

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.18996 of 2008

S.CHANDRASEKARAN

..Petitioner

Vs

1 THE MUNICIPAL COMMISSIONER
NAGAPATTINAM MUNICIPALITY NAGAPATTINAM.

2 THE COMMISSIONER OF MUNICIPAL
ADMINISTRATION CHEPAUK CHENNAI-5. ..Respondents

Prayer:- This Writ Petition is filed, under the Article 226 of Constitution of India, to issue a writ of Certiorari, calling for the records of the respondents in connection with the impugned order passed by the 1st respondent in letter No.10107/99/C1 dated 21.11.2006 and confirmed by the 2nd respondent in Na.Ka.No.70602/07/A2 dated 22.4.2008 and quash the same and direct the respondents to superannuate the petitioner from service and grant him all consequential service and monetary benefits.

For Petitioners : Mr.K.Venkataramani,
Senior counsel
for Mr.M.Muthappan

For Respondents : Mr.R.S.Selvam, Govt.Advocate
for R1 and R2.

ORDER

This Writ Petition is filed challenging the impugned order passed by the 1st respondent in letter No.10107/99/C1 dated 21.11.2006 and confirmed by the 2nd respondent in Na.Ka.No.70602/07/A2 dated 22.4.2008. The writ petitioner further seeks a direction to the respondents to superannuate him from service and grant him all consequential service and monetary benefits.

2. The facts of the case is that (a) the petitioner entered the service as Night Watchman in the Nagapattinam Municipality on 17.11.1966 and promoted as Office Assistant in the year 1967. In the year 1992, the petitioner submitted an application to grant 3 years of leave without salary for undertaking overseas employment. The said leave application was accepted and he left India in the month of January 1992. Again in 1995, the petitioner submitted another application for leave on 30.05.1995 for another period of two years of leave without salary. As there was no response, the petitioner returned from Singapore and submitted a petition requesting the 1st respondent to allow him to join duty. The 1st respondent by proceedings dated 12.11.1996, allowed the petitioner to join duty.

(b) The petitioner submitted an application seeking voluntary retirement from service due to family circumstances and he submitted an application on 01.12.1996, to grant leave for three months pending application for voluntary retirement.

(c) On 16.12.1996, the first respondent issued show cause notice asking the petitioner to submit his explanation for his long absence and the show cause notice further says that the petitioner has violated Article 18(3) of the Fundamental Rules and it was proposed to impose the punishment of removal from service for his absence from 10.1.1992 to 12.11.1996.

(d) Another charge memo was issued to the petitioner on 20.01.1997 framing the two charges under Rule 8(2) of the Municipal Service Rules. The charges read as follows:-

(a) Applying for passport without the permission of the department and left India without prior permission;

(b) After knowing that the permission should be obtained for going abroad, failed to obtain permission.

(e) According to the petitioner, since he left India in the month of December 1996, both the show cause notice and the charge memo were not served on him.

(f) Since the charge memo sent has been returned, the first respondent by his proceedings dated 10.05.1997, has come to the conclusion that the petitioner is not available in the station and thereby, he has committed the delinquency alleged in the charge memo and issued an order removing him from services permanently from the date of the order.

(g) It is the contention of the petitioner that since he has not been furnished with the charge memo, show cause notice nor the minutes of the enquiry, the entire order of removal from service on 10.5.1997, is in violation of the principles of natural justice.

(h) Aggrieved by the dismissal order, the petitioner filed O.A.No.1466 of 2002 before the Tribunal and the above OA was transferred to the file of this court and numbered as W.P.No.27442 of 2006. This court, by order dated 13.02.2006, set aside the order of the first respondent with liberty to the respondents to proceed afresh since it was an ex parte enquiry.

(i) Thereafter, the petitioner submitted a fresh representation dated 15.03.2006 to the first respondent. The first respondent, by order dated 20.04.2006, issued a fresh charge memo containing two charges. The petitioner submitted a detailed explanation on 26.04.2006 and 05.05.2006 seeking to cancel the order of dismissal from service and to reinstate him in service.

(j) An enquiry officer was appointed and after conduct of enquiry, enquiry officer given a finding. The petitioner was furnished with a copy of the enquiry officer's report on 05.06.2006 to which the petitioner submitted his reply on 13.06.2006.

(k) Thereafter, the 1st respondent, imposed a punishment of removal from service, by the impugned order dated 21.11.2006.

(l) Aggrieved by the said order, the petitioner preferred an appeal to the 2nd respondent, who also rejected the appeal by order dated 22.04.2008.

3. The learned Senior counsel appearing for the petitioner submits that among several grounds raised as against the impugned order, the main grounds are that the impugned order is not sustainable as (a) it is in violation of principles of natural justice (b) there is denial of information of documents during enquiry and therefore, entire charge memo is illegal (c) Since no subsistence allowance was granted to the petitioner from the date of suspension order on 18.5.1996, till the date of passing of the final orders in the disciplinary proceedings, the non-payment of subsistence allowance would vitiate the disciplinary proceedings (d) the enquiry officer has given a finding in respect of totally six charges whereas only two charges were framed against the petitioner.

4. That apart, the learned Senior counsel appearing for the petitioner submits that the petitioner's request for voluntary retirement on 01.12.1996 was not considered by the respondents and no orders were passed nor rejected. It is further contended that the petitioner rendered service in the respondent department for nearly 25 years and the punishment imposed is excessive.

5. The learned Government Advocate, appearing for the respondents submits that the writ petitioner violated Rule 24-A of the Tamil Nadu Government Servants' Conduct Rules, 1973 and therefore, the impugned order, passed as against the petitioner, is sustainable in law.

6. Rules 24-A of the Tamil Nadu Government Servants' Conduct Rules, 1973, reads as follows:-

"24-A. Obtaining of Identity Certificate before applying for Passport and No Objection Certificate for undertaking foreign trip.-

No Government Servant shall except after giving prior intimation or after obtaining Identity Certificate and No Objection Certificate from the Government apply for grant or renewal of Passport and shall, except after obtaining No Objection Certificate from the Government undertake trip to foreign country. Application for such Identity Certificate or No Objection Certificate shall be submitted in Form I in Schedule III appended to these Rules. Prior Intimation Letter shall be submitted in Form II in Schedule III appended to these Rules and the Identity Certificate and No Objection Certificate to apply for grant or renewal of Passport and No Objection Certificate to undertake foreign trip shall be issued in Forms III and IV respectively, in the said schedule. While applying for such No Objection Certificate, information regarding the purpose of the visit, the duration of stay and the names of countries proposed to be visited shall be furnished. The spouse of the Government Servant and dependent children up to the age of 18 years shall have an option to obtain Identity Certificate for expeditious issue of Passport in such case, the Government Servant shall submit the required particulars in Form-V in Schedule -III appended to these Rules.]

Provided that he shall not leave India for seeking employment abroad without the prior permission of the Government.]

[Provided further that the Heads of Departments concerned shall be competent to exercise the powers of the Government under this rule to issue No Objection Certificate to the Government servants belonging to Groups B, C and D who apply for grant or renewal of passport to visit foreign countries as tourists or on pilgrimage or to see friends or relatives or to seek employment.]

[Provided also that the Heads of Departments concerned shall be competent to exercise the powers of the Government under this rule to issue No Objection

Certificate to the Government servants belonging to Groups B, C and D who apply to undertake trip to foreign countries as tourists or on pilgrimage or to see friends or relatives or to seek employment.
"

A reading of the above Rule shows that no Government Servant shall except after giving prior intimation or after obtaining Identity Certificate and No Objection Certificate from the Government, apply for grant or renewal of Passport and shall, except after obtaining No Objection Certificate from the Government undertake trip to foreign country.

7. Learned Senior counsel appearing for the petitioner further submitted that the respondents have not followed the relevant procedure while conducting enquiry and therefore, the entire charge memo and the impugned order passed, is in violation of the Rules and no fresh opportunity granted to the petitioner to defend his case even after this court set aside the exparte order passed by the first respondent.

8. The learned Senior Counsel appearing for the petitioner further submitted that pending enquiry, the petitioner was not paid subsistence allowance as contemplated under the rules. However, the learned Senior Counsel appearing for the petitioner argued that it is suffice if suitable direction is given to the respondents to reconsider the punishment imposed on the petitioner taking into consideration the services rendered by the petitioner in the respondents-Department and also on the ground that the punishment awarded is excessive.

9. Learned Government Advocate, appearing for respondents 1 and 2 submits that as per Rule 24 of the Tamil Nadu District Municipalities Act, 1920, the 2nd respondent may be directed to de novo consider the revision petition filed by the petitioner.

10. The materials on record indicate that the petitioner has already filed revision before the appellate/revisional authority and the revisional authority, has confirmed the order of the first respondent, by order dated 22.04.2008.

11. In this regard, it is pertinent to refer Rule 24 of the Act Tamil Nadu District Municipalities Act, 1920, which reads as follows:-

"24. Revision Petition to Government.

Where the original order imposing any of the penalties specified in Rule 3 has been imposed on a member of a service by the State Government, such member may, within two months from the date on which the order is communicated to him, submit a revision

petition to the Government against the order. In disposing the petition the State Government shall, as far as possible follow the procedure prescribed for dealing with appeals."

12. Taking into consideration the above submission of the parties and in the interest of justice and also considering the fact that the petitioner has rendered service in the department for nearly 25 years and seeks for reconsideration of the award of alternative punishment, other than 'removal from service', this court is inclined to pass the following directions:-

(1) The impugned order passed by the respondents dated 21.11.2006 and 22.04.2008, insofar as imposing the punishment of removal from service and confirming the same alone is set aside and remitted back to the 2nd respondent, with a direction to consider the revision filed by the petitioner afresh in accordance with law.

(2) It is made clear that the 2nd respondent shall consider the request of the petitioner without being influenced by the observations made in the present writ petition.

(3) The second respondent shall pass appropriate orders insofar as imposing the punishment against the petitioner for violation of Rule 24-A of the Tamil Nadu Conduct Rules.

(4) The 2nd respondent shall complete the aforesaid exercise within three months from the date of receipt of a copy of this order.

(5) It is made clear that the 2nd respondent need not give any opportunity of re-enquiry or re-appreciate the evidence, for the purpose of deciding the punishment, but shall pass orders based on the available records.

13. The Writ petition is disposed of with the directions stated supra. No costs.

Sd/-

Assistant Registrar (CS-)

// True Copy//

Sub Assistant Registrar

nvsri

WEB COPY

To

1 THE MUNICIPAL COMMISSIONER
NAGAPATTINAM MUNICIPALITY NAGAPATTINAM.

2 THE COMMISSIONER OF MUNICIPAL
ADMINISTRATION CHEPAUK CHENNAI-5.

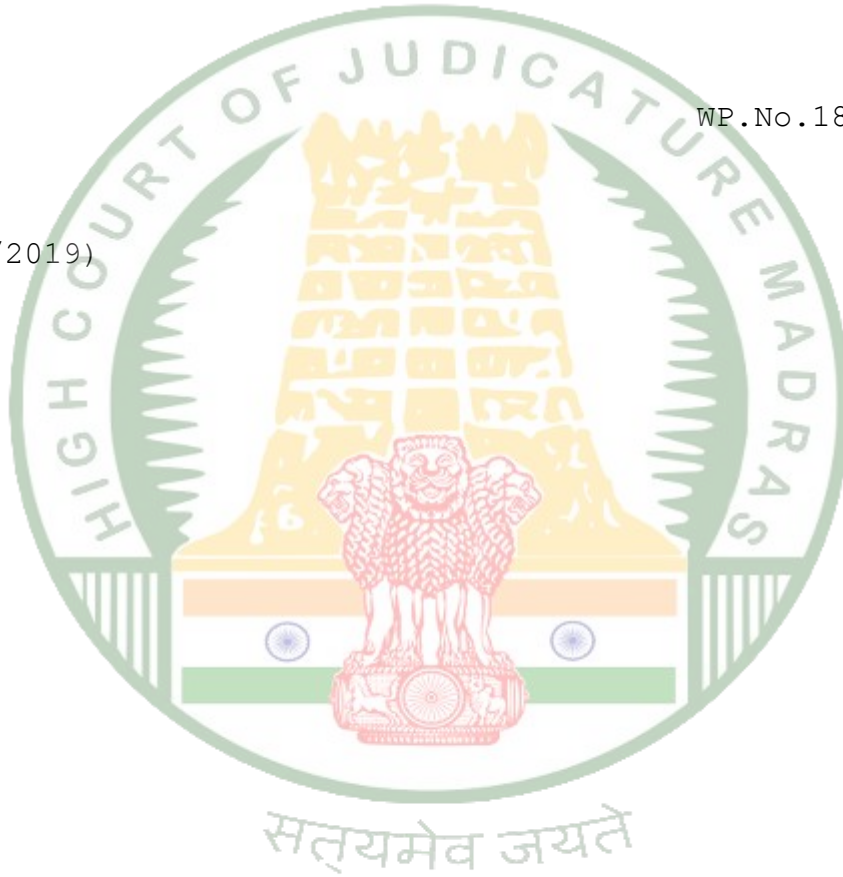
+lcc to Mr.M.Muthappamn, Advocate, SR.No.87229.

+lcc to Mr.R.Selvam, Advocate, SR.No.87702.

+lcc to Government Pleader, SR.No.87718.

WP.No.18996 of 2008

MR (CO)
CSR(11/12/2019)



WEB COPY