Therefore the said plea raised by the petitioner based on the aforesaid factual matrix is liable to be rejected and accordingly is rejected.

28. On the side of the merits of the charge memo is concerned, though only one charge had been framed against the petitioner, it contain two parts. In the first part, the very alleged involvement of the petitioner in doing business in the name of his wife by taking contract to supply water through the tanker lorry has been considered as violation. Insofar as the said part of the charge is concerned, even though the enquiry officer has stated that, it is proved, we cannot take it as if

it was proved, because admittedly the business had been done only by the wife of the petitioner and the lorries are also in the name of the wife of the petitioner. Therefore it cannot be attributed that, merely the contractor was the wife of the employee, the employee can be considered that as if he is running the business and therefore, insofar as the said charge is concerned, this Court is not able to accept the report submitted on the side of the enquiry officer and therefore, the acceptance of the report on the part of the disciplinary authority and the first appellate authority, therefore is liable to be interfered with.

29. Insofar as the second part of the charge is concerned, it is an admitted fact that, the petitioner has not informed or disclosed properly to the respondent board about the involvement of the business by her wife directly with the respondent board, since the said non-disclosure would amount to misconduct within the meaning of conduct regulations certainly for the said violation, the petitioner has to be dealt with.

30. In this context, since it is an admitted flaw on the part of the petitioner, for which certainly some punishment can be inflicted.

31. If no punishment is inflicted on the petitioner for the said charge of non-disclosure there would not be any deterrent for the employees and workers working in the employer Board and otherwise it will be very difficult for the management of the Board to maintain the decorum and discipline in running the organisation.

32. When the petitioner is an employee of the respondent board, primarily he must be loyal to the board and as an employee, it is his foremost duty to disclose the involvement of his wife in the business of water supply by taking contract with the board and such inaction on the part of the petitioner in not making such disclosure is a wilful non-disclosure. For such charges, definitely the petitioner shall be punished.

33. In this context, whether the punishment given by the disciplinary authority, as has been confirmed by the appellate authority, is proportionate or disproportionate to the proven charge is concerned, this Court is of the view that, since the first part of the charge has not been accepted to be the proven one and in so far as the second part of the charge, the punishment of withholding of increment for 5 years with cumulative effect and having a bearing of the petitioner's pensionary benefits is concerned, this Court feels that it is on the higher side.

34. Though this fact has been raised by the petitioner by way of appeal to the appellate authority, the first respondent / appellate authority, by order, dated 22.05.2003 has passed a very cryptic order in three lines stating that, there is no case for reconsideration and accordingly it was rejected.

35. Whenever an appeal is filed to the statutory appellate authority, such Authority must have gone into the merits of the issue raised in the appeal and he should give his reasons for accepting, rejecting or modifying the order passed by the revisional / original authority.

36. Here in the case in hand, the Appellate Authority has passed orders in three lines and therefore, the said order of the Appellate Authority cannot be accepted.

37. For all these reasons, this Court is of the view that, some modified punishment for the proven charge against the petitioner can very well be imposed.

38. Resultantly, the impugned order of punishment awarded against the petitioner withholding his increment for five years with cumulative effect can be modified into withholding of the increment with cumulative effect for two years. It is needless to mention that, in view of the modified punishment, whatever be the benefits to the petitioner, shall be calculated by the respondent Board and arrears, if any come, because of the modified calculation, the same shall be paid by the respondent Board to the petitioner, within a period of three months from the date of receipt of a copy of this order.

With these modification, this writ petition is ordered to the extent indicated above. However, there shall be no order as to costs.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

krk / tsvn

To

1.The Secretary,
Municipal Administration and
Water Supply Department,
Fort St.George, Chennai - 600 009.

2.The Board of Directors
Chennai Metropolitan Water Supply
and Sewerage Board,
No.1, Pumping Station Road,
Chindatripet, Chennai - 600 002.

3.The Managing Director,
Chennai Metropolitan Water Supply
and Sewerage Board,
No.1, Pumping Station Road,
Chindatripet, Chennai - 600 002.

+1 CC to Mr. Balan Haridas, Advocate sr 74157

+1 CC to Mr.T.Gowthaman, Advocate sr 74231.

+1 CC to The Govt. Pleader sr 74859.

W.P.No.39084 of 2005

RSV(CO)
SP(26/12/2019)

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