



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 12.10.2018

Pronounced on: 02.11.2018

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P. (MD) No.19628 of 2018

and

W.M.P. (MD) Nos.17413 and 17414 of 2018

A.Mathuram

... Petitioner

-vs-

1. The Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai.
2. The Commissioner of Municipal Administration,
Chepauk, Chennai-600 005.
3. The Commissioner,
Madurai Municipal Corporation,
Madurai-625 002.
4. The Commissioner,
Tuticorin City Municipal Corporation,
Tuticorin.
5. Mr.Ruben Suresh Ponnaiah

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records relating to the impugned order passed by the 1st respondent in his proceedings G.O.(2D).No.72 Municipal Administration and Water supply (MC6) Department dated 05.09.2018 and quash the same as illegal, arbitrary, Malice in law.

For Petitioner : Mr.K.M.Vijayan, Senior Counsel

For Mr.B.Saravanan

For R1 to R4

: Mr.B.Pugalendhi

Addl. Advocate General

Assisted by K.Mu.Muthu for R1 & R2

Mr.R.Murali, for R3 & R4

ORDER

This petition has been filed, seeking to quash the order dated 05.09.2018 passed by the 1st respondent in his proceedings in G.O. (2D).No.72 Municipal Administration and Water supply (MC6) Department, by which the petitioner was placed under suspension by invoking Sub Rule 9(i) of Rule 8 of the Madurai City Municipal Corporation (Discipline and Appeal) Rules, 1975.

**Brief Facts:**

2. The case of the petitioner was that he was initially appointed as Assistant Engineer in the Corporation of Chennai in the year 1990 and was transferred to the Madurai Municipal Corporation thereafter. After various promotions, he was finally promoted as City Engineer in the 3rd respondent Corporation on 15.10.2013. While so, on 14.08.2018, he was transferred and posted as City Engineer on deputation to the 4th respondent Municipal Corporation and the said post was created by upgrading the post of Executive Engineer on 22.05.2012. In his place at Madurai Municipal Corporation, one Mr. Ruben Suresh Ponnaiah / 5th respondent herein was posted on deputation and the petitioner, aggrieved by his transfer on deputation, had filed W.P.(MD) No.18228 of 2018 before this Court on various grounds.

2.1. While so, a disciplinary action was initiated against him on the ground of various irregularities based on the report of the Directorate of Vigilance and Anti Corruption report and subsequently, the 1st respondent had passed an order dated 05.09.2018, which is impugned herein, thereby suspending him from service so as to ensure free and fair enquiry and the following charges were framed against him:

"(i) that Thiru A.Mathuram, City Engineer, Madurai City Municipal Corporation has given the eligibility certificate for 1.Tmt.J.Malliga, Assistant Engineer 2.Thiru.M.Balamurugan, Assistant Engineer and 3.Thiru M.Kamaraj, Assistant Engineer stating that no charges were pending against them and recommending the above three persons for promotion, he has suppressed the facts about pendency of disciplinary action against the above 3 Assistant Engineers to the superiors, which is unbecoming of a Municipal Corporation Servant.

(ii) that Thiru A.Mathuram, City Engineer, Madurai City Municipal Corporation failed to adhere to the instructions issued in Government Order (G.O.(Ms.) No.22, Personnel and Administrative Reforms (S) Department dated 24.02.2014 while preparations of approved list for the post of Assistant Executive Engineers for the year 2014-2015.

(iii) that during 2003 - 2004 Thiru A.Mathuram, Assistant Executive Engineer (now City Engineer) Madurai Corporation has committed malpractices in the purchase of ROBOT causing financial loss to the Madurai Corporation.

(iv) that he has failed to issue notice to the then Executive Engineer, TNHB, Madurai for the unauthorized



construction of 104 HIG Flats at Ellis Nagar, Madurai between May 2011 and October 2012 and also held responsible for the missing of files in Ma.4 Po.6/00593/09 dated 25.04.2012 and issuance of demand notice to TNHB, Madurai before getting planning permission from LPA, Madurai and also collection of charges of Rs.6,86,332/- from TNHB, Madurai in the construction of said flats, prior to issuance of planning permission by the Member Secretary, LPA Madurai as recommended by the Director of Vigilance and Anti-Corruption.

v) that enquiry into grave charges against Thiru A.Mathuram, City Engineer, Madurai City Municipal Corporation is contemplated in connection with the procedural lapses as well as non-adherence of financial discipline in the execution of construction of Omni Bus Terminal near Maatuthavani in Madurai i.e. Work estimates were unreasonably split up into 26 instead of one estimate to suit the convenience of Technical Sanction powers to the City Engineer and Engineers in violation of Tender Rules."

2.2. It was submitted that on account of filing a writ petition against his transfer on deputation dated 14.08.2018, he has been suspended from service on vengeance, which is against the settled proposition, as a Government employee can be suspended either during the course of enquiry or on contemplation of disciplinary proceedings, which is a clear indication of victimizing him for approaching this Court against his transfer;

2.3. It was further submitted that the charges 1 and 2 relate to the same incident and after issuance of the charge memo, no enquiry has been conducted and there were no disciplinary proceedings initiated so far. When the same charges, as that of the petitioner, were levelled against the then Deputy Commissioner, she was simply transferred and allowed to retire from service.

2.4. It was the grievance of the petitioner that there was no immediate warranting circumstances for his suspension and the impugned order has been passed arbitrarily without independent application of mind. Contending that his suspension was purely to wreck vengeance on him and the said order suffers from malice in law, it is prayed that the impugned order of suspension is liable to be set aside.

3. The 1st respondent has filed a counter affidavit, wherein it has been *inter alia* stated as follows:



i) the petitioner, who was holding the post of City Engineer was on earlier occasion transferred to the 4th respondent Corporation by order dated 14.08.2018, aggrieved by which, he had filed a writ petition in W.P.(MD) No.18228 of 2018 and the Government subsequently withdrew the said order and placed him under suspension vide impugned order in G.O.(2D) No.72, Municipal Administration and Water Supply (MC-6) Department dated 05.09.2018 for his misconduct, indiscipline and insubordination.

ii) Since the petitioner has been facing serious charges under Rule 8(2) of Madurai Corporation Services (Discipline and Appeal) Rule, 1975 (in short "Rules"), he was suspended from service and there is no illegality committed in suspending him, as the Rules empower the appointing authority to effect suspension on an employee and moreover, the suspension is not a punishment and no prejudice would be caused to the petitioner on mere issuance of the suspension order.

iii) It was further stated in the counter that the petitioner has been facing three disciplinary proceedings as on date in ROC no.8155/2015-F1 dated 07.05.2015, V.O2/26430/2008 dated 02.07.2015 and M/Po.7/33026/2009 dated 18.07.2017, which are all grave in nature. Insofar as the development of Omni Bus Stand is concerned, the entire 28 works were split up into more than 20 works without sanction of the Government. As per the notification dated 26.08.2008, Government sanction is mandatory, if the work values more than One Crore Rupees and in order to circumvent the procedure, the works were split up into 28, thereby causing huge financial loss to the Government.

iv) It was also reiterated in the counter that though apart from the above 20 items of work, several other eight works were initiated, but were kept incomplete at various levels. Since the petitioner had worked for long time in the 3rd respondent Office, keeping him in the same post and conducting enquiry would not yield fruitful result, as several witnesses discharged under the petitioner at various category and in order to unearth the truth as a whole, suspension of the petitioner is unavoidable. The petitioner, instead of facing the disciplinary proceedings, has been attempting to evade from the same under some pretext or the other.

v) the negligence of the petitioner in discharging his official duties, unfriendliness and disobedience with superiors had stumbled the entire Government machinery and brought to a standstill. If the petitioner is allowed to continue in the Office, it would result in giving him further opportunity to indulge in the very same act. Thus, it was pleaded in the counter that the writ petition is liable to be dismissed in limine in the interest of public at large.



4. Learned Senior Counsel for the petitioner has vigorously submitted that when there is no hindrance in the conduct of domestic enquiry, nothing prevents the respondents to allow the petitioner to execute official work in the current station and therefore, the impugned order of suspension suffers from procedural irregularity and impropriety. The impugned order has been passed in a hurried manner by the 1st respondent, merely on the recommendation of the 2nd respondent and the 2nd respondent has not exercised his discretion rationally. Even after revocation of the suspension order, the 5th respondent was allowed to continue in the post, which amounts to malice in law.

5. Learned Additional Advocate General appearing for the respondents has contended that the petitioner has approached this Court with unclean hands, by suppressing several facts and since the petitioner has been facing several charges, as per the power vested with the Appointment Authority under Rule 9, he was suspended from service, as the petitioner, being a Class-I Officer, can be suspended by the Government. He has further contended that without any necessity, the petitioner, for the reasons best known to him, had split up the single huge value work into more than 20 works without sanction of the Government, as it is mandatory to obtain sanction from the Government to the work valued above Rs.1 Crore. The petitioner, in order to cover up his mistake, had voluntarily split up the work into 20 to 28 so as to customize that the sanctioning power would be within his ambit. Since the Government has decided to conduct an enquiry over his misconduct, it has become imperative to place him under suspension so as to ensure fair enquiry, as most of the witnesses serving in the department are under the direct supervision of the petitioner and would be reluctant to give evidence against him. Therefore, it is prayed that this petition is devoid of merits and is liable to be dismissed.

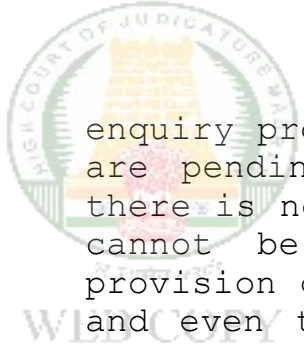
6. Heard the learned counsel for the petitioner and also the Additional Advocate General appearing for the respondents. This Court also perused the material documents available on record.

7. It is seen that the petitioner has been placed under suspension by invoking Rule 9(i) of the Rules, 1975, which reads as under:

“(9) A member of the service may be placed under suspension from service where -

(i) an inquiry into grave charge against him is contemplated or is pending.”

There are several charges framed against the petitioner and in view of the interim order passed by this Court, there is no

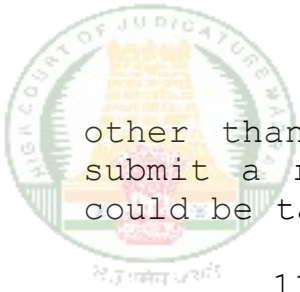


enquiry proceedings initiated against him and as such, the charges are pending against him. The contention of the petitioner that there is no public interest involved in respect of his suspension, cannot be accepted, because it has been narrated that the provision of road work in Omni bus stand itself have been split up and even the split up road works had been divided into various components, such as, sanctioning, levelling & filling gravel, formation of metal road and providing BT surface. It was further narrated that Truss work had also been split into two, namely, Truss work for passenger shelter and for booking office, that too without approval of the Government, thereby wasted public money. It was argued by the respondents that had these works been taken as single work, Tenders would have been floated at State level and the same would have paved way for bigger entities to participate in Tender and increased the competition, which would have ensured financial gain and quality of works. Though it has been contended by the petitioner that he has no role to separate the huge work into different sects, the preliminary enquiry reveals that the petitioner is responsible for such split up.

8. It is pertinent to mention here that an order of suspension is not a punishment and the relationship between the employer and the employee subsists even during the period of suspension. When there is master and servant relationship, the suspension can be effected by the employer and it cannot be questioned except on certain grounds like competence of the Authority issuing the said order, want of jurisdiction, contrary to the Rules, etc. Hence, as long as the competency of the authority issuing the suspension order is not challenged, this Court cannot interfere with the order of the suspension.

9. It was stated by the petitioner that charges have been issued with regard to stray incidents, said to have been committed by the petitioner. This Court, on account of laches, has entertained the writ petition and stayed the same. A close reading of the impugned order on hand would reveal that it is not a charge sheet, but only a suspension order, narrating various incidents. Nothing prevented the respondents in splitting up the charges, issue a charge sheet excluding the charges that were stayed by this Court, conduct enquiry, if the explanation is not satisfactory and come to a logical conclusion and pendency of the writ petition cannot be a bar with regard to placing a person under suspension, when allegations are grievous in nature.

10. Though it was argued on the side of the petitioner that on the basis of the recommendation of the 2nd respondent, the 1st respondent has passed the present impugned order and filed a counter with certain remarks, which is not sustainable. It is no doubt true that though the 1st respondent has filed a counter affidavit, it is for the Court decide and appoint a third party



other than a person from the Department to conduct enquiry and submit a report fresh authority, based on which, final decision could be taken.

11. Though the petitioner has been suspended for certain charges, in my considered opinion, as held by the Hon'ble Supreme Court in the case of Ajay Kumar Choudhary vs. Union of India through its Secretary and another, reported in 2015 (3) CTC 119, an inference can be drawn that instead of keeping a person under suspension, it is better that the suspension can be reviewed, transferred and posted in a non-sensitive place. In view of the later development, I am of the view that even without suspending an employee, the delinquent can be transferred to some other place on the ground of charges / misconduct, which will not amount to stigma. If the Government Official is corrupt, even the counter and vacate stay petition will not be allowed to be presented before the Court so that he could escape from the clutches of law and in many of the incidents like the one on hand, high stakes are involved and the participation of the officials cannot be ruled out. The charges, if any framed need to be proved in the manner known to law and it is made clear that whatever observed herein above is for only disposal of this writ petition and the same cannot be taken as a precedent for coming to the conclusion that the petitioner is guilty of charges and findings have to be recorded by the Disciplinary Authority only on the basis of the materials placed before them. It is advisable that the Government Officials holding a sensitive post shall have to be periodically transferred at least once in a year so that they will not have any vested interest.

12. For the foregoing discussions and observations, this Court is of the view that the writ petition lacks merits and fails. Accordingly, the Writ Petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-II)

To:

1. The Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai.
2. The Commissioner of Municipal Administration,
Chennai-600 005.



3. The Commissioner,
Madurai Municipal Corporation,
Madurai-625 002.

4. The Commissioner,
Tuticorin City Municipal Corporation,
Tuticorin.

+2cc to Mr.B.Saravanan,Advocate Sr.No.94294,94413

+1cc to Mr.R.Murali,Advocate Sr.No.94151

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VB/RSK/SAR2/19.11.2018/8P/8C

ORDER IN
W.P. (MD) No.19628 of 2018
02.11.2018