

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :29.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.9997 of 2014

K.Devarajan

... Petitioner

Vs

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

2.The Director of Town Panchayats,
Kuralagam, Chennai.

3.The District Collector,
Dharmapuri District,
Dharmapuri.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the proceedings of the first respondent in G.O (Ten years), No.477 (MAWS TP4 Department) dated 12.09.2013 confirming the orders passed by the 2nd and 3rd respondents in their proceedings in Na.Ka.No.4790/07/A5 dated 23.11.2007 and Na.Ka.No.3692/03/P2 dated 28.02.2007 respectively and quash the same.

For Petitioner : Mr.N.Balamuralikrishnan

For Respondents : Mrs.P.Rose Kamalam,
Additional Government Pleader

O R D E R

Heard Mr.N.Balamuralikrishnan, learned counsel for the petitioner and Mrs.P.Rose Kamalam, learned Additional Government Pleader appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorari, to call for the proceedings of the first respondent in G.O (Ten years), No.477(MAWS TP4 Department) dated 12.09.2013 confirming the orders passed by the 2nd and 3rd

respondents in their proceedings in
Na.Ka.No.4790/07/A5 dated 23.11.2007 and
Na.Ka.No.3692/03/P2 dated 28.02.2007 respectively and
quash the same."

3. The case of the petitioner is as follows:-

The petitioner was originally joined as Bill Collector in Pennagaram Town Panchayat in July 1978. After serving in several Town Panchayats, he was lastly posted at Pappireddipatti Town Panchayat. On 29.01.2001, he was served with the charge memo containing five articles of charges in respect of the incidents alleged to have taken place while he was working as Bill Collector in Pappireddipatti Town Panchayat from 06.01.1997 to 21.06.1999. The substance of the charge was that the petitioner had committed irregularities in not remitting the amounts collected by him as taxes from the Town Panchayat.

4. An enquiry was conducted and the charges were held proved. Thereafter, the disciplinary authority imposed a punishment of dismissal from service on 23.06.2003. Aggrieved by the order passed by the disciplinary authority on 23.06.2003, an appeal was preferred to the second respondent and the second respondent by his proceedings dated 29.09.2003, had set aside the punishment of dismissal from service passed by the disciplinary authority and remitted back the matter for fresh enquiry by adhering to the principles of natural justice.

5. Thereafter, a fresh charge memo was served on the petitioner on 12.09.2004, containing almost identical charges and once again an enquiry was conducted into the charges. In the enquiry, admittedly one Smt.Kuppu, Junior Assistant, was alone examined by the Enquiry Officer himself. According to the petitioner, mere statement was obtained from the lone witness and also from the petitioner. Thereafter, a report was submitted on 18.02.2005, holding the charges proved. The disciplinary authority accepted the findings of the enquiry by proceedings dated 28.02.2007 and once again imposed a punishment of dismissal from service.

6. Once again aggrieved by the order passed by the disciplinary authority i.e., the third respondent herein, an appeal was preferred to the second respondent. However, the second respondent appellate authority by his proceedings dated 23.11.2007, rejected the appeal and thus confirmed the order passed by the third respondent, dismissing the petitioner from service. Against which, a revision was filed before the first respondent and the same was also rejected on 12.09.2013. The orders of the disciplinary authority, appellate authority and the revisional authority are put to challenge in the present writ petition.

7. The learned counsel for the petitioner would submit that the entire disciplinary action right from the conduct of the enquiry has been vitiated for not following the procedure contemplated in the service rules in respect of major penalty proceedings. According to the learned counsel, no presenting officer was appointed on behalf of the prosecution and only a statement was obtained from the lone witness Smt.Kuppu who is the Junior Assistant in the Town Panchayat. No cross-examination was permitted and no documents were marked in the enquiry. Without any iota of acceptable evidence, a report was submitted on 18.02.2005 and such report has been blindly accepted by the disciplinary authority and the petitioner was imposed with a punishment of dismissal from service vide proceedings of the third respondent dated 28.02.2007.

8. The learned counsel for the petitioner would submit that the disciplinary authority has grossly failed in his duty in not properly appreciating the sham report submitted by the Enquiry Officer without any supporting evidence against the petitioner. The disciplinary authority mechanically incorporated each article of charges and explanation of the petitioner and held charges proved without any iota of analysis of the evidence. The learned counsel would submit that such casual and reckless approach on the part of the disciplinary authority is contrary to the rules and the settled legal principles. According to the learned counsel, while imposing a major penalty like dismissal from service, it is all the more reason that the disciplinary authority have to apply his mind in all aspects of the case and ought to have seen whether there was any evidence available at all against the petitioner. In the absence of such approach on the part of the disciplinary authority, according to the learned counsel, the disciplinary action stood vitiated on that score alone.

9. Further, the learned counsel for the petitioner would submit that even the appellate authority has failed in his duty to consider the appeal in proper perspective and grossly overlooked the grave infirmity that has been crept in, in the conduct of the enquiry and the procedure followed by the Enquiry Officer and also the manner in which, the disciplinary authority has passed the penalty order of dismissal from service. Even the appellate authority has merely recorded the facts and appeared to have come to the conclusion that the charges were proved without independent application of mind, so is the order passed by the revisional authority, the first respondent herein. He would therefore submit that there cannot be a much better case for quashing the punishment imposed against the petitioner, since the punishment has been completely vitiated by non adherence of mandatory procedure contemplated in the service rules.

10. Upon notice, learned Additional Government Pleader appearing for the respondents, entered appearance and filed a detailed counter affidavit.

11. The learned Additional Government Pleader would submit that the charges framed against the petitioner is grave in nature. Earlier, an enquiry was conducted which resulted in imposition of dismissal from service. However, on appeal, it was found that the enquiry was not properly conducted. Therefore, the matter was remitted back to the Enquiry Officer to conduct fresh enquiry and thereafter, an enquiry was conducted and a witness was examined and findings were rendered by the Enquiry Officer on the basis of the circumstances of the case and the relevant documents and such report was accepted by the disciplinary authority and therefore, the impugned action was taken and confirmed in the appeal and revision. He would therefore submit that the imposition of penalty is on the basis of the proved misconduct and therefore, the same does not call for any interference.

12. This Court has considered the rival submissions of the learned counsel appearing for the parties and perused the materials and pleadings placed on record. What emerges in clear terms is the fact that the disciplinary action commencing from the conduct of the enquiry, passing of order of penalty by the disciplinary authority and confirmation of the penalty by the appellate authority and revisional authority, stands vitiated for more than one reason.

13. Firstly, the enquiry which was conducted against the petitioner, did not follow the mandatory procedure of examining the witness and allowing the petitioner to cross examine the witness in order to establish his innocence. In this case, admittedly, it appears that only one witness was examined, that too, mere statement was taken from her by the Enquiry Officer. This Court does not see on what basis the Enquiry Officer could have come to the conclusion against the petitioner in respect of the charges framed against him. The report of the Enquiry Officer holding the charges proved are completely erroneous and unacceptable both legally and factually, since no acceptable evidence was let in, in the enquiry in order to establish the charge. In the absence of any worthwhile material which was placed for consideration in the enquiry, this Court does not see on what basis such conclusion could be arrived at by the Enquiry Officer. Therefore, this Court holds that the findings of the Enquiry Officer is unsupported by any material evidence. Therefore, the same is gravely flawed.

14. Secondly, the disciplinary authority who passed the impugned order of penalty of dismissal from service, has gravely failed in his duty to appreciate the infirmities which crept in,

in the conduct of the enquiry by the Enquiry Officer and had chosen to merely accept the findings blindly and mechanically without any reasons set forth in the penalty order. From the perusal of the order passed by the disciplinary authority, it could be seen that there appears to be complete lack of application of mind on the part of the disciplinary authority.

15. As rightly contended by the learned counsel for the petitioner that the disciplinary authority has merely chosen to incorporate the charges and the explanation of the petitioner and thereafter concluded that the charges were proved without referring to a piece of evidence or material which was placed for consideration in the departmental enquiry. Such approach on the part of the disciplinary authority is completely at variance with the mandatory procedure contemplated in the service rules and with the well established legal principles on the subject matter.

16. Further, the appellate authority passed the order confirming the penalty imposed by the disciplinary authority, has completely abdicated his statutory duty under Rule 27 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Under the said Rule, the appellate authority is expected to give reasons for every valid and legitimate objection. But, in this case, on perusal of the appellate authority order, it is once again to be seen that the appeal has been considered quite casually and without any seriousness with the clear motive of just confirming the order passed by the disciplinary authority.

17. This Court is unable to see how the appellate authority who is vested with the higher responsibility in the hierarchy of post, can adopt such a casual approach, particularly, in dealing with the case where the penalty imposed on the employee was dismissal from service. Although earlier, the appellate authority had remanded the matter back for re-enquiry, the appellate authority ought to have seen that even after the remand, the enquiry was not properly conducted and findings rendered thereon on the basis of such improper and defective enquiry, cannot be relied upon for the purpose of imposition of such extreme penalty of dismissal from service.

18. Besides, the revisional authority who is the first respondent herein, is also failed to address the grave infirmities which were pointed out by the petitioner in the revision petition. The respondents who taken a decision against the petitioner, have failed in their respective decision in addressing the legitimate concerns and infirmities that projected for consideration in the matter of conduct of the enquiry, the imposition of penalty and the consideration of the appeal and revision.

19. On the whole, it appears that the disciplinary action, right from the conduct of the enquiry, has been completely flawed and the same was contrary to the well established legal principles and also contrary to the mandatory procedure contemplated under the major penalty proceedings of the provisions of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

20. At the end, the learned counsel for the petitioner would also rely on the decision of this Court, rendered in W.P.No.17527 of 2013 dated 04.09.2017. He would draw the attention of this Court to paragraph Nos.10,11,12 and 13, are reproduced below:-

"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."

21. In any event, from the bare facts which are made available for consideration before this Court, there cannot be any other conclusion except holding that the entire disciplinary action from the conduct of the enquiry till the disposal of the revision petition, stands completely vitiated on the basis of various infirmities pointed out above. Therefore, this Court has no hesitation in allowing the writ petition.

22. In the above circumstances, the impugned orders passed by the first respondent in G.O (Ten years), No.477(MAWS TP4

Department) dated 12.09.2013, proceedings in Na.Ka.No.4790/07/A5 dated 23.11.2007, passed by the second respondent and proceedings in Na.Ka.No.3692/03/P2 dated 28.02.2007, passed by the third respondent, are set aside. The learned counsel for the petitioner would submit that the petitioner had attained the age of superannuation of 31.05.2011. In view of the allowing the writ petition, there shall be a consequential direction to the respondents to grant the petitioner all monetary and pensionary benefits which are otherwise admissible to him.

23. An order complying with the above direction is directed to be passed within a period of eight weeks from the date of receipt of a copy of this order. The writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

gsk

To

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

2.The Director of Town Panchayats,
Kuralagam, Chennai.

3.The District Collector,
Dharmapuri District,
Dharmapuri.

+1cc to Government Pleader sr.no.42347

+1cc to Mr.V.Vijay Shankar, Advocate sr.no.42596

W.P.No.9997 of 2014

nr 23/07/2018