

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 20.04.2018

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.34715 of 2015

J.Devaraj

.. Petitioner

versus

1. The Secretary to Government of Tamilnadu,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai-09.

2. The Director of Town Panchayats,
Kuralagam, Chennai-108.

.. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, to call for the records of the 2nd respondent in its Na.Ka.No.6656/2005/A5 dated 30.09.2010 and the consequential order passed by the 1st respondent in its proceedings in G.O.(Ten years) No.314 (MAWS) Department dated 15.5.2015 and quash both the orders.

For Petitioner :Mr.V.Vijay Shankar

For Respondents:Mr.J.Pothiraj, Spl.G.P.

ORDER

The present writ petition has been filed, seeking for the following relief:

"To issue Writ of Certiorari, to call for the records of the 2nd respondent in its Na.Ka.No.6656/2005/A5 dated 30.09.2010 and the consequential order passed by the 1st respondent in its proceedings in G.O.(Ten years) No.314 (MAWS) Department dated 15.5.2015 and quash both the orders."

2. The petitioner joined as Junior Assistant in Town Panchayat on 12.6.1985. He was promoted as Head Clerk in the year 1997 and then as Executive Officer Grade-I in the year 1999. He was further promoted as Executive Officer Selection Grade during August 2003 and he has been working as such as on the date of filing of the Writ Petition.

3. While working as Executive Officer in Mukkudal Town Panchayat in 2005, he was issued with a charge memorandum dated 27.5.2005 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The said charge memorandum contained three articles of charges. As per charge memorandum, the petitioner had written false diary while he was working as Executive Officer, Alangulam Town Panchayat during the period from 13.8.2003 to 22.3.2004 and that he has failed to submit diary to the Office of the Assistant Director of Town Panchayats, Thirunelveli during his tenure as Executive Officer, Alangulam Town Pannchayat from 13.8.2003 to 22.3.2004 and he has violated Rule 20(1) of TNCS Rules, 1973.

4. In response to the charge memorandum, the petitioner submitted his explanation, denying the charges. However, notwithstanding the same, an enquiry was conducted and finally, the Enquiry Officer, who conducted the enquiry, has submitted his report on 29.8.2006 holding that first charge was not proved and charges 2 and 3 were proved. Thereafter, it appears that for some reasons, the Disciplinary Authority ordered de novo enquiry by the same Enquiry Officer in the presence of an officer from Vigilance Cell. In the enquiry, the Department had also let in evidence and the petitioner also participated in the enquiry. After conclusion of the enquiry, on consideration of the materials which made available on record, the Enquiry Officer held that all the charges were not proved. However, the Disciplinary Authority, by proceedings dated 30.7.2010, disagreed with the findings of the Enquiry Officer and issued an disagreement note and sought for explanation from the petitioner. The petitioner, by his representation dated 23.8.2010 explained the facts and also the findings of the Enquiry Officer which were rendered on the basis of the relevant materials which placed for consideration before the Enquiry Officer and requested the Disciplinary Authority to drop the charges against him by accepting the enquiry report. However, the Disciplinary Authority imposed a punishment of cut in increment for a period of six months with cumulative effect by holding that the charge No.1 was not proved, but charges 2 and 3 were proved. Aggrieved by the same, an appeal was preferred by the petitioner to the first respondent appellate authority on 10.12.2010. However, the appeal came to be rejected on 15.5.2015 enclosing a copy of the advise of the Tamil Nadu

Public Service Commission. The orders of the Disciplinary Authority dated 30.9.2010 and the appellate authority dated 15.5.2015 are put to challenge in the present writ petition.

5. Shri V.Vijay Shankar, learned counsel appearing for the petitioner, at the out set, would submit that although the Disciplinary Authority itself had agreed with the findings of the Enquiry Officer in respect of first charge which was held not proved, however, strangely, differed from the findings of the Enquiry Officer in respect of charges 2 and 3 and held the same as proved. In any event, as far as 3rd charge is concerned, it is only a consequence to the second charge and cannot independently stand. The learned counsel would submit that the findings of the Disciplinary Authority in respect of the second charge was contrary to the clear evidence available on record which was let in before the Enquiry Officer, namely, the evidence of Junior Assistant who was working during the relevant time at Alangulam Town Panchayat. According to the witness, namely, Vimala Stella Bai, the fact of the petitioner submitting his diary relating to the period of his tenure from 13.8.2003 to 22.3.2004 to the Office of the Assistant Director, has been clearly established. However, the point of difference according to the Disciplinary Authority was that the Enquiry Officer did not accept the statement of one Shri Murugan, Assistant Director of Town Panchayats. While holding so, the Disciplinary Authority also failed to appreciate the fact that during the period in question, there was no communication from the Office of the Assistant Director as to non-submission of diary to the Office of the Assistant Director periodically. In the absence of such communication, it has to be presumed that the petitioner had indeed submitted his diary for scrutiny as required and according to the petitioner, it was the practice that no entries were made while submitting the diary for scrutiny to the Office of the Assistant Director at that point of time. The above fact would corroborate the evidence of Junior Assistant and therefore, the finding of the Disciplinary Authority overlooking such unimpeachable evidence and merely accepting the statement of witness just because he happened to be superior officer, cannot be countenanced both in law and on facts. In fact, the learned counsel would draw the attention of this Court to the specific finding of the Enquiry Officer in his assessment of evidence when the said witness, Junior Assistant, Mrs.K.Vimala Stella Bai deposed as PW.2 stating that she saw the petitioner handing over the diary to the Office of the Assistant Director. In the teeth of the clear evidence given by the departmental witness, the learned counsel would submit that the finding of the Disciplinary Authority holding the second charge proved is contrary to the facts and records and also the same is legally unacceptable. Therefore, he would submit that the punishment imposed based on such evidence, cannot be sustained in law.

6. The learned counsel would further submit that even the Appellate Authority has not considered the appeal in proper perspective since infirmities pointed out were not properly addressed by the Disciplinary Authority while imposing the penalty. The appellate authority, vide proceedings dated 15.5.2015 had simply incorporated the opinion of the TNPSC and confirmed the order of penalty of the Disciplinary Authority dated 30.9.2010. He would therefore submit that the order in appeal is not as per the Rules and therefore on this ground, the impugned orders have to be interfered with.

7. Upon notice, Mr.J.Pothiraj, learned Special Government Pleader entered appearance for the respondents and made his submissions.

8. The learned Special Government Pleader would submit that the Enquiry Officer did not give a proper finding in respect of second charge and therefore, the Disciplinary Authority disagreed with the said finding and however, held in favour of the petitioner in respect of first charge holding that the first charge was not proved and at the same time, it held that the second charge proved based on certain piece of evidence which was overlooked by the Enquiry Officer. Therefore, the Disciplinary Authority had concluded that both the second and third charges stood proved and the punishment imposed on the petitioner for his dereliction of duties was only a lenient punishment, namely cut in pension for a period of six months with cumulative effect. The petitioner could not have any legitimate cause of action to assail such order passed by the Disciplinary Authority. He would further submit that the appellate authority has disclosed in the order that all the materials were considered and also the opinion of the Service Commission and had come the conclusion against the petitioner and rejected the appeal. Therefore, there was nothing wrong in the order passed by the appellate Authority, since the same was in consonance with the Rules.

9. This Court has considered rival submissions of the learned counsels, perused the materials and pleadings placed on record.

10. As rightly contended by the learned counsel for the petitioner, the findings of the Enquiry Officer were very clear and lucid and such findings were rendered on material evidence made available in the enquiry. As such, as rightly pointed out by the learned counsel for the petitioner, the Enquiry Officer had relied on the statement of Junior Assistant during the course of the enquiry when she appeared as a witness on behalf of the Department as PW.2 and deposed clearly that she saw the

diary being handed over to the office of the Assistant Director of Town Panchayats. The evidence given by the Junior Assistant cannot be overlooked and further the fact that there was no communication from the office of the Assistant Director, Town Panchayats to the petitioner stating that the diary was not submitted periodically during the relevant period, would establish the fact that the petitioner had been complying with the requirement during the crucial period when he was working in Allangulam Town Panchayat between 13.8.2003 and 22.3.2004. In the teeth of such clear findings by the Enquiry Officer, the contra finding rendered by the Disciplinary Authority in respect of second charge merely on the basis of statement of superior officer as against the clear evidence given by the Junior Assistant, cannot be legally acceptable and such finding is not on the basis of any evidence, but on the basis of presumption and speculation. Such view was probably taken by the Disciplinary Authority only in order to find the petitioner guilty of the charge when the fact of the matter was that all the materials and evidence were very clear in favour of the petitioner. Therefore, this Court is of the considered view that the imposition of the penalty on the petitioner on the basis of flawed findings of the Disciplinary Authority cannot be allowed to stand and the same is liable to be interfered with.

11. Moreover, as rightly contended by the learned counsel for the petitioner, the Appellate Authority has simply incorporated the opinion of the TNPSC and rejected the appeal by a non-speaking order which is contrary to the provisions of the disciplinary rules. This Court, time and again has reasoned and held that the authorities who were vested with the statutory power have to exercise their powers independently without parting with powers to outside the authorities like TNPSC in this case. The order in appeal does not even disclose an iota of independent application of mind on the part of the appellate authority and the appellate authority was fully and completely guided by the opinion of the TNPSC and mechanically confirmed the order of the Disciplinary authority. The order of the appellate authority is completely silent in regard to consideration of the infirmities pointed out by the petitioner herein. Therefore, this Court is of the considered view that the appellate authority has abdicated the statutory power vested in him under the Rules. Therefore, the appellate authority confirming the disciplinary authority's order, is liable to be interfered with, as being illegal and void.

12. Further, the learned counsel appearing for the petitioner would rely upon the following decisions in support of his contentions.

i) (2016) 6 MLJ 420 (Secretary to Government, Cooperation, Food & Consumer Protection Department and others versus G.Nagendran), wherein, the learned counsel would draw the attention of this Court to paragraph 23, which is extracted herein below:

23. Coming to the facts of the present case, we could see that the impugned order of the first respondent does not disclose any reason nor an application of mind as to the contentions / points raised on behalf of the writ petitioner. Except narrating the orders of various authorities and recommendations of second respondent and the Tamil Nadu Public Service Commission, there is no independent discussion or independent consideration of the case, at least with regard to the quantum of punishment. Hence, we are of the view that the impugned order suffers from material irregularities in the sense that it does not indicate any independent application of mind nor disclose any independent reason by referring to the facts admitted and the facts established."

ii) (2016) 6 MLJ 627 (M.Ramanathan versus Secretary to Government, Environment and Forest Department, Secretariat, Chennai-600 009)", wherein, the learned counsel would rely upon paragraph 34 of the order passed by a learned single Judge of this Court, which is extracted hereunder:

"34. From the reading of the above judgments, the law that has been settled by this Hon'ble Court and the Hon'ble Apex Court is clear to the effect that the conclusions by quasi-judicial authorities should be based on reasons and materials and that an order which does not disclose the reason for its conclusion is liable to be set aside either for non-application of mind or for unreasonableness. In the present case, as it has been dealt with in previous paragraphs, the orders of the respondents 1 and 2 are liable to be set aside for non-application of mind and for failure to consider the grounds giving explanation for his inability to complete the investigation and file charge sheet in the criminal case within six months and his legal submissions."

iii) An unreported decision of this Court in W.PNo.17527 of 2013 dated 4.9.2017, wherein, this Court, while considering similar submissions, has held in paragraph 10 as under:

"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."

13. The reliance placed by the learned counsel for the petitioner in the aforementioned decisions can be squarely applied to the factual matrix of the present case and therefore, the petitioner has made out a clear case for allowing the writ petition.

For the foregoing reasons, the Writ Petition is allowed. the impugned orders, viz., Na.Ka.No.6656/2005/A5 dated 30.09.2010 passed by the second respondent and the consequential order passed by the first respondent in G.O.(Ten years) No.314 (MAWS) Department dated 15.5.2015, are hereby set aside. The respondents are directed to restore the pay of the petitioner as it stood before imposition of the penalty and grant all attendant benefits as admissible to the petitioner. The respondents are directed to comply with this order, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

suk
To

1. The Secretary to Government of Tamilnadu,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai-09.

2. The Director of Town Panchayats,
Kuralagam, Chennai-108.

+lcc to the Government Pleader Sr.29991

W.P.No.34715 of 2015

sj[co]
srg 05/06/2018