IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 13.02.2018

Delivered on : 22.02.2018

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.21231 of 2009

P.Krishnamurthy .. Petitioner

versus

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

2. The Director of Municipal Administration,
Chepauk, Chennai-600 005. .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to quash the order of the 2nd respondent in Na.Ka.No.18093/2005/K3 dated 7.12.2006 as well as the order of first respondent in G.O.No.45 dated 29.5.2009 and consequently, direct the respondents to grant promotion to the petitioner as Class IV and Class II Officer from 30.10.2006 as Class IV Officer and Class II officer from 19.9.2007 and fix the pay of the petitioner with respective scales in Class IV and Class II officers pay with all arrears of salary and consequentioan pensionary benefts.

For Petitioner : Mr. M.Ravi

For Respondents: Mr.D.Venkatachalam, AGP

ORDER

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

> "To issue Writ of Certiorarified Mandamus, to quash the order of the 2nd respondent in Na.Ka.No.18093/2005/K3 dated 7.12.2006 as well as the order of first respondent in G.O.No.45 dated 29.5.2009 and consequently, direct the respondents to grant promotion to the petitioner as Class IV and Class II Officer from 30.10.2006 as Class IV

Officer and Class II officer from 21.9.2007 and fix the pay of the petitioner with respective scales in Class IV and Class II officers pay with all arrears of salary and consequential pensionary benefits."

2. The petitioner was originally recruited as Attender in 1972 in the ministerial service department. He was promoted as Junior Assistant and further promoted as Assistant and Revenue Inspector in 1998. He was, thereafter, promoted as Assistant Revenue Officer in 2008 and on attaining the age of superannuation, he retired on 31.8.2009.

3. While he was working as Revenue Inspector, he was posted at Arani Municipality, where, he worked from 11.10.2000 to 9.12.2002. In regard to his discharge of duties in the said municipality, the Commissioner of Municipality had issued a charge memorandum under major penalty proceedings on 23.2.2004. The petitioner submitted a detailed explanation in response to the charge memorandum on 12.1.2006. However, an enquiry was ordered to be conducted, wherein, the petitioner participated and submitted his explanation. On conclusion of the enquiry, a report was submitted by the Enquiry Officer on 23.6.2006 holding that the charges 4,5,6 and 9 alone were proved out of 9 charges framed against the petitioner. On the basis of the report of the Enquiry Officer, further explanation was called for from the petitioner and ultimately an order was issued on 7.12.2006 imposing punishment of censure on the petitioner. Aggrieved over the same, the petitioner filed an appeal before the first respondent and the same was rejected by G.O.Ms.No.45 Municipal Administration and Water supply Department dated 29.5.2009. The orders of the disciplinary authority as well as the appellate authority are put to challenge in this Writ Petition.

4. Mr.M.Ravi, learned counsel appearing for the petitioner would contend that this a case of 'no evidence' in respect of the charges held proved and therefore, the enquiry report was nothing but perverse and invalid. He would submit that charge Nos.1,2,3,7 and 8 were held not proved and the same was accepted by the Disciplinary Authority and therefore, the same were not addressed here. As regards the other charges held proved, the learned counsel would make the submissions as follows:

i) As regards the charge No.4 is concerned, the allegation was that he did not effect proper collection of various taxes due to the Municipality. But the explanation of the petitioner was that he had collected an amount of Rs.16.92 lakhs of the total dues of Rs.17.5 lakhs and before the balance could be collected, he was transferred to a different place. Even that balance amount was subsequently collected by the other Revenue Inspector. Therefore, the enquiry officer failed to appreciate the said factual position and mechanically held that the charge was proved.

ii) As regards the charge No.5, it was alleged that when the petitioner was working as Revenue Inspector at Arani

Municipality, he did not discharge his duties properly, which resulted in loss to the Municipality. This charge was extremely vague since no specific details have been spelt out as to how the petitioner was responsible for causing any loss to the Municipality and what was the loss. Unfortunately, the Enquiry Officer, without any supporting material, held that the said charge was proved, which according to the learned counsel, is nothing but a perverse finding.

iii) As regards the charge No.6 which was held proved, the allegation was that while the petitioner was acting as Revenue Inspector, he did not take prompt steps to defend the case filed against the Municipality. The learned counsel would submit that the explanation as regards this charge is concerned is that there was originally an ex parte decree in O.S.No.48 of 2002 and at the instance of the petitioner, the said ex parte decree was set aside and the said suit was dismissed in favour of the Municipality. Therefore, no negligence or inaction can be attributed against the petitioner as he had taken prompt action for having the suit dismissed filed against the Municipality.

iv) As regards the charge No.9, the learned counsel for the petitioner would submit that as a consequence of the above charges, the petitioner had violated the conduct rules of Municipality. The learned counsel would submit that the charge can never be held as established, but unfortunately, the Enquiry Officer has held that the charge was proved without drawing support by any material whatsoever. Although a punishment of censure was imposed by the Disciplinary Authority, ostensibly by taking into consideration the slender piece of evidence available in the enquiry on behalf of the department, yet, the pendency of disciplinary action from 2004 till 2009, has resulted in grave consequence to the petitioner since during the period when the petitioner was subjected to disciplinary action, his junior was promoted as Class-IV Officer in October 2006 and was promoted as Class-II Officer in September, 2007.

vi) The learned counsel for the petitioner would also submit that the Disciplinary Authority and the Appellate Authority were one and the same and therefore, the consideration of the appeal by the same officer is illegal and the writ petition has to be allowed on that ground alone.

vii) The learned counsel further submit that the petitioner was working in Arani Municipality for a brief period, i.e. from 11.10.2000 to 9.12.2002 and whatever possible during the said period, the petitioner had initiated action for collection of revenue dues payable to the Municipality and he collected nearly 16.92 lakhs out of total dues of Rs. 17.5 lakhs and his successor Revenue Inspector had collected the remaining balance. In the said circumstances, the question of charging the petitioner for any lapse towards non-collection of dues to the Municipality did not arise in the first place. Though the petitioner had offered very legitimate explanation in respect of charges 4, 5, 6 and 9 which charges were held proved ultimately, neither the Enquiry Officer nor the Disciplinary Authority or the Appellate Authority had appreciated the same in a proper perspective and therefore, the disciplinary action from the stage of finding of guilt by the Enquiry Officer for the charge Nos.4, 5, 6 and 9 and the subsequent imposition of penalty by the Disciplinary Authority and confirmed by the same by the Appellate Authority have to go lock, stock and barrel.

5. Upon notice, Mr.D.Venkatachalam, learned Addl.Government Pleader entered appearance for the respondents and filed a counter affidavit. He would reiterate the contents of the counter affidavit. He would submit that the punishment which was imposed on the petitioner was only a censure and therefore, the petitioner cannot have legitimate grievance since there was dereliction on the part of the petitioner towards discharge of his duties. According to him, the Enquiry Officer's report cannot be assailed for the simple reason that the same Enquiry Officer held majority of the charges as not proved. Therefore, it cannot be gainsaid for the petitioner that the Enquiry Officer did not apply his mind and mechanically held certain charges proved. As regards the punishment is concerned, both the Disciplinary Authority and the Appellate Authority have taken into consideration overall circumstances of the case and thought fit to impose minor penalty which is envisaged in the service rules and therefore, the grievance of the petitioner on that score, is misplaced and not acceptable.

6. This Court has considered the rival submissions put forth on behalf of the parties and relevant materials placed on record.

7. The submission made on behalf of the learned counsel for the petitioner that both the Disciplinary Authority and the Appellate Authority were one and the same and therefore, the rejection of the appeal has to be interfered with, is made based on facts which facts cannot be disputed as could be seen from the materials. Therefore, on this ground alone, the impugned action of the first respondent has to be interfered with as the order passed by the Appellate Authority suffers from patent illegality. Nevertheless, the fact is that the petitioner had retired from service on 31.8.2009 and therefore, this Court has ventured to evaluate the arguments of the learned counsel for the petitioner in regard to factum of establishment of charges against the petitioner in the departmental enquiry.

8. The petitioner's explanation in regard to Charge No.4 is that the collection of revenue due to the municipality, i.e. Rs.16.92 lakhs out of 17.5 lakhs dues, has not been disputed and the same was not properly appreciated by the Enquiry Officer nor the Disciplinary Authority. Moreover, even the balance amount was also collected by the succeeding Revenue Inspector. That being the case, there is absolutely no justification for holding the charge as proved.

9. As rightly contended by the learned counsel for the petitioner that charge No.5 which was held proved, is extremely

vague and bereft of any specific details as to how the petitioner failed to discharge his duties resulting in loss to the Municipality.

10. In the absence of specific instances pointing out the dereliction on the part of the petitioner in discharge of his duties, this Court has to necessarily interfere with the said charge on the ground of vagueness. As regards the charge No.6 is concerned, once again it is contended by the learned counsel for the petitioner that the ex parte decree in O.S.No.48 of 2012 was set aside and the same was dismissed in favour of the Municipality at the instance of the petitioner. Such being the case, this Court once again does not see any justification as to how the Enquiry Officer can find the charge proved against the petitioner. As regards the charge No.9 is concerned, it is mere violation of conduct rules in view of the allegation of misconduct in respect of other charges. Therefore, this Court is of the considered view that the charges cannot be held to be established and as rightly argued by the learned counsel for the petitioner that the finding in regard to the proved charges, is nothing but perverse finding which cannot be the basis for imposing any penalty.

11. Even though it appears that the petitioner was imposed only with mere censure for the so-called proved misconduct, nonetheless, because of pendency of disciplinary action between 2004 and 2009, the petitioner lost his valuable promotion as Class-IV and Class-II Officer when such promotions were granted to his juniors. Therefore, this Court has to take into consideration the loss of seniority to the petitioner and promotion at the appropriate time when his junior was promoted. Even otherwise, the petitioner having been imposed only with the penalty of censure which cannot act as a bar for promotion, was entitled to be promoted along with his junior.

12. For the discussion and narrative as above, this Court has no hesitation to interfere with the orders passed by the Disciplinary Authority and also confirmed by the same authority as Appellate Authority.

13. Accordingly, both the proceedings, viz., Na.Ka.No.18093/2005/K3 dated 7.12.2006 issued by the second respondent and the order of first respondent in G.O.No.45 dated 29.5.2009, are hereby quashed. The second respondent is directed to consider and grant promotion to the petitioner as Class-IV and Class-II officer from the date when his junior was promoted and fix the pay of the petitioner accordingly on notional basis and on such basis, calculate his pension from the date of his retirement. It is made clear the petitioner is not entitled to arrears of pay in the higher post on being granted notional promotion on the principle that the petitioner had not shouldered higher responsibility in the promoted post, but however, entitled to arrears of pension. The respondents are

directed to comply with this direction within a period of eight weeks from the date of receipt of copy of this order. No costs.

14. The Writ Petition is allowed on the above terms. No costs.

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Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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

2. The Director of Municipal Administration,
Chepauk, Chennai-600 005.

RR(CO)
sm:21.3.2018

Order in
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