IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2018

CORAM

THE HON'BLE MR.JUSTICE T.RAJA

W.P.No.26751 of 2017
and WMP.Nos.28488 & 34628 of 2017

M.Srinivasan ... Petitioner

Vs.

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

2.The District Collector,
Dharmapuri District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the second respondent in Na.Ka.No.5468/2016/K2 dated 23.06.2017 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 Petitioner : Mr.Dakshayani Reddy

For Respondents : Mr.I.Sathish,
Additional Government Pleader

O R D E R

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This Writ Petition has been filed challenging the impugned order of punishment dated 23.06.2017 passed by the second respondent/District Collector, Dharmapuri District, imposing punishment of stoppage of increment for a period of three years with cumulative effect.

2. The petitioner, while serving as Assistant in Kariyamangalam Village Panchayat Union, has undertaken the works of providing pipeline on the Kottamedu to Salur Road in the Pappireddipatti in 'A' Pallipatti Village and providing paver

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block in Mukkan Naickenpatty Village. The above said works should be done under the control of the Assistant Project Director and the Assistant Engineer. The petitioner, being an Assistant, has no role to play insofar as preparation of estimate is concerned. However, the Assistant Project Director urged the petitioner at night hours around 10.30 p.m. on 09.02.2016 to prepare an estimate, to be submitted to the District Collector at 7.00 a.m. in the next morning.

3. Usual course of procedure is that the Engineering Department should make a fresh estimate and the same to be approved by the Assistant Engineer and the Assistant Project Director, but due to paucity of time, the petitioner was directed to prepare an estimate in urgency. When the petitioner contacted the Engineering Department, found that rate per meter was Rs.232.558 and for 3010 meters of pipeline, the estimate was around Rs.7,00,000/- and therefore, took the sample estimate for the year 2014-2015 and changed the figures of Rs.3,00,000/- to Rs.7,00,000/-. Thus the petitioner prepared the estimate only due to paucity of time, on the basis of the sample estimate for the previous year in a bonafide manner.

4. While so, the respondents had issued a charge memo dated 02.03.2016, alleging that the petitioner has 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. On receipt of the charge memo, a detailed explanation was given by the petitioner stating that he was only an Assistant and hence, no role to play insofar as the estimate is concerned. However, it was pleaded that since the Assistant Project Director urged the petitioner at around 10.30 p.m. on 09.02.2016 to prepare an estimate to be submitted to the District Collector at 7.00 a.m. in the next day morning, the petitioner has prepared the estimate. As per usual procedure, the Engineering Department should make a fresh estimate and the same could be approved by the Assistant Engineer and the Assistant Project Director. Since due to paucity of time, the petitioner was directed to prepare the same, he contacted the Engineering Department and found that rate per meter was Rs.232.558 and for 3010 meters of pipeline, the estimate was Rs.6,99,999.59 which was rounded of to Rs.7,00,000/-. Accordingly, the petitioner took the sample estimate for the year 2014-2015 and changed the figures from Rs.3,00,000/- to Rs.7,00,000/- and he prepared the estimate by taking the sample estimate for the previous year in a bonafide manner. 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. While so, the respondents ought not to have issued the charge memo dated 02.03.2016.

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5. Further, the learned counsel appearing for the petitioner submitted that when the estimate prepared by the petitioner was also approved by the Assistant Project Director as well as Assistant Engineer, the second respondent had also granted approval approval for the work to be undertaken based on the estimate prepared by the petitioner and then the work was given and the same was also completed. Hence, the respondents cannot issue a charge memo.

6. Moreover, when the aforesaid explanation was given to the charge memo, without even furnishing a copy of the Enquiry Report, all of a sudden, the punishment of stoppage of increment for three years with cumulative effect was imposed against him as though the petitioner as admitted the guilt, which is not at all correct. On the other hand, the petitioner was under the fond hope that the Enquiry Officer would have dropped the charges after accepting the explanation offered by him. In any event, when the Enquiry Officer submitted his report without furnishing a copy thereof along with the second show cause notice calling upon him to submit his written representation to the report of the Enquiry Officer, the impugned order of punishment is wholly bad in law and unsustainable, therefore, the impugned order of punishment is liable to be set aside.

7. The learned counsel appearing for the petitioner has further submitted that it is a well settled legal proposition that before imposing punishment, delinquent officer should be given fair and reasonable opportunity, more particularly by furnishing a copy of the Enquiry Report. However, in the present case, for the reasons best known to them, the respondents failed to furnish the petitioner, a copy of the Enquiry Report, which has been filed today along with the counter affidavit and therefore, the impugned order is liable to be set aside.

8. Concluding her arguments, the learned counsel for the petitioner has submitted that neither the copy of the Enquiry Report was furnished to the petitioner nor the report of the Enquiry Officer shows that the petitioner was found guilty, while that being so, the Disciplinary Authority arbitrarily imposed the punishment of stoppage of increment for three years with cumulative effect and therefore, prays for interference.

9. Per contra, Mr.I.Sathish, learned Additional Government Pleader appearing for the respondents, drawing the attention of this Court to the detailed counter affidavit filed by the second respondent, has submitted that the impugned order of punishment served on the petitioner has been acknowledged by affixing his signature thereon, which shows that the enquiry has been

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properly and fairly conducted.

10. As regards the first contention raised by the petitioner that the respondents have failed to furnish copy of the Enquiry Report before passing final orders, calling upon the petitioner to give explanation to the Enquiry Report, no denial has been made in the counter affidavit. With regard to second contention of the petitioner that the Enquiry Officer has not found the petitioner guilty, the counter affidavit is silent.

11. On receipt of the charge memo, when the petitioner submitted a detailed explanation refuting the same with a request to dropping the charges, the Disciplinary Authority dissatisfying with the petitioner's explanation, appointed an Enquiry Officer. It is well settled legal position that the Disciplinary Authority should furnish a copy of the report of the Enquiry Officer to the petitioner along with the issuance of second show cause notice calling upon him to submit further written representation to the Enquiry Officer's report.

12. Furnishing a copy of the report of the Enquiry Officer has been made mandatory and sin qua non by the Apex Court in the decision in Union of India and Others v. Mohd. Ramzan Khan reported in (1991) 1 SCC 588, wherein it is held as follows:

> "18. We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the deliquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter."

13. The mandatory condition to furnish a copy of the report of the Enquiry Officer as laid down in the above said judgement has been admittedly given a go-by, as per the admission made by the respondent in 12 of the counter affidavit, which is extracted hereunder:

> "12. With regard to the averments made in the Grounds (a), (b) & (c) of the para No.24 are concerned, it is submitted that the petitioner himself signed the certificate that the Enquiry conducted was satisfactory and cross examination of witnesses was properly done and also certified that the petitioner himself personally permitted to peruse all the documents/files which are related to the enquiry and charges. The copy

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of the same are submitted herewith before Hon'ble High Court, Madras. On completion of Enquiry, the findings of the Enquiry Officer revealed that the charges which levelled against the petitioner are held proved. Based on the enquiry report, the District Collector, Dharmapuri on his own discretion, concluded that tampering of Government records is a very serious offence and ordered for increment cut for 3 years with cumulative effect, vide proceedings in ROC.No.5468/2016/K2 dated 02.06.2017...."

14. It is pertinent to point out that when the petitioner has taken the first ground in the affidavit pleading that the copy of the report of the Enquiry Officer was not furnished to him, the respondent having received notice from this Court, should have taken a fair stand before this Court that the report of the Enquiry Officer was not furnished. Although the second respondent, in the counter affidavit, admitted the case of the petitioner that neither a copy of the report of the Enquiry Officer was furnished nor issued the second show cause notice calling upon him to submit his written explanation to the report of the Enquiry Officer, yet they went on to justify the impugned order.

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.

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

Sd/-
Assistant Registrar(CS II)

//True copy//

Sub Assistant Registrar

jvm

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

2.The District Collector,
Dharmapuri District.

3. The Section Officer,
Writ Section, High Court,
Madras.

4. The Section Officer,
Contempt Section, High Court,
Madras.

Copy to:

The Secretary,
Tamil Nadu State Legal Services Authority,
North Fort Road, High Court Campus,
Chennai-600 104.

+1cc to Mr.Dakshyani reddy , Advocate SR.No.9993

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