

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2019

CORAM :

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

W.P.No.28564 of 2004

K. Nanthakumar

... Petitioner

v.

1. The Municipal Commissioner,
Mettur Municipality,
Mettur,
Salem District.

2. The Commissioner of Municipal Administration,
Chepauk,
Chennai - 600 005.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, calling for the records of the 1st respondent relating to his Pro.Na.Ka.No.9091/2003/C1, dated 25.08.2004, quash the same and issue consequential direction to reinstate the petitioner in service with all consequential benefits.

For Petitioner : Mr. M. Ravi

For Respondents : Mr. S. Saravanan - for R1
For Mr.K.S.Jayaganeshan

Mr. S.Suresh Kumar - for R2
Government Advocate

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ORDER

The petitioner has filed the above Writ Petition to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent dated 25.08.2004, to quash the same and issue consequential direction to reinstate the petitioner in service with all consequential benefits.

2.1 The petitioner entered the service in Mettur Municipality in May 1996 as a daily wage worker, by virtue of the oral orders issued by the then Municipal Commissioner for typing matters related to the Audit Report for the year 1994-1995 and for preparation of the Manuscript voters' list for the local body election and continued to serve as such after Thiru. Ramaswamy took over as Municipal Commissioner during local body election and had been attending to all typing works as instructed by the Municipal Commissioner and other officials of the Municipality.

2.2 The petitioner contended that with a view to absorb the daily wage workers in all the Municipalities in the State in permanent establishment, the Government of Tamil Nadu, passed order in G.O.Ms.No.125, Municipal Administration and Water Supply Department, dated 27.05.1999, directing for the preparation of the list of daily wage employees, who were served as such before 01.10.1996 and to absorb them in regular establishment of the Municipality on a consolidated pay of Rs.2,000/- for one year, at the first instance, with all service benefits and thereafter place them in regular time scale of pay. Since the petitioner was served in the Municipality from May 1996, the 1st respondent included his name in the said list, after having been fully satisfied that he was eligible for the benefits of the Government order. Thereafter, the petitioner was appointed as Junior Assistant on a consolidated pay of Rs.2,000/- on the basis of Resolution No.3, dated 28.04.2000 of the Appointments Committee of the Municipality. Subsequently, the petitioner was directed to be removed from the Muster Roll by orders dated 25.04.2003 and 27.05.2003.

2.3 Challenging the same, the petition preferred an Original Application in O.A.No.2166 of 2003 on the file of the Tamil Nadu Administrative Tribunal and the Tribunal, by order dated 28.10.2013, set aside the termination order on the ground that it has been passed without giving an opportunity to the petitioner and directed the respondents to serve a Charge Memo and conduct an enquiry and pass appropriate orders. Thereafter, the petitioner was reinstated in service as a daily wage worker with effect from 24.02.2004.

2.4 The 1st respondent, by his proceedings dated 18.03.2004, initiated disciplinary proceedings against the petitioner and framed three charges, alleging that in order to obtain the benefits of G.O.Ms.No.125, dated 27.05.1999, the petitioner furnished false information to the Municipality and connived with the officials to manipulate the official records as if he had been serving as daily wage worker in the Municipality from 01.08.1996, though he was actually serving from 01.09.1997 and got himself appointed as Junior Assistant on

consolidated pay basis by committing the act of misrepresentation of facts.

2.5 The petitioner sent his explanation dated 06.04.2004. Not satisfied with the explanation submitted by the petitioner, the 1st respondent appointed an Enquiry Officer and an enquiry was conducted and the Enquiry Officer also filed his report dated 30.07.2004 rendering his findings that the charges were proved.

2.6 On the basis of the Enquiry Report, the 1st respondent passed the impugned order dated 25.08.2004, terminating the petitioner's services from 25.08.2004. Challenging the same, the petitioner has filed the above Writ Petition.

3.1 The learned counsel appearing for the petitioner contended that the charges framed against him are vague and bereft of material particulars. That apart, the petitioner's request to furnish the list of witnesses was also not acceded. Further, the learned counsel contended that the Enquiry Officer failed to examine any witness to prove the allegation of misrepresentation.

3.2 The learned counsel appearing for the petitioner, in support of his contention, relied upon an unreported order dated 01.06.2016 made in W.P.Nos.3990 of 2014 and 3510 of 2015 [M.Manohar vs Government Of Tamil Nadu and ors.] wherein, this Court held as follows:-

"... 26. It is very pertinent to point out at this juncture that even in the said report, Thiru V.Balakrishnan, IPS, Superintendent of Police, Madurai District, has opined as to the surcharged atmosphere prevailing and also as to the happening of many issues simultaneously in quick succession. It is very unfortunate to note that the case in Cr.No.155/08 registered by Koodakovil Police Station, after investigation, has culminated into a charge sheet, which has been taken on file by the learned Judicial Magistrate, Thirumangalam in P.R.C.No.30/2010 and it was not withdrawn at that point of time. However, the Disciplinary Authority, namely the Additional Director General of Police, overlooking the fact and without application of mind as to the pendency of criminal prosecution on the file of the Court of competent jurisdiction, had used the word in Charge No.I foisted case and it is also repeated in para 3 of the Statement of Allegations in Annexure-II. It

is not even within the jurisdiction/realm of the Disciplinary Authority, namely Additional Director General of Police to conclude that the criminal case and that too registered at the instance of Woman Sub-Inspector of Police Tmt.Sathyaprabha, which after investigation, has resulted in a positive final report, is a foisted one. Thiru V.Balakrishnan, IPS, who conducted the Inquiry, in pursuant to the directions of the Inspector General of Police, South Zone, Madurai, in his conclusion, has opined that Thiru R.Samy, MLA was not the part of the unlawful assembly which damaged police vehicles and therefore, their involvement in Koodakovil Police Station Cr.No.155/08 is highly doubtful. Here again, the said official has overlooked the fact that the case in the above said crime number, after investigation has resulted in the filing of charge sheet which has been taken cognizance by the learned Judicial Magistrate, Thirumangalam as early as on 29.10.2010 itself in P.R.C.No.30/2010. The Disciplinary Authority has assumed the role of judicial forum by stating that the case is a foisted one and he should not have stated so. Thus, the charge memo itself came to be issued without due and proper application of mind to the material facts and more particularly on account of pendency of the case in P.R.C.No.30/2010 on the file of the Court of Judicial Magistrate, Thirumangalam and that apart, the contents of the charge memo as well as statement of imputations are also vague and therefore, in the considered opinion of the Court, the writ petitioner, namely Thiru.M.Manohar is put to serious prejudice and handicapped in defending the charges framed against him in the impugned charge memo. ..."

4. Countering the submissions made by the learned counsel appearing for the petitioner, the learned counsel appearing for the 1st respondent submitted that the order passed by the 1st respondent is proper. Further, the learned counsel submitted that the provisions of Tamil Nadu Municipal Services (D & A) Rules 1970 is not applicable to the petitioner, since he was only an Non Muster Roll (NMR) employee and not a regular employee of the Municipality. Further, the learned counsel submitted that on 07.07.2004, the Enquiry Officer adjourned the enquiry to 13.07.2004 so as to enable the petitioner to peruse all the records. Further, the petitioner had acknowledged the receipt of all the documents for perusal on 07.07.2004.

Therefore, the allegation that the impugned order had been passed without giving sufficient opportunity to the petitioner is not sustainable.

5. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that there is no dispute that the petitioner was working as a N.M.R. employee with the Mettur Municipality and subsequently his name was included as if he was engaged prior to 01.10.1996 so as to enable him to avail the benefits of G.O.Ms.No.125, dated 27.05.1999. Based on the G.O.Ms.No.125, dated 27.05.1999, the Municipal Engineer of the 1st respondent Municipality was directed to prepare a list of N.M.R. Employees who have employed prior to 01.10.1996. Accordingly, the Municipal Engineer prepared the list on 09.04.1999 and 09.08.1999 and since the petitioner was engaged as a N.M.R. employee only from 01.09.1998, his name was not included in the original list prepared on 09.04.1999 and 09.08.1999. Subsequently, in the list prepared on 09.04.1999, the name of the petitioner was inserted as if he was engaged by the respondent prior to 01.10.1996 and the manipulated list was forwarded to the Commissioner of Municipal Administration as well as the Regional Director of Municipal Administration on 17.09.1999 and 09.04.1999 respectively. Based on the manipulated records, the petitioner was given the benefit of G.O.Ms.No.125 and was posted on consolidated pay in the leave vacancy that arose in the 1st respondent's Municipality.

6. Based on the complaint received, the 2nd respondent directed the 1st respondent to verify whether the petitioner had been employed as per the Rules and Regulations, it was found that the petitioner was engaged as a N.M.R. employee on 01.09.1997 and the records of the 1st respondent's office had been manipulated and his name was inserted as if the petitioner was engaged prior to 01.10.1996 so as to enable the petitioner to avail the benefits of the Government Order.

7. The 1st respondent issued a charge memo dated 18.03.2004 containing three charges for providing false information as if he was engaged from the month of May 1996 and for manipulating the records to include his name in the list to enable him to avail the benefits of the Government Order, to which he is not entitled to.

8. Based on the order passed by the Tamil Nadu Administrative Tribunal in O.A.No.2166 of 2003, dated 28.10.2003, the charge memo was issued to the petitioner. An Enquiry Officer was appointed and an enquiry was also conducted and the enquiry was posted on 07.07.2004 and the same was adjourned to 13.07.2004 so as to

enable the petitioner to peruse all the records. Further, the petitioner was served with all the documents on 07.07.2004. Therefore, the contention of the petitioner that the Enquiry Officer has not given any opportunity to him cannot be accepted.

9. That apart, the Enquiry Officer has given his report only after considering the documents produced before him. After conducting the enquiry, the Enquiry Officer found that all the three charges were proved against the petitioner. Therefore, it is clear that the enquiry was conducted by the Enquiry Officer in accordance with law.

10. Pursuant to the report of the Enquiry Officer, the 1st respondent terminated the services of the petitioner by the impugned order dated 25.08.2004. While passing the impugned order, the 1st respondent took into consideration the charges framed against the petitioner and also the findings of the Enquiry Officer. When the petitioner has manipulated the records for availing the benefits of the Government Order, the punishment imposed to terminate the services by the 1st respondent, is proper.

11. Though there is no dispute with regard to the ratio laid down in the Judgment relied upon by the learned counsel appearing for the petitioner, since there is no vagueness in the charge memo issued to the petitioner, the said Judgment is not applicable to the present case.

12. For the reasons stated above, I find no error or irregularity in the order passed by the 1st respondent. The Writ Petition is devoid of merits and the same is dismissed. No costs.

Sd/-

सत्यमेव जयते Assistant Registrar (CS-IV)

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Rj

To

1. The Municipal Commissioner,
Mettur Municipality,
Mettur,
Salem District.
2. The Commissioner of Municipal Administration,
Chepauk,
Chennai - 600 005.

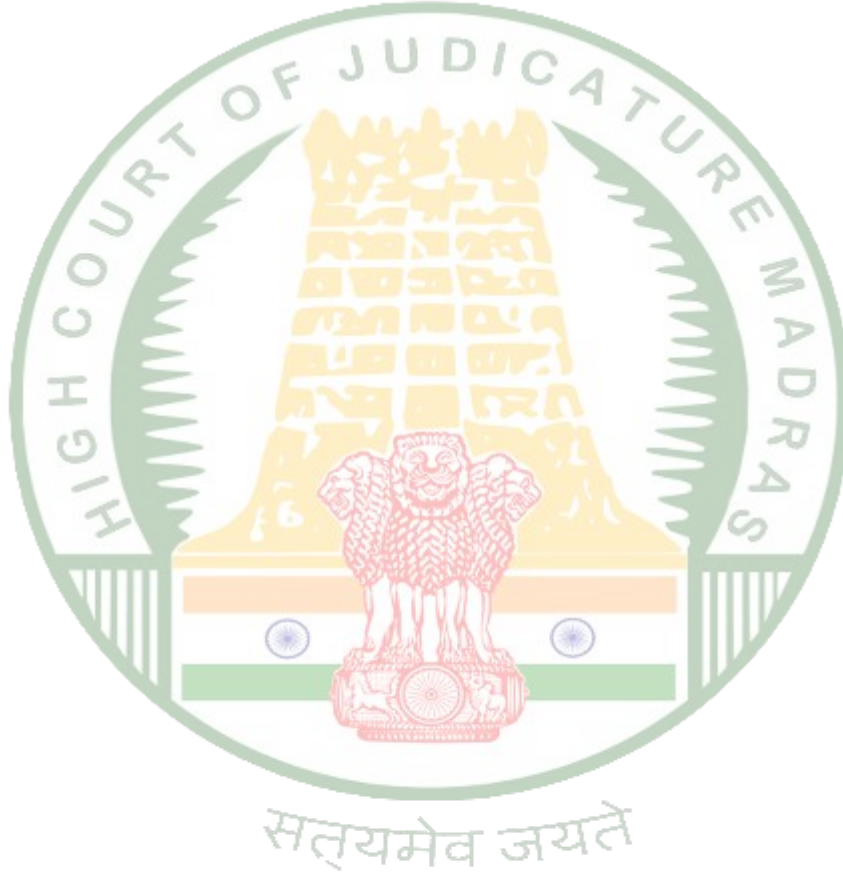
+1cc to Mr.S.Sravanan, Advocate, SR.No.93995.

+1cc to Government Pleader, SR.No.94106.

(CO)
CSR(26/11/2019)



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