

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.19958 of 2008

S.Annasamy

.. Petitioner

Vs.

1.The State of Tamilnadu
Rep. by its Secretary to Government
Housing and Urban Development Department
Fort. St. George
Chennai-600 009.

2.The Tamilnadu State Housing Board
Represented by its Managing Director
492, Annasalai, Nandanam
Chennai-600 035.

3.The Managing Director
The Tamil Nadu Housing Board
492, Annasalai, Nandanam
Chennai-600 035.

4.The Enquiry Officer cum
Revenue Officer (i/e)
Tamil Nadu Housing Board
492, Annasalai, Nandanam
Chennai-600 035.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari, calling for records of the orders of the 1st, 2nd and 3rd respondents made in G.O.(1D) No.241, Housing and Urban Development Department (Vce.Val(2) Department dated 12.11.2007, in proceedings No.DC6/77267/2004 dated 08.01.2007 and in proceedings No.DC6/43694/03 dated 08.10.2004 respectively and quash the same.

For Petitioner
For R1

: Mr.G.Devadoss
: Mr.R.S.Selvam
Government Advocate

For R2 to R4 : Mr.R.Bharath Kumar
Standing Counsel for TNHB

O R D E R

Writ Petition is filed for issuance of a writ of Certiorari calling for records of the orders of the 1st, 2nd and 3rd respondents made in G.O.(1D) No.241, Housing and Urban Development (Vce.Val(2) Department dated 12.11.2007, in proceedings No.DC6/77267/2004 dated 08.01.2007 and in proceedings No.DC6/43694/03 dated 08.10.2004 respectively and quash the same.

2. According to the petitioner, while he was working as Junior Assistant in 2nd respondent Board, a charge memo was issued stating that he has received a sum of Rs.15,000/- from one Sa.Sekar on the promise of securing a job of 'Salai Paniyalar' from the Government and cheated the public. The petitioner submitted his explanation. A domestic enquiry was conducted and the Enquiry Officer submitted his report. The 3rd respondent issued second show cause notice to the petitioner. The petitioner sought for time to submit his explanation. The 3rd respondent by order dated 08.10.2004 dismissed the petitioner from service. The two appeals filed by the petitioner before the 2nd respondent and 1st respondent were dismissed.

3(i). According to the learned counsel for the petitioner, the Enquiry Officer in violation of Board regulations failed to give opportunity to the petitioner to submit his statement of defence, concluded the enquiry and filed his report. As per Rule 37 of the Tamil Nadu Housing Board Service Regulations, 1969, the petitioner is entitled to submit further statement of his defence. Neither the Enquiry Officer nor the 3rd respondent gave opportunity to the petitioner to submit his further statement after conclusion of domestic enquiry. The petitioner sought time to submit his explanation to the second show cause notice issued by the 3rd respondent. The 3rd respondent without granting any extension of time dismissed the petitioner from service by the order dated 08.10.2004. The 2nd respondent without appreciating the grounds raised in the appeal and without giving personal hearing to the petitioner, dismissed the appeal filed by the petitioner by Board Resolution No.12.01-11, dated 21.12.2006. Rule 40 of Tamil Nadu Housing Board Service Regulations, 1969, prescribes the method of disposal of appeal. The Board has not followed the said Rule while dismissing the appeal filed by the petitioner. The 2nd appeal

filed by the petitioner was also dismissed by the 1st respondent confirming the order of dismissal passed by the 2nd respondent.

3(ii).According to the learned counsel for the petitioner, the respondents 1 to 3 failed to consider that Enquiry Officer has stated that the complainant has not proved the payment of Rs.15,000/-, but spoke about the payment of Rs.5,000/- only. Having held so, the Enquiry Officer erred in holding that the charges levelled against the petitioner were proved, when the charge levelled against the petitioner is that he received Rs.15,000/- from the complainant on the promise of securing a job for the complainant. The petitioner received a hand loan of Rs.5,000/- from his friend Ramachandran and on his request, he repaid the same to the complainant. The complainant had financial transaction with Ramachandran only, who died due to the prolonged illness. As the complainant was unable to recover the money from Ramachandran, he has given false complaint against the petitioner. The respondents 1 to 3 without properly appreciating the above materials had passed the impugned orders, which are contrary to law, illegal, violation to the principles of natural justice and vitiated by error of law apparent on the face of record and prayed for quashing the impugned order.

4.The respondents 2 and 3 filed counter affidavit and the 1st respondent adopted the same.

5.The learned counsel appearing for the respondents 2 and 3 contended that the petitioner committed serious misconduct and on the complaint received against the petitioner, a charge memo was issued and domestic enquiry was conducted as per the regulations of the Tamil Nadu Housing Board Service Regulations, 1969, following the principles of natural justice. On receipt of enquiry report, second show cause notice was issued to the petitioner, but he did not submit any explanation. The 3rd respondent considering all the materials on record has passed the impugned order dismissing the petitioner from service. The 3rd respondent has given valid reasons for passing the order of dismissal. The 2nd respondent has considered the appeal filed by the petitioner as per the regulations of Tamil Nadu Housing Board Service Regulations, rejected the appeal and prayed for dismissal of the writ petition.

6.The learned counsel appearing for the 1st respondent contended that the 2nd appeal filed by the petitioner was considered by the 1st respondent on merits and rejected the appeal confirming the order passed by the 3rd respondent as

appeal filed by the petitioner was devoid of merits. There is no error in the order of dismissal passed by the 3rd respondent confirmed by the respondents 2 & 1 and prayed for dismissal of the writ petition.

7. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the 1st respondent and respondents 2 & 3 and perused the materials available on record.

8. From the materials available on record, it is seen that one Sa.Sekar has given a complaint stating that the petitioner received a sum of Rs.15,000/- promising to get him a job in Government as 'Salai Paniyalar', but failed to get the job as promised and also did not refund the amount. The complainant along with complaint had enclosed the letters written by the petitioner promising to get a job for the complainant. In the domestic enquiry, the petitioner admitted that he had written the letters. The petitioner has denied his signature in one of the letters produced by the complainant, wherein it has been stated that the complainant paid a sum of Rs.10,000/- to the petitioner and Rs.5,000/- to Ramachandran. The petitioner also contended that a sum of Rs.5,000/- paid to the petitioner was corrected as Rs.10,000/- and there is no authentication for the said correction. According to the petitioner, he has repaid the entire amount received from the complainant and no amount is due to him.

9. From the impugned order, it is seen that the petitioner has admitted that he received Rs.5,000/- from the complainant as travelling expenses for securing a job to the said Sekar. This clearly shows that the petitioner has received money from the said Sekar on the promise of securing a job for him. The said Sekar has deposed about having paid money to the petitioner for securing job for him. The 3rd respondent perused the letter dated 22.08.1999 written by the petitioner, wherein he has promised to secure a job to the said Sekar and asked him to be patient, otherwise he will suffer heavy loss. The 3rd respondent considering the admission of the petitioner for having written the said letters and other materials on record, passed the impugned order dated 08.10.2004 dismissing the petitioner from service. The contention of the learned counsel for the petitioner that the respondents 2 and 1 have not considered the objections raised by the petitioner in the appeals and rejected the appeals, is not acceptable. The orders reveal that the appeal filed before the 2nd respondent was considered by the Board and a resolution was passed rejecting the appeal. Before the 1st respondent, the petitioner has

contended that he received only Rs.5,000/- from his friend Ramachandran as hand loan and as per the request of Ramachandran, he repaid the amount to Sekar. This was not the case of the petitioner before the 3rd respondent.

10.As far as the contention of the learned counsel for the petitioner that the Enquiry Officer or the 3rd respondent failed to give opportunity to the petitioner to submit his further statement after conclusion of the enquiry, Rule 37 of Tamil Nadu Housing Board Service Regulations gives an option to the petitioner to submit his further statement of defence, if he so desires. The learned counsel for the petitioner has not produced any material to show that the petitioner expressed his desire to submit further statement of defence as per Rule 37 of Tamil Nadu Housing Board Service Regulations and the Enquiry Officer or 3rd respondent rejected such a request. In such circumstances, it is not open to the learned counsel for the petitioner to contend that Rule 37 of Tamil Nadu Housing Board Service Regulations, 1969, was not complied with.

11.The petitioner also did not raise any objection in the appeal filed by him before the 2nd respondent that Rule 37 of Tamil Nadu Housing Board Service Regulations, 1969, was not complied with and the petitioner was not given an opportunity to submit his explanation as requested by him. The 2nd respondent has considered the entire materials on record and dismissed the appeal filed by the petitioner by giving valid reason for rejection of the appeal. When the Appellate Authority confirmed the order of 3rd respondent, it is not necessary to give elaborate reason for confirming the order of the 3rd respondent. It is sufficient if reason is given for rejecting the appeal. In the present case, the Resolution of the 2nd respondent reveals that the Board has considered the appeal filed by the petitioner and for the reasons stated therein rejected the appeal. The contention of the learned counsel for the petitioner that the order passed by the 2nd respondent is not a speaking order, is not correct. The 2nd respondent has given valid reason for rejecting the appeal and confirming the order of the 3rd respondent, dismissing the petitioner from service and it was confirmed by the 1st respondent by giving reasons.

12.For the above reason, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

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Housing and Urban Development Department
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+1 cc to Government Pleader Sr.No. 52294
+1cc to Mr.G.Devadoss , Advocate SR.No. 51459
+1cc to Mr.R.Bharath KUMar , Advocate SR.No. 51608

A.SK(07/08/2019)

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सत्यमेव जयते

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