

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2018

CORAM :

The Hon'ble Mr.HULUVADI G.RAMESH, ACTING CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE S.S.SUNDAR

W.A.No.668 of 2018

1.State of Tamil Nadu,
rep. by its Secretary,
Rural Development and Panchayat Raj Department,
Fort St. George,
Chennai - 600 009.

2.The District Collector,
Dharmapuri District. .. Appellants/Respondent

-vs-

M.Srinivasan ... Respondent/Petitioner

Appeal filed under Clause 15 of Letters Patent against the order dated 08.2.2018 made in W.P.No.26751 of 2017 on the file of this Court.

W.P.No.26751/2017:

Writ Petition presented under Article 226 of the constitution of India to issue a Writ of certiorarified Mandamus calling for the records of the 2nd respondent herein in Na. ka. No. 5468/2016/K2 dt 23.6.2017 and quash the same as arbitrary and against the principles of natural justice and consequently direct the respondents to promote the petitioner to the post of Deputy Block Development Officer on the date when his immediate junior was promoted.

For Appellants .. Mr.P.S.Siva Shanmugasundaram
Spl. Government Pleader

For Respondent ... Ms.Dakshayani Reddy

JUDGMENT

(Judgment of the Court was made by Huluvadi G.Ramesh,
Acting Chief Justice)

This appeal is directed against the order of the learned Single Judge dated 08.2.2018 passed in W.P.No.26751 of 2017 on the file of this Court.

2. The respondent has filed W.P.No.26751 of 2017, challenging the order of the second appellant/District Collector, Dharmapuri, imposing punishment of stoppage of increment for a period of three years with cumulative effect.

3. The case of the respondent is that while serving as Assistant in Kariyamangalam Village Panchayat Union, he has undertaken the works of providing pipeline on Kottamedu to Sulur Road in Pappireddipatti in 'A' Pallipatti village and paver blocks in Mukkan Naickenpatty village. The above said works should be done under the control of the Assistant Project Director and the Assistant Engineer. The respondent, being an Assistant, had no role to play insofar as preparation of estimate is concerned. However, the Assistant Project Director urged the respondent on 09.2.2016 at around 10.30 p.m. on 9.2.2016 to prepare an estimate to be submitted to the District Collector at 7.00 a.m. the next day morning.

4. According to the respondent, the usual course of procedure is that the Engineering Department should make a fresh estimate and the same has to be approved by the Assistant Engineer and the Assistant Project Director, but due to paucity of time, the respondent was directed to prepare an estimate in urgency. The respondent contacted the Engineering Department and found that rate per meter was Rs.232.558 and for 3030 meters of pipeline, the estimate was around Rs.7.00 lakhs and therefore, he took the sample estimate for the year 2014-2015 and changed the figures of Rs.3,00,000/- to Rs.7,00,000/-. The respondent prepared the estimate only due to paucity of time and on the basis of the sample estimate for the previous year in a bonafide manner.

5. While things stood thus, the appellants issued a charge memo dated 02.3.2016 alleging that the respondent had tampered the work estimate, which was submitted for approval to the District Collector under Member of Legislative Assembly Constituency Development Scheme and submitted a wrong report before the District Collector. The respondent had submitted a detailed explanation. An Enquiry Officer was appointed to inquire into the charges.

6. When the respondent was under the fond hope that the Enquiry Officer would have dropped the charges after accepting the explanation offered by him, without even furnishing a copy of the enquiry report, all of a sudden, punishment of stoppage of increment for three years with cumulative effect was imposed on the respondent. Challenging the same, the respondent has filed the writ petition.

7. Finding that the second appellant, before passing the impugned punishment, has not followed the basic principles of

natural justice, the learned Single Judge allowed the writ petition and imposed cost of Rs.15,000/- to be recovered only from the second appellant.

8. The relevant portion of the order of the learned Single Judge reads thus:

"15. The second respondent/District Collector, being the Disciplinary Authority, is expected to know the fundamental procedure as to how a disciplinary enquiry should be conducted i.e., from the issuance of charge memo till the conclusion of domestic enquiry, including furnishing a copy of the Enquiry Report, so as to comply with the principles of natural justice. Ironically, the second respondent, before passing the impugned order, did not follow the basic principles of natural justice. As a result, the precious time of this Court has been badly wasted. In view of the above, the impugned order passed without following the principles of natural justice, is liable to go.

16. Accordingly, this Writ Petition is allowed and the impugned order of the second respondent in Na.Ka.No.5468/2016/K2 dated 23.06.2017 is set aside, subject to costs of Rs.15,000/- (Rupees Fifteen Thousand only), payable by the Disciplinary Authority/second respondent herein to the Tamil Nadu State Legal Services Authority, Chennai, within a period of two weeks from the date of receipt of a copy of this order. It is made clear that the cost of Rs.15,000/- shall be recovered only from the salary of the second respondent and not from the Department. Consequently, connected miscellaneous petitions are closed.

Post "For Reporting Compliance" on 23.03.2018 along with Cont.P.No.58 of 2018."

9. Assailing the order of the learned Single Judge, the appellants have preferred this appeal.

10. Heard Mr.P.S.Siva Shanmugasundaram, learned Special Government Pleader appearing for the appellants and Ms.Dakshayani Reddy, learned counsel appearing for the respondent.

11. It appears that the respondent was issued with a charge memo dated 2.3.2016 alleging that he had tampered the work estimate, which was submitted for approval to the second appellant under MLA Constituency Development Scheme and had

also submitted a wrong report before the second appellant. According to the appellants, the respondent has deliberately tampered the estimate.

12. According to the learned counsel for the respondent, the respondent had pleaded guilty in the sense that due to paucity of time, he had made alteration and not deliberately. The respondent, in his explanation to the charge memo, has clearly stated that he took the sample estimate for the year 2014-2015 and changed the figures from Rs.3.00 lakhs to Rs.7.00 lakhs and had prepared the estimate by taking the same estimate for the previous year in a bonafide manner. According to the respondent, the said estimate was also approved by the Assistant Engineer and the Assistant Project Director and based on the said approval, work was also initiated and completed.

13. The learned Special Government Pleader submitted that since the respondent was found guilty, he was imposed with the punishment of stoppage of increment for a period of three years with cumulative effect and the learned Single Judge, without appreciating the fact, set aside the order of punishment and imposed cost of Rs.15,000/- on the second appellant to be recovered from the salary of the second appellant. The learned Special Government Pleader mainly argued that the learned Single Judge ought not to have imposed cost of Rs.15,000/- on the second appellant that too to be recovered from the salary of the second appellant.

14. As far as the punishment of three increments cut is concerned, we are of the considered view that the Disciplinary Authority without properly appreciating the explanation offered by the respondent to the charge memo, had imposed the aforesaid punishment.

15. The grievance of the appellants is that when the respondent pleaded guilty, the Disciplinary Authority was right in imposing punishment of stoppage of increment for a period of three years with cumulative effect. We are of the considered view that only due to paucity of time, the respondent had made alteration in the estimate, which does not warrant the punishment of stoppage of three increments. Though the respondent pleaded that due to paucity of time, he had done alteration in the work estimate, being an Assistant, he should be more vigilant while preparing an estimate.

16. Considering the fact that during night hours, the respondent was directed to prepare an estimate and due to paucity of time and on the basis of the sample estimate for the previous year, he had made alternation, it would be just and proper to modify the punishment imposed on the respondent to Censure, instead of stoppage of increment for a period of three

years with cumulative effect. It is also directed that the respondent should be more vigilant in future for his work and he should not indulge such activities in future.

17. As far as imposition of cost on the second appellant is concerned, the learned Single Judge observed that being the Disciplinary Authority, the District Collector is expected to know the fundamental procedure as to how a disciplinary enquiry should be conducted. The learned Single Judge has also observed that in this case, the second respondent, before passing the impugned order, has not followed the basic principles of natural justice and as such, he has wasted the precious time of this court. Thus, the learned Single Judge imposed cost of Rs.15,000/- on the second appellant to be recovered from his salary and not from the Department.

18. We are of the view that such a finding arrived at by the learned Single Judge is not correct and the cost of Rs.15,000/- imposed on the second appellant to be recovered from his salary is liable to be waived off. Thus, the order of the learned Single Judge needs modification to the effect that Censure is ordered on the respondent. As far as imposition of cost of Rs.15,000/- on the second appellant to be recovered from the salary is concerned, the same is waived off.

10. The writ appeal is partly allowed, leaving the parties to bear their own costs. Consequently, C.M.P.No.6386 and 11007 of 2018 are closed.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1.The Secretary,
Rural Development and Panchayat Raj Department,
Fort St. George,
Chennai - 600 009.

2.The District Collector,
Dharmapuri District.

+1 CC to Ms.Dakshayani Reddy, Advocate sr 54997.

+1 CC to Govt. Pleader sr 56053.

W.A.No.668 of 2018

SP(04/09/2018)