

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2018

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.6155 of 2006

And

W.P.M.P.No.705 of 2010

P.Ramachandran

... Petitioner

Vs.

1.The Secretary to Government,
Housing and Urban Development Department,
Government of Tamil Nadu,
Secretariat,
Chennai - 600 009.

2.The Director of Town and Country Planning,
Chennai - 600 002.

3.The Deputy Director,
Vellore Region,
11, Officers Line,
Vellore - 632 001.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the first respondent in G.O.(D) No.693, Housing and Urban Development (UD2.1) Department dated 19.11.2004 confirming the order passed by the first respondent in G.O.Ms.No.27, Housing and Urban Development (UD2) Department dated 30.01.2002 and quash the said orders and grant all consequential benefits to the petitioner.

(Prayer amended as per order of this Court dated 23.11.2017 in WPMP.704 of 2010 in WP.6155 of 2006)

For Petitioner : Mr.J.Lakshmi Narayanan

For Respondents: Mr.K.Ravikumar

Additional Government Pleader

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the first respondent in G.O.(D) No.693, Housing and Urban Development (UD2.1) Department dated 19.11.2004 confirming the order passed by the first respondent in G.O.Ms.No.27, Housing and Urban Development (UD2) Department dated 30.01.2002 and to quash the said orders and to grant all consequential benefits to the petitioner.

2.The petitioner joined the services of Town and Country Planning in the year 1967 as Surveyor and was elevated as Assistant Director during the year 1986. Whiles, the petitioner was issued with

a charge memo dated 19.06.1998 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

3.The sum and substance of the charges framed against the petitioner is that the petitioner while working as Assistant Director has recommended to advise the Member Secretary, Coimbatore Local Planning Authority, to issue planning permission for a building in S.No.498/2, 497/1B, 497/2, 498/B2 and 520 of Telungupalayam of Coimbatore Corporation; has misguiding the higher authorities for relaxing the scheme clauses for a building for ground floor + 4 floors which is a multistoreyed building for which powers for exempting of any scheme clause vests with Government; has failed to apply the guidelines issued by the Department from time to time and also in Circular No.851/92-BA1 dated 12.01.1992 while examining the files relating to D.Dis 23188/95, D.Dis 41899/95, D.Dis 5068/95, D.Dis 7105/96, Ka.Dis 37361/95, D.Dis 35119/95 and that the petitioner is insincere and acted against the statutory provisions, rules and regulations and exposed his disintegration towards his duty and violated Rule 20 of the Tamil Nadu Government Servants Conduct Rules, 1973.

4.After issuance of charge memo, enquiry was conducted. The petitioner also participated in the enquiry. After enquiry, the Enquiry Officer submitted the enquiry report to the Government on 23.09.1999. A copy of the findings of the Enquiry Officer was communicated to the petitioner on 08.12.1999 with instructions to submit his further representation, if any, on the findings of the Enquiry Officer. Accordingly, the petitioner submitted his further representation on 24.12.1999. After examination of the case, the original Authority passed

final orders imposing the punishment of stoppage of increment for a period of one year without cumulative effect on the petitioner vide G.O.Ms.No.27, Hg & UD Department, dated 30.01.2002.

5. Aggrieved by the same, the petitioner filed a Review Petition to the Government on 25.07.2002 to review the punishment imposed on him. The Government rejected the review petition vide G.O.D.No.693, Hg & UD Department, dated 19.11.2004 on the ground that the petitioner has not preferred the review petition within the prescribed period of two months and has not adduced any ground on his defence in the review petition on the charges framed against him. Challenging the same, this writ petition has been filed.

6. The learned counsel appearing for the petitioner would submit that a superior Officer was also involved on the very same allegations, however, separate proceedings was issued to him. As per Rule 9 (a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the competent Authority has to club both the charges and conduct enquiry. However, without doing so, the competent Authority conducted adjudication of the petitioner's case and the superior Officer's case independently. Thereby, the Authority has violated the above said Rule. Accordingly, the learned counsel prayed for allowing the writ petition.

7. Per contra, the learned Additional Government Pleader appearing for the respondents would submit that the delinquent Officers were in the ranks of Assistant Director and Joint Director and they belonged to the State Service namely, the Tamil Nadu General Service. As per Rule 12 (1) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the State may impose any of the penalties specified in item (i) and (iii) to (viii) in Rule 8 of the said Rules on the members of the State Services. Further, as per Rule 12 (2) (ii) of the said rules, notwithstanding anything contained in these Rules and in Appendix IV, the Heads of Departments concerned may institute disciplinary proceedings under Rule 17(b) of the said Rules on all members of the State services other than such members who are immediately below such Heads of Departments and shall remit the case to the Government for passing final orders.

8. The learned Additional Government Pleader would further submit that in the present case, the delinquent Officers namely, the petitioner was the Assistant Director and the Co-accused was the Joint Director in the Department and they were therefore, the fifth and third level officers respectively. A careful reading of the Rule position mentioned above will reveal the fact that the Head of the Department is competent to institute

disciplinary proceedings in respect of the officers mentioned above and he should remit the case to the Government for passing final orders.

9.The learned Additional Government Pleader would further submit that in the present case, the Government after analyzing the entire materials passed the final order against the petitioner. Considering the length of service put in by the petitioner, though charges were framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, only a minor punishment of stoppage of increment for a period of one year without cumulative effect was imposed on the petitioner. Hence, the petitioner's case does not reserve any review under Article 226 of the Constitution of India. Accordingly, he prayed for dismissal of the writ petition.

10.Heard the arguments advanced on either side and perused the entire materials available on record.

11.Perusal of the records reveal that though power is vested with the Government, the petitioner mis-guided the Authority to grant approval to the building illegally. Thereby, the petitioner committed mis-conduct and the same is attracted by Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Though charges were framed against the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, he was imposed with the minor punishment of stoppage of increment for a period of one year without cumulative effect. Moreover, the petitioner also retired from service in the year 2006 itself.

12.The findings of the fact finding Authority cannot be interfered in a mechanical manner unless there is any material available to show that the findings warrants interference. In view of the above, I do not find any error in the orders passed by the first respondent. Accordingly, the writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
Housing and Urban Development Department,
Government of Tamil Nadu,
Secretariat,
Chennai - 600 009.

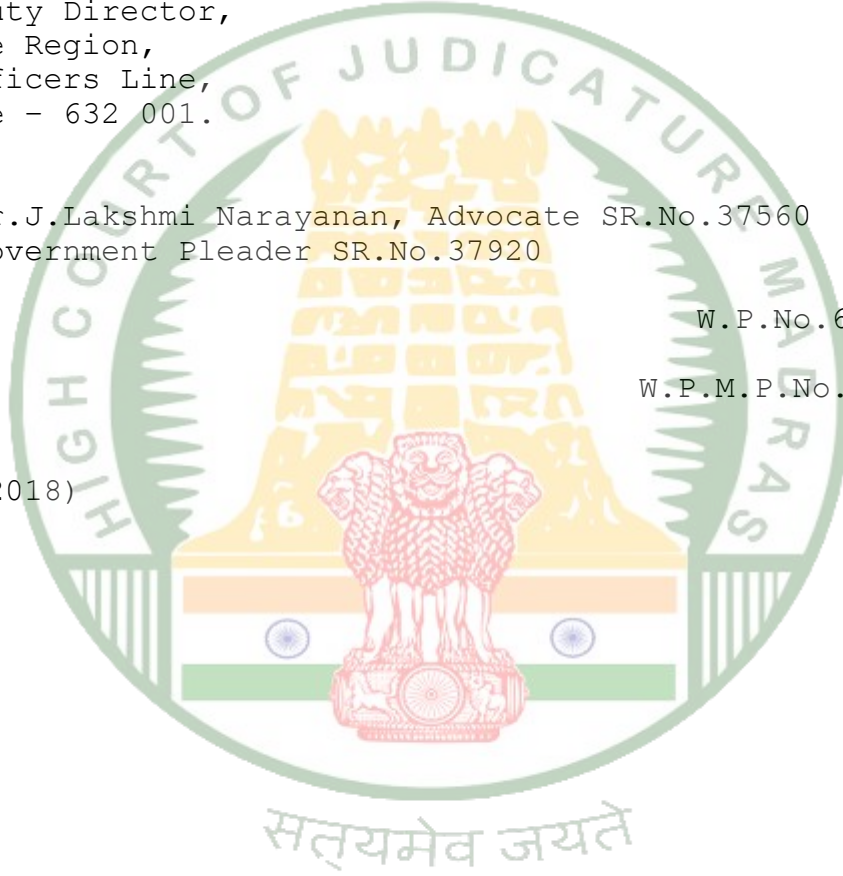
2.The Director of Town and Country Planning,
Chennai - 600 002.

3.The Deputy Director,
Vellore Region,
11, Officers Line,
Vellore - 632 001.

+1cc to Mr.J.Lakshmi Narayanan, Advocate SR.No.37560
+1cc to Government Pleader SR.No.37920

W.P.No.6155 of 2006
And
W.P.M.P.No.705 of 2010

VGII(CO)
GN(29/06/2018)



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