

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09/04/2019

DATED : 27.04.2019

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.14512 of 2012

A.B.Gurumani

.. Petitioner

Versus

1. The Government of Tamil Nadu
Rep., by the Secretary to Government
Municipal Administration & Water Supply Department
Fort St. George, Chennai - 600 009.
2. The Managing Director
Chennai Metropolitan Water Supply
and Sewerage Board
No.1, Pumping Station Road
Chintadripet, Chennai - 600 002.
3. The General Manager
Chennai Metropolitan Water Supply
and Sewerage Board
No.1, Pumping Station Road
Chintadripet, Chennai - 600 002. ... Respondents

PRAYER:Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus calling for the records of the first respondent issued in G.O. (D).No. 256, Municipal Administration & Water Supply (MW2) Department dated 14.07.2011, confirming the order of the second respondent issued in proceedings No. CMWSSB/P&A/VC(A)/5044/2007 dated 02.06.2007 and in proceedings No. CMWSSB/P&A/VC2/53192/2004 dated 04.01.2007 and quash the same and issue a consequential direction to the respondents to reinstate the petitioner into service of the respondent Board with service and monetary benefits.

For Petitioner :: Mr.R.Saseetharan

For R1 :: Mr. P.S.Siva Shanmuga Sundaram
Special Government Pleader

For RR 2 & 3 :: Mr.T.Gowthaman

ORDER

The Writ Petition had been filed by the petitioner, in the nature of a Writ of Certiorarified Mandamus calling for the records of the first respondent issued in G.O.(D).No. 256, Municipal Administration & Water Supply (MW2) Department dated 14.07.2011, confirming the order of the second respondent issued in proceedings No. CMWSSB/P&A/VC(A)/5044/2007 dated 02.06.2007 and in proceedings No. CMWSSB/P&A/VC2/53192/2004 dated 04.01.2007 and quash the same and issue a consequential direction to the respondents to reinstate the petitioner into service of the respondent Board with service and monetary benefits.

2. The writ petitioner A.B.Gurumani was appointed as Accounts Assistant in the office of Chennai Metropolitan Water Supply and Sewerage Board (CMWSSB) on 06.11.1987. He was then promoted as Junior Accounts Officer. While functioning as Junior Accounts Officer, he issued salary certificates for the employees, who had applied for loan from Co-operative Bank and Indian Bank during the period 23.11.2002 to 02.01.2003. The second respondent, Managing Director, CMWSSB, issued a memo of charges by proceedings dated 22.05.2003. The petitioner was charged that though he was not the competent Pay Disbursing Officer, he had given an undertaking as Pay Disbursing Officer to the Tamil Nadu State Apex Co-operative Bank Limited., Periamet Branch, Chennai, for 18 employees for getting personal loans from the said Bank. On the basis of the said undertaking, the Bank also granted personal loan. The petitioner was charged that he had furnished false pay certificates to the Bank showing a higher rate of net pay. He submitted his explanation denying the charges. An enquiry was conducted and the third respondent, General Manager, CMWSSB, imposed a punishment of stoppage of increment for three years without cumulative effect, by Order dated 08.02.2005.

3. The second respondent by proceedings dated 05.11.2004 issued another notice charging the petitioner with misusing his position as Pay Drawing Officer and issuing pay certificates to 30 employees in Area -I Office and arranged to avail salary loan to them from Indian Bank and further misused his position and gave an undertaking letter for recovery of the loan from their salary, thereby tarnishing the image of the Board. The petitioner gave a representation on 22.11.2004. The third respondent by further proceedings dated 25.04.2005 issued a memorandum of charges under Rule 10(2) of CMWSSB Regulations and called for explanation. Three charges were framed which were as follows:-

"Charge No.1: A Circular No. CMWSSB/P&A/VC1/52375/2002 dated 07.01.2003 has been issued to all the officers of the Board instructing strictly not to involve in such type of practices as giving Pay certificates misusing their official capacity as Pay Drawing Officer to which they are not delegated to, for the employees to avail bank loan from the Bank. But Thiru. A.B.Gurumani, Junior Accounts Officer has misused his official capacity and given an undertaking letter on 02.01.2003 to the Chief Manager, Indian Bank, Ashok Nagar Branch, Chennai - 600 083 to recover the loan instalment from the salary of employees who availed loan, in spite of the circular issued. Thiru. A.B.Gurumani, Junior Accounts Officer on issuing the circular, should have stopped the process without lapse. This amounts to disobedience of office orders/procedures.

Charge No.2: That Thiru A.B. Gurumani, Junior Accounts Officer of Area-I, misusing his official position as Pay Drawing Officer has given an inflated pay certificate for the employees whose names are given in the tabular column.

Charge No.3: That Thiru A.B.Gurumani, Junior Accounts Officer, under suspension has already done the same cheating in getting 51 Nos. of employees/workers personal loans from the Tamil Nadu State Apex Co-operative Bank Limited, Periamet for which he has been charge sheeted and punished."

In Charge No.2, in the tabular column referred, a list of 31 employees had been given.

4. The petitioner was also placed under suspension by Order dated 25.04.2005.

5. It is the contention of the writ petitioner that in Charge No.1, a reference had been made to a Circular dated 07.01.2003, whereas he had been alleged to have misused his position by issuing an undertaking letter on 02.01.2003 prior to the date of circular. It is also his contention that Charge

No.2 was closely linked to the earlier set of charges for which he had already been imposed with punishment of stoppage of increment for three years without cumulative effect. He contended that he could not be punished again for the same set of offence. With respect to Charge No.3, it is also his contention that the same charge had been one of the charges in the earlier disciplinary proceedings.

6. The petitioner filed W.P.No. 25778 of 2005 challenging the memorandum of charges issued on 25.04.2005 and also the order placing him under suspension. In the meanwhile, he also submitted his explanation on 30.08.2005. This Court by order dated 08.09.2006 issued a direction to the second respondent to pass final orders in the disciplinary proceedings initiated against him within a period of four weeks.

7. By Order dated 04.01.2007, the respondent Board imposed a punishment of removal from service for the above said charges. The Order was issued in the name of the Employment Committee. The petitioner preferred an Appeal and by Order dated 02.06.2007, the second respondent affirmed the Order. It was claimed by the writ petitioner that both the Orders dated 04.01.2007 and 02.06.2007 were signed by the second respondent. He then filed a Revision on 17.10.2010 before the first respondent. However, by Order dated 14.07.2011 the first respondent confirmed the punishment. Challenging that Order, the Writ Petition filed.

8. The respondents filed a counter affidavit. In the counter affidavit, it had been stated that the writ petitioner, who was working as Junior Accounts Officer, had given an undertaking letter dated 02.01.2003 to the Chief Manager, Indian Bank, Ashok Nagar, Chennai, stating that the employees of the Board are interested in availing personal loan and undertaking to recover the instalment amounts from their salary and remitting the same to the Bank promptly every month by way of cheques till the entire dues are over. It was further stated in the undertaking letter that the petitioner was competent to give a letter.

9. It was the specific stand of the respondents that the petitioner, a Junior Accounts Officer, was not competent to give such undertaking. It was stated that the Chief Manager, Indian Bank by letter dated 05.07.2004 informed the Managing Director of the respondent that they had sanctioned salary loan of 9.81 lakhs to 18 employees and Rs.6.83 lakhs to 12 employees working in Area - I, Office, Kodungaiyur, Chennai -118 during February and June 2003 on the basis of the undertaking letter dated 02.01.2003.

10. The respondents stated that the petitioner had earlier given a similar letter to the Tamil Nadu State Co-operative Bank. A Circular dated 07.01.2003 Form No. CMWSSB/P&A/VC-I/52375/2002 had been issued to all the Officers of the Board stating that the issuance of such certificates would be viewed as a serious lapse and would amount to cheating the said organisation as well as the Board. It was stated that the writ petitioner was already involved in a similar type of case and misused his position as Pay Drawing Officer and had issued pay certificates to the Field Workers to avail personal loan at TNSC Bank. He was issued with the charge memo and was also awarded with punishment of stoppage of increment for three years without cumulative effect. It was further stated that since he had repeated the offence with respect to Indian Bank, show cause notice was issued to him on 05.11.2004. He gave an explanation on 22.11.2004. Considering the seriousness of the case, he was placed under suspension by Order dated 25.04.2005. Thereafter, three charges were framed against him. It was stated that he did not submit his explanation to the charge memo. An enquiry Officer was appointed. The Employment Committee (Disciplinary Authority) in its meeting held that on 09.08.2005 appointed the Controller of Finance (IA) as Enquiry Officer. The Enquiry Officer submitted a report stating that the petitioner had admitted the charges. In the certificates issued by the petitioner, he had suppressed the existing loans availed by the employees. If the actual net amount had been given, the employees would not have been eligible to get further loan. The Enquiry Officer found that the charges had been proved. The petitioner then filed W.P.No. 14512 of 2012 for a direction against the Board to pass final Orders pursuant to the enquiry. The High Court granted four weeks time, by Order dated 08.09.2006 to pass final orders. Thereafter, the Enquiry Report was placed before the Employment Committee. The Committee felt that the petitioner should be removed from service and accordingly, the petitioner was removed from service by Order dated 04.01.2007. He filed an Appeal which was rejected by Order dated 02.06.2007. He filed a Revision which was also rejected by Order dated 14.07.2011.

11. It was stated in the counter affidavit that the Circular dated 07.01.2003 was issued subsequent to the act of the petitioner in a similar type of case in TNSC Bank for which charges were framed with view to prevent such acts from reoccurring in the future. It was specifically denied that the petitioner, a Junior Accounts Officer was competent to issue such certificates. It was stated that due procedure was followed during the enquiry proceedings and also subsequently. It was stated that the petitioner was already involved in a similar type of case along with three others by issuing such certificates for employees to avail loan from TNSC Bank. He had

been punished for that offence. It had been stated that granting certificates for loan from TNSC Bank and granting letter of undertaking for loan from Indian Bank are two separate transactions. It was finally stated that the Writ Petition should be dismissed.

12. Heard arguments advanced by Mr.R.Saseetharan, learned counsel for the petitioner and Mr.P.S.Siva Shanmuga Sundaram, learned Special Government Pleader, appearing for the first respondent and Mr.T.Gowthaman, learned counsel appearing for the second and third respondents.

13. The writ petitioner had been appointed as Accounts Assistant on 06.11.1987 in the Chennai Metropolitan Water Supply and Sewerage Board (CMWSSB) and was subsequently promoted as Junior Accounts Officer. While functioning as Junior Accounts Officer, though he was not the Pay Disbursing Officer, the petitioner had issued salary certificates to 18 employees to avail loan from the Tamilnadu State Co-operative Bank Limited, Periamet, Chennai. He issued a similar certificate and undertaking letter on 02.01.2003 with respect to 30 employees for availing loan from Indian Bank, Anna Nagar Branch, Chennai. With respect to issuing salary certificates for availing loan from TNSC Bank, a charge memo was issued against the writ petitioner and on enquiry it was found that the charges had been proved and he was imposed with punishment of stoppage of increment for three years without cumulative effect. The respondents had issued a Circular on 07.01.2003 specifically preventing and prohibiting issual of salary certificates or any related documents by any of the Officers to the employees for availing personal loan. The said Circular dated 07.01.2003 is extracted below:-

"CHENNAI METROPOLITAN WATER SUPPLY
AND SEWERAE BOARD
(Personnel and Administration (VC) Department)
No.1, Pumping Station Road, Chintadripet,
Chennai - 600 002.
CIRCULAR No. CMWSSB/P&A/VC-1/52375/2002 dated
07.01.2003
Sub: CMWSSB-P&A- Vigilance Cell-Officials
misused the powers - Noticed- Certain
instructions issued.

Instances have come to notice that some of our officials have misused their official capacity and furnished pay certificates, certified by them neither they are pay drawing Officers nor they were delegated to give such certificates. Upon such certificates, it is come to notice that certain employees have availed personal

loan from banks and this kind of practice is viewed as a serious lapse and amounts to cheating the other organisation as well as this Board.

The employees of the Board are therefore strictly instructed not to involve in such type of practices in any manner or of any kind whatever it be, in giving false information of any kind and if the above delinquency is noticed, it will be viewed as a very serious lapse and severe disciplinary action will be taken against them.

This may be circulated among all staff working under their control.

K.DEENADHAYALAN,
MANAGING DIRECTOR.

To
All Officer of the Board."

14. It is the contention of the respondents that they have received a letter from the Chief Manager, Indian Bank, Ashok Nagar Branch, Chennai on 05.07.2004 stating that the Bank had sanctioned salary loan of Rs.9.81 lakhs to 18 employees and Rs.6.83 lakhs to 12 employees working in Area-I Office, Kodungaiyur, Chennai during February and June 2003. It was further stated that the loan had been sanctioned on the basis of an undertaking letter dated 02.01.2003 issued by the petitioner. Since as on 05.07.2004, a Circular dated 07.01.2003 was in force, the respondents issued a charge memo dated 25.04.2005 to the petitioner. The Charges were as follows:-

"Charge No. 1: A Circular No. CMWSSB/P&A/VC1/52375/2002 dated 07.01.2003 has been issued to all the officers of the Board instructing strictly not to involve in such type of practices as giving Pay certificates misusing their official capacity as Pay Drawing Officer to which they are not delegated to, for the employees to avail bank loan from the Bank. But Thiru. A.B.Gurumani, Junior Accounts Officer has misused his official capacity and given an undertaking letter on 02.01.2003 to the Chief Manager, Indian Bank, Ashok Nagar Branch, Chennai - 600 083 to recover the loan instalment from the salary of employees who availed loan, in spite of the circular issued. Thiru.

A.B.Gurumani, Junior Accounts Officer on issuing the circular, should have stopped the process without lapse. This amounts to disobedience of office orders/procedures.

This is serious misconduct under Rule 6 (1) of CMWSSB Board Employees (Discipline and Appeal) Regulations, 1978.

6(1) "Wilful insubordination or disobedience whether alone or in combination with another or others of any lawful and reasonable order of a superior."

Charge No.2: That Thiru A.B. Gurumani, Junior Accounts Officer of Area-I, misusing his official position as Pay Drawing Officer has given an inflated pay certificate for the employees whose names are given in the tabular column.

That Thiru A.B. Gurumani, Junior Accounts Officer of Area-I, misusing his official position as Pay Drawing Officer has given an inflated pay certificate for the employees whose names are given in the tabular column.

A list of 31 employees were given in the table.

Knowing well that he is not the Pay Drawing Officer, he has misused his Official position and deliberately cheated another organisation as well this Board.

This amounts to act of fraudulence and dishonesty and charges are framed for his arroyos misconduct under Rule 6(23) of CMWSS Board Employees (Discipline and Appeal) Regulations, 1978.

6(23) "Theft, fraud or dishonesty in connection with the Board's property or transactions".

Charge No.3: That Thiru A.B.Gurumani, Junior Accounts Officer, under suspension has already done the same cheating in getting 51 Nos. of employees/workers personal loans from

the Tamil Nadu State Apex Co-operative Bank Limited, Periamet for which he has been charge sheeted and punished."

This is serious misconduct under Rule 6 (4) of Regulation 10(2) of CMWSS Board Employees (Discipline and Appeal) Regulations, 1978.

6(4) "Habitual negligence or neglect of work.""

15. In the Annexure relating to statement of allegations, namely imputation of misconduct or misbehaviour in support of the charges, it was stated that the Chief Manager, Indian Bank, Ashok Nagar Branch, by letter dated 05.07.2004 had stated that the Bank had granted personal loan to 30 employees after obtaining an undertaking to recover the salary and remitting the loan instalments directly to the Bank. This undertaking was said to have been signed by the writ petitioner by letter dated 02.01.2003. Simultaneously, on 25.04.2005, the writ petitioner was also placed under suspension.

16. The petitioner submitted his explanation on 30.08.2005. In the explanation, he had specifically stated as follows:-

"I submit that the charges framed against me are unsustainable and against law. The first charge is for violating the circular dated 07.01.2003. Whereas, from the charge itself it can be seen that I had issued pay certificate prior to 07.01.2003 and therefore I have not violated the circular of the Board. Hence, the charge is perse illegal and is liable to be struck down."

The board has taken action for the second time for the same cause of action. The board has already taken action against the petitioner for issuing certificates prior to the circular dated 07.01.2003. Therefore, the action of the board in taking action for the same sort of action done in the same period is arbitrary and unsustainable."

17. He also filed W.P.No. 25778 of 2005 challenging his suspension and the charge memo. Since in the meanwhile, he had given his explanation and an enquiry was conducted, the following Order was passed in the said Writ Petition:-

"3. The learned Standing Counsel for

the respondents has submitted that the first respondent, who is the competent authority, will pass orders in the disciplinary proceedings initiated against the petitioner within a period of four weeks.

4. In view of above said submissions of the learned Standing counsel for the respondents, this Writ Petition is disposed of, with a direction to the first respondent to pass final orders in the disciplinary proceedings initiated against the petitioner, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected WPMP is closed."

18. Thereafter, drawing reference to the charge memo dated 25.04.2005, the report of the Enquiry Officer dated 16.09.2005 and 27.09.2005, the further representation of the petitioner received on 30.11.2005 and the minutes of the Employment Committee meeting held on 14.12.2006, the Managing Director of CMWSSB, the second respondent, issued proceedings No.CMWSSB/P&A/VC-II/53192/2004 dated 04.01.2007 informing the petitioner that he had been removed from service of the Board immediately. The relevant portion is extracted below:-

"7. The subject was placed before Employment committee for passing final orders on the charges framed against Thiru.A.B.Gurumani, JAO, (under suspension). The Employment Committee in its meeting held on 14.12.2006 has noted that the charged official Thiru. A.B.Gurumani, JAO., (under suspension) has already committed the same kind of offence in getting 51 Nos., of Employees/workers personal loan from TNSC (Appex) Bank, Periamet by issuing false pay certificate for which he was awarded a punishment of stoppage of increment for a period of three years without cumulative effect. Even after this, he had repeated the same offence within a short time which is serious in nature and warrants severe punishments. The Employment Committee has felt that there is no justification to continue him in service due to his dishonesty, and therefore decided to remove Thiru. A.B.Gurumani, JAO., (under suspension) from the services of the Board for the proven

charges against him.

8. Accordingly, Thiru.A.B.Gurumani, JAO., (under suspension) is removed from the services of the Board immediately.

9. An appeal, if desired, shall lie to the Board within 30 days from the date of receipt of this order.

MANAGING

DIRECTOR"

19. This order dated 04.01.2007 has also been impugned in the Writ Petition. The petitioner then filed an Appeal. This was considered by the Board and finally the petitioner was informed by the Managing Director by proceedings No. CMWSSB/P&A/VC-A/5044/2007 dated 02.06.2007 that the Board had rejected the Appeal. The relevant portion of the said proceedings is extracted below:-

"9. The Appeal petition submitted by Thiru A.B.Gurumani, JAO (Removed from Services) to set aside the order of removal from service and to restore him in to service was placed before the Board for taking a decision.

10. The Board in its Res.No. 179/2007 dated 28.05.2007 examined all the relevant records of charges framed, explanation offered by the delinquent Officer, Enquiry Officer's report, grounds of appeal filed etc in detail. After detailed discussions of the earlier decision decided that the grounds adduced in the appeal of Thiru A.B.Gurumani, JAO is devoid of merits and decided to reject the appeal.

11. Accordingly, the appeal preferred by Thiru A.B.Gurumani A.B.Gurumani, JAO, to set aside the order removal from the services of the Board is hereby rejected.

\\ BY ORDER OF THE BOARD//

SD/- X X XX

MANAGING DIRECTOR"

20. The petitioner then filed a Revision before the first respondent. Final orders were passed on 14.11.2011 in the Revision. The relevant portion is extracted below:-

"10. The Government have examined the Revision Petition of Thiru A.B.Gurumani, formerly Junior Accounts Officer, Chennai Metropolitan Water Supply and Sewerage Board against the orders of the Managing Director, Chennai Metropolitan Water Supply and Sewerage Board and praying to reinstate him into service, carefully and independently along with the connected original records and it is seen that, the Revision Petition does not contain any grounds for interfering with the orders of the Chennai Metropolitan Water Supply and Sewerage Board. Therefore, the Government have proposed to reject the Revision Petition of the petitioner. Accordingly, the Government direct that the Revision Petition of Thiru A.B.Gurumani, formerly Junior Accounts Officer, Chennai Metropolitan Water Supply and Sewerage Board, be rejected as devoid of merits.

\\By order of the Governor//

S.KARUTHIAH

PANDIAN

Secretary to Government"

21. The learned counsel for the writ petitioner placed strong reliance on a Judgement rendered by a Division Bench of this Court dated 12.11.2013 on very similar set of facts and also related to CMWSSB, in Managing Director Vs. K.P.Sugumar, in W.A.No. 541 of 2012. The said Writ Appeal had been filed against the Order dated 14.03.2011 in W.P.No. 26384 of 2008. The writ petitioner in that case, K.P.Sugumar was also a Junior Engineer in CMWSSB. He was charged that though he was not a competent Pay Drawing Officer, he had given the undertaking as Pay Drawing Officer to the Union Bank of India, Vadapalani Branch, Chennai in respect of 20 employees of CMWSSB for getting personal loan from the said Bank. The Union Bank of India also granted personal loan. The employees defaulted in repaying the loan instalments. An enquiry was conducted into the charges and they were found to be proved. The report of the Enquiry Officer was placed before the Employment Committee for passing final orders. The Employment Committee took note of the fact that the writ petitioner K.P.Sugumar had earlier issued a similar kind of letter to enable employees from obtaining loan from TNSC Bank Ltd., Periamet Branch, and for that act, he had been imposed with punishment of stoppage of increment for three years without cumulative effect. Consequently, the Employment Committee, holding that the charges have been proved and requires severe

punishment, removed the said K.P.Sugumar from service.

22. K.P.Sugumar then filed W.P.No. 26384 of 2008. A learned Single Judge of this Court, allowed the Writ Petition holding that the enquiry proceedings were vitiated since the same Officer had participated in the enquiry committee and also in the Appeal proceedings and consequently there was an element of bias. It was also held that the punishment of removal of service was based on the circular dated 07.01.2003 whereas the undertaking had been issued prior to the said circular. The learned Single Judge, allowed the Writ Petition and directed reinstatement with continuity of service but without any back wages. Challenging that Order, W.A.No. 541 of 2012 had been filed.

23. In the Writ Appeal, a Division Bench of this Court while examining the issues raised, did not endorse the finding of the learned Judge with respect to bias by an Officer participating in the enquiry proceedings and also in the Appellate proceedings. However, it was held by the Division Bench that the disciplinary authority had erroneously proceeded on the ground that the undertaking given by the respondent K.P.Sugumar to Union Bank of India was after the awarding of punishment of stoppage of increment for three years. It was also found that the Appellate Authority also did not examine the facts and materials on record. It was specifically held that the Appellate authority has to re-appreciate the evidence and come to its own conclusion on facts. It was held that the Appellate authority had simply proceeded to affirm the findings of the disciplinary authority. Moreover in the Writ Appeal, it was also specifically held that a second show cause notice was not issued to K.P.Sugumar calling upon him as to why the major punishment of removal from service should not be imposed. On those grounds, the Order of the learned Single Judge was upheld and reinstatement on the above terms was affirmed.

24. The facts in W.A.No.541 of 2012 are very similar to the facts of the present case. In the present case, the writ petitioner had, while functioning as Junior Accounts Officer, issued salary certificates for availing loan by 18 employees from TNSC Bank, Periamet Branch. This was between the period 23.11.2002 to 02.01.2003. On 02.01.2003 he had also issued a letter of undertaking to the Branch Manager, Indian Bank, Ashok Nagar, undertaking repayment of loan availed by 30 employees. On the basis of that undertaking, loans had been advanced to the said 30 employees. It is seen that the issuance of pay certificates and the issue of the letter of undertaking were between the period 23.11.2002 and 02.01.2003. It was only thereafter that the circular relied on by the respondents in Circular No. CMWSSB/P&A/VC-I/52375/2002 dated 07.01.2003 had

been issued. On the dates when the salary certificates and letter of undertaking were issued, the Circular was not in force. For the offence of issuing salary certificates charge memo dated 22.05.2003 was issued and final orders passing punishment of stoppage of increment for three years without cumulative effect was passed on 08.02.2005. The second charge memo relating to issuance of undertaking letter dated 02.01.2003 was issued on 25.04.2005.

25. In the charge memo dated 25.04.2005, it had been stated that though a circular had been issued on 07.01.2003, the writ petitioner had issued an undertaking letter on 02.01.2003 and consequently serious misconduct under Rule 6(1) of CMWSSB Employees (Discipline & Appeal) Regulations 1978 had been committed.

26. I am unable to comprehend how when letter of undertaking was issued on 02.01.2003, a circular issued much later on 07.01.2003 could be pressed into service by the respondents and a charge issued. It was further mentioned in the charge sheet that the petitioner had already done the same cheating with respect to Tamilnadu State Co-operative Bank and consequently it was habitual negligence as provided in Rule 6(4) of Regulation 10(2) of CMWSS Board Employees (Discipline and Appeal) Regulations, 1978.

27. It is to be noted that both the issuance of salary certificates and the issuance of letter of undertaking were between the period 23.11.2002 to 02.01.2003. The disciplinary authority had erroneously proceeded as if the undertaking had been given by the petitioner to Indian Bank, Ashok Nagar Branch, after he had been awarded punishment of stoppage of increment for three years without cumulative effect by proceedings dated 08.02.2005 and that even thereafter the petitioner had not corrected himself but has repeated the same offence within a short period of time. This is factually wrong.

28. In the Appeal preferred by the petitioner, the Appellate Authority also did not properly the facts and materials on record. They have to re-appreciate the evidence and come to their own conclusion on facts, but the Appellate Authority had simply proceeded to confirm the findings of the disciplinary authority. In this connection, the proceedings dated 04.01.2007 whereby the petitioner was informed that he had been removed from service will also have re-examined in detail. The findings are given below:-

"a. Thiru A.B.Gurumani, J.A.O (under suspension) disobeyed the official procedure by issuing salary certificates and disobeyed the Government instructions in Government

Letter No. 92440/90-1 dated 01.11.90 of P&A.R. (Per.A) Department., and the Circular instruction of the Board vide Cir.No. CMWSSB/P&A/VC1/52375/2002, dated 07.01.2003.

b. He misused his official capacities and violated the officials proceedings by issuing salary certificates ie., salary certificates should be issued by the pay drawing officer viz., the concerned SAO and not by others.

c. He issued false certificates to the Indian Bank, Ashok Nagar, Chennai-83, stating higher carry home salary and suppressing the details of personal loan already availed by the employees.

d. It is concluded that the charges framed against the charged official are held proved."

29. It is thus seen that the basis for imposing punishment was the Circular dated 07.01.2003. This Circular has been invoked by the respects though the undertaking letter dated 02.01.2003 was issued earlier to the date of Circular on 07.01.2003. It is also seen that the Employment Committee, in the meeting held on 14.12.2006, had noted that the charged Official, namely the writ petitioner had already committed the same kind of offence and therefore, since he had repeated the same offence within a short period, he must be removed from service. This finding is also wrong. The letter of undertaking to the Indian Bank was not given after the punishment was imposed for the earlier offence of issuing pay certificates for availing loan from TNSC Bank. The pay certificates and the letter of undertaking were given between the period 23.11.2002 to 02.01.2003. The punishment for issuing pay certificates was imposed on 08.02.2005. Therefore, the conclusion that the petitioner had repeated the offence after having been punished is factually wrong and cannot be sustained.

30. The Appellate Authority in their proceedings dated 02.06.2007 had not independently examined the entire surrounding factors. As extracted above, they have only confirmed the findings of the Employment Committee. The Appellate Authority held as follows:-

"10. The Board in its Res.No. 179/2007 dated 28.05.2007 examined all the relevant records of charges framed, explanation offered by the delinquent Officer, Enquiry Officer's

report, grounds of appeal filed etc in detail. After detailed discussions of the earlier decision decided that the grounds adduced in the appeal of Thiru A.B.Gurumani, JAO is devoid of merits and decided to reject the appeal.

11. Accordingly, the appeal preferred by Thiru A.B.Gurumani A.B.Gurumani, JAO, to set aside the order removal from the services of the Board is hereby rejected."

31. It is seen that very unfortunately the Appellate Authority had not come to any independent conclusion. They have simply proceeded to confirm the findings of the disciplinary authority. They have not re-appreciated the evidence to come to their own conclusion. They have not examined the facts and materials on record. They have not examined whether the findings of the disciplinary authority are borne out by evidence or records and whether the punishment imposed were correct. They did not keep in mind the undertaking given by the respondent in respect of Indian Bank and that the salary certificates issued in respect of TNSC Bank are within a short interval between 23.11.2002 to 02.01.2003 much prior to the issuance of Circular dated 07.01.2003.

32. Moreover a second show cause notice was not issued to the writ petitioner calling upon him as to why the major punishment of removal from service should not be imposed on him. The disciplinary authority, ought to have afforded a reasonable opportunity to the writ petitioner by issuing second show cause notice as to why the punishment of removal from service cannot be imposed on him. I hold that the Order of the disciplinary authority is vitiated on account of the violation of principles of natural justice.

33. The ratio laid down that a second show cause notice has to be issued had been affirmed in the Judgement in W.A.No. 541 of 2012 which, in similar circumstances, the Hon'ble Division Bench had held as follows:-

"12. As pointed out earlier, in respect of the undertaking given to TNSC Bank, the punishment was imposed on 8.2.2005. But without examining the facts and the materials on record, the disciplinary authority erroneously proceeded as if the undertaking was given by the respondent to Union Bank of

India after the respondent was awarded punishment of stoppage of increment for three years without cumulative effect by proceedings dated 8.2.2005 and even thereafter the respondent has not corrected himself but has repeated the same offence within a short time.

13. In the appeal preferred by the respondent, the appellate authority also did not examine the facts and materials on record. When the appeal has been preferred, the appellate authority has to consider whether the findings of the disciplinary authority are borne out by the evidence on record and whether the punishment imposed is correct. As noticed, while considering the appeal, the appellate authority has to re-appreciate the evidence and come to its own conclusion on facts. But the appellate authority has simply proceeded to confirm the findings of the disciplinary authority and modified the punishment as "compulsory retirement" on humanitarian grounds. The Appellate authority also did not keep in view that the undertaking given by the respondent in respect of TNSC Bank and Union Bank of India are within short interval in the year 2002 much prior to the issuance of Circular dated 7.1.2003."

34. Again with respect to the second show cause notice, the Division Bench had held as follows:-

"16. Likewise, before imposing punishment of "dismissal from service", a second show cause notice was not issued to the respondent calling upon him as to why the major punishment of "removal from service" is not to be imposed on him. When the respondent has not appeared before the Enquiry Officer, the disciplinary authority ought to have afforded a reasonable opportunity to the respondent by issuing second show cause notice as to why the punishment of "dismissal from service" is not to be imposed on him and therefore the order of disciplinary authority is vitiated on account of violation of principles of natural justice. "

35. The ratio laid down by the Division Bench is binding on

this Court. In view of the findings, since there has been violation of principles of natural justice, I hold that the impugned order cannot be sustained.

36. The deponent of the counter affidavit, namely the General Manager cum Vigilance Officer of CMWSSB had cited several Judgments in the counter affidavit. But in the present case, when the entire enquiry is held to be vitiated on the ground of violation of principles of natural justice, I hold that the relief sought by the writ petitioner has to be granted. However considering the fact that this Writ Petition had been pending before this Court for the past 7 years, and that the petitioner was aged 49 years in the year 2012 which would mean that he should be now aged about 56 years as on date, and since he had already been imposed with the punishment of stoppage of increment for three years without cumulative effect, I hold that it would not be desirable at this stage to remit the case back for consideration by the authorities once again. Therefore, to meet the ends of justice, the respondents / CMWSSB are directed to reinstate the petitioner forthwith with continuity of service alone but without any back wages, based on the rule 'no work no pay', in as much as the petitioner was not in service after he was sent out by reason of the impugned order.

37. With the above observations, the Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vsg

To

1. The Secretary to Government
The Government of Tamil Nadu
Municipal Administration & Water Supply Department
Fort St. George, Chennai - 600 009.
2. The Managing Director
Chennai Metropolitan Water Supply
and Sewerage Board
No.1, Pumping Station Road
Chintadripet, Chennai - 600 002.

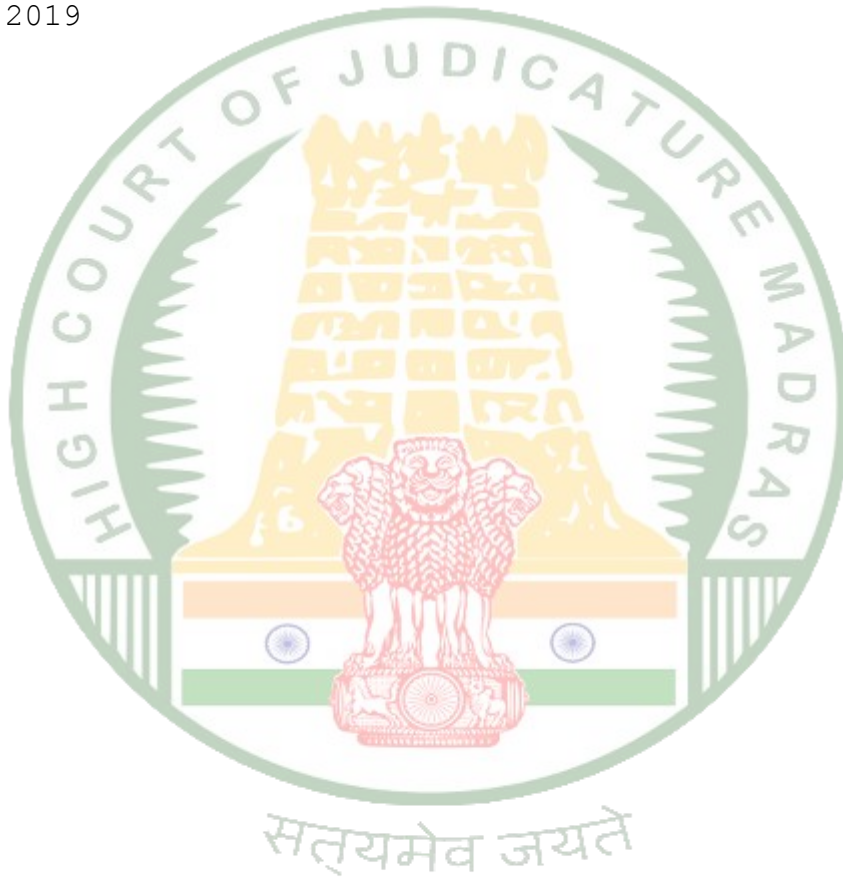
3. The General Manager
Chennai Metropolitan Water Supply
and Sewerage Board
No.1, Pumping Station Road
Chintadripet, Chennai - 600 002.

+1 cc to Mr.R.Saseethran, Advocate, Sr.No. 41349

Order made in

W.P.No.14512 of 2012

MP (CO)
CSL/03.05.2019



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