

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MS.JUSTICE P.T.ASHA

W.A.Nos.921 & 1079 of 2019
&
C.M.P.Nos.6960 & 7891 of 2019

W.A.No.921 of 2019

1.The Assistant Commissioner
Revenue Administration
Disaster Management &
Mitigation Department,
Ezhilagam, Chepauk, Chennai - 5.
2.The Enquiry Officer/The
Superintendent,
Service IV Section,
Revenue Administration,
Disaster Management &
Mitigation Department,
Chepauk, Chennai - 5. Appellants/Respondents
-vs-
M.Kuppusamy Respondent/Petitioner

W.A.No.1079 of 2019

The Assistant Commissioner
Revenue Administration
Disaster Management &
Mitigation Department,
Ezhilagam, Chepauk, Chennai - 5. ... Appellant/Respondents
सत्यमेव जयते

M.Kuppusamy Respondent/Petitioner

W.A.No.921 of 2019 is filed under Clause 15 of Letter Patent
against the order in W.P.No.27049 of 2009 dated 31.07.2018 on
the file of the High Court of Judicature at Madras.

WP.No.27049 of 2009: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the respondents 1 & 2 in connection with the impugned memo issued by the 1st respondent in Ref.No.AA/Na(1)/29878/09 dated 21.11.2009 and the enquiry officer's report of the 2nd respondent dated 12.11.2009 and quash the same.

W.A.No.1079 of 2019 is filed under Clause 15 of Letter Patent against the order in W.P.No.27448 of 2009 dated 31.07.2018 on the file of the High Court of Judicature at Madras.

WP.No.27448 of 2009:Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari Calling for the records of the respondent in connection with the impugned memo issued by the respondent in Ref.No.AA/Na(1)/29878/06 dated 24.12.2009 and quash the same.

For Appellants : Mrs.A.Sri Jeyanthi
Special Government Pleader

For Respondent : Mr.Venkataramani
Senior Counsel
for Mr.M.Muthappan

C O M M O N J U D G E M E N T

[Judgement of the Court was delivered by P.T.ASHA,J.]

These Intra-Court Appeals are filed challenging the common order dated 31.07.2018 allowing the Writ Petitions filed by the respondent herein. W.P.No.27448 of 2009 (which is the subject matter of W.A.No.1079 of 2019) is filed at the behest of the respondent challenging the charge memo dated 24.12.2009 issued by the appellants.

2. W.P.No.27049 of 2019 (which is the subject matter of W.A.No.921 of 2019) is filed at the behest of the respondent challenging the charge memo dated 21.11.2009 and the Enquiry Officer's report dated 12.11.2009.

3. The facts are common in both these Writ Appeals and therefore a common Judgement is being pronounced.

4. The respondent herein had been appointed as an Office Assistant after his name was sponsored by the Employment Exchange, Chennai. The respondent who had participated in the interview had come out successful and he was appointed as Assistant by the order of the Assistant Commissioner of Revenue Administration, Chennai by order dated 21.05.1986.

5. At the time of the interview the respondent had produced his Educational qualifications and all other connected records and after perusing the same he was appointed as a Office Assistant. Thereafter, it appears that the appellant herein had come to know that the School Certificates which the respondent had produced was a bogus one. Therefore, a charge memo dated 13.03.2007 under Section 17 (b) of the Tamilnadu Civil Services (Discipline & Appeal) Rules was issued. He was charged with the following misconduct.

a) Bogus School Certificates have been produced stating that the respondent had passed 8th std.

b) Once the certificate is proved to be bogus the respondent will not be qualified to hold the post as he has not passed the 8th Std and therefore the respondent by his conduct had violated the Government Servant Rules.

6. The respondent had submitted a detailed explanation denying the charges and he had requested for a personal hearing. The respondent had appeared in person on 24.05.2007 and had submitted his statement once again denying the charges. Though on the said date no witnesses were examined however the respondent later came to know that the Head Master of the School one Thiru.Mohd Ayub had appeared before the Enquiry Officer and given statement with reference to the record sheet of the respondent. He has also produced the admission register and mark register for the scrutiny of the Enquiry Officer. The respondent would submit that he had not heard anything from the appellants thereafter.

7. It appears that another Enquiry Officer was appointed on 03.04.2009 to conduct the enquiry and the respondent had also appeared before him on 24.06.2009. The Enquiry Officer had prepared a report on 12.11.2009 holding that the charges against the respondent were proved. The respondent was furnished with a copy of this report and he was asked to submit a further representation. The respondent has sought time till 25.12.2009 for submitting his representation. The respondent, in the meanwhile, had filed W.P.No.27049 of 2009 challenging the showcause notice dated 21.11.2009 and the enquiry report dated 12.11.2009 (Which is also the subject matter of the appeal).

8. When the Writ Petition was taken up for admission, the writ Court was pleased to order notice of motion returnable by 2 weeks. The respondent's counsel had forwarded the notice and thereafter the appellant proceeded to pass the impugned order dated 24.12.2009 directing the respondent to appear for a personal hearing on 31.12.2009 along with his reply. The respondent had, in the meanwhile, sent his representation dated 24.12.2009.

9. Considering the fact that the memo dated 24.12.2009 did not reflect the true state of facts the respondent had filed W.P.No.27448 of 2009.

10. After perusing the original documents, by order dated 24.07.2019 we had called upon the Special Government Pleader to take into account the fact that the respondent had worked without any blemish for over 20 years and it was only on this occasion that the Disciplinary Proceedings had been initiated against him. Taking into account the fact that the original records were not available, we had directed the learned Special Government Pleader to take instructions as to whether a minor punishment can be imposed on the respondent. The matter was directed to be listed on 31.07.2019 for the response.

11. When the appeals came up on 31.07.2019 the following order was passed:

"2. When the appeal is taken up for hearing today, the learned Special Government Pleader, on the strength of the communication received from the Joint Commissioner, Revenue Administration Department, dated 30.07.2019, submitted that even before issuing the second show cause notice to the respondent, he filed writ petitions before this Court and got the very report quashed. According to the Department, it would be possible to impose the punishment only after submitting explanation to the second show cause notice by the respondent."

12. Today, the Special Government Pleader had produced a copy of the order of the Joint Commissioner, Revenue Administration, Chennai imposing the punishment of Compulsory Retirement and the orders for Compulsory Retirement Pension and Death cum Retirement Gratuity would follow later. The above order dated 17.08.2019 is taken on file.

13. We direct the appellants to pass orders forthwith taking into account the modification of punishment. While passing such orders there should not be a cut in pension, as it would be possible to award an alternative punishment by taking into account the amount of Death cum Retirement Gratuity.

14. The Writ Appeals are Disposed of as indicate above. No costs. Consequently, connected Civil Miscellaneous Petitions are also closed.

-s/d-
Assistant Registrar (CSII)

True Copy

Sub-Assistant Registrar

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To

1.The Assistant Commissioner
Revenue Administration
Disaster Management &
Mitigation Department,
Ezhilagam, Chepauk, Chennai - 5.

2.The Enquiry Officer/The
Superintendent,
Service IV Section,
Revenue Administration,
Disaster Management &
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Chepauk, Chennai - 5.

+2 cc to Mr.M.Muthappan Advocate sr70586 & 70585
+1 cc to the Government Pleader sr70856

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&
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