

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE N.SESHASAYEE

W.A.No.3446 of 2019

S.Maragathavelan

.. Appellant/Petitioner

Vs

Tamil Nadu Water Supply and Drainage Board
No.31, Kamarajar Salai
Chepauk, Chennai - 600 005.

Rep. By its Managing Director

..Respondent/Respondent

Prayer:- Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 08.07.2019 passed in W.P.No.19552 of 2019.

Prayer in WP.No.19552/2019:

Writ Petition filed under Article 226 of the constitution of India praying for issuance of writ of certiorarified mandamus, to call for the records of charge memo, dated 07.02.2019 with reference charge memo No.17030/Estt.(DP)/A4/2018-1 issued by the respondent, quash the same and consequently direct the respondent to revoke the order of suspension dated 06.08.2018 with reference Proc.No.17030/Estt/DP/A-4/2018-1 and reinstate the petitioner with consequential benefits.

For Appellant : Mr.S.M.Muralidharan

For Respondent : Mr.R.Ganesh Babu

JUDGMENT

[Order of the Court was made by M.SATHYANARAYANAN, J.]

The appellant is the writ petitioner and challenging the impugned Charge Memo dated 07.02.2019, issued by the sole respondent, filed W.P.No.19552 of 2019, which came to be dismissed, vide impugned order dated 08.07.019 and challenging the legality of the said order, he has filed this writ appeal.

2. Facts leading to filing of the writ appeal has been narrated in detail in the order passed in W.P.No.19552 of 2019, which is the subject matter of the present appeal and

therefore, it is unnecessary to re-state the facts once again, except to cull out the facts necessary for the disposal of this writ appeal.

2.1. The petitioner is working as a Deputy Chief Engineer at the respondent-Board and was placed under suspension, pending contemplation of disciplinary action, the impugned Charge Memo came to be issued on 07.02.2019, containing four articles of charges for the irregularities committed by him during his service in Chidambaram Municipality, WSIS. Before the learned Single Judge, it was submitted that the contract was entered into between the respondent-Board and the contractor for WSIS on 28.11.2012 and the work has commenced on 03.11.2012 and on completion of the scheme as per the report of the Superintending Engineer of Tamil Nadu Water Supply and Drainage Board, dated 30.11.2015, 70% of the payment was made to the Contractor on 25.03.2013.

2.2. It is further pointed out that the trial run has commenced from 28.12.2015 and the Chief Engineer of the respondent-Board also gave his consent on 29.06.2016 for commencement of contractor's maintenance and only on 01.12.2016, the appellant has joined as Executive Engineer, Urban Division, Tamil Nadu Water Supply and Drainage Board, Cuddalore, and thereafter, only 30% of the payment was made.

2.3 Thus the stand of the appellant is that he has carried out his duties responsibly and in the light of the factual aspects, the impugned Charge Memo containing four articles of charges, is unsustainable and prays for quashment of the same.

2.4 The learned Single Judge, after going through the materials found that the points urged by the learned counsel for the appellant can be thrashed out only through adjudicatory process and therefore, dismissed the writ petition and hence, this writ appeal.

3. The learned counsel appearing for the appellant has drawn the attention of this Court to the typed set of documents, especially to the impugned Charge Memo and would submit that the appellant/petitioner cannot be visited with departmental proceedings, for which, he has discharged his duties efficiently and sincerely and though the criminal prosecution was launched in respect of the very same incident, admittedly, he has not been arrayed as accused and would point out that in the light of the factual narration, it need not require any adjudication on disputed factual aspects and hence prays for quashment of the impugned Charge Memo.

4. This Court has considered the rival submissions and also perused the materials before it.

5. A perusal of the articles of the Charge Memo would prima facie disclose that the appellant has made payment to the contractor without obtaining pre-delivery certificate and that he has also made recommendations for declaration of Contractor's Maintenance period on 01.2.2017 and that the said recommendation was made without verifying the lapses in the checklist. It is also brought to the knowledge of this Court that the appellant/petitioner, in response to the Charge Memo, has submitted his written statement of defense, wherein the petitioner have not made any recommendation for the payment to the contractor and also to declare the Contract Maintenance Period.

6. In the considered opinion of the Court, the matter revolves around factual aspects and the sustainment of the articles of the charge memo, require oral and documentary evidences and same can be done only during the course of departmental enquiry. The Hon'ble Supreme Court in the decision in Union of India and Another Vs. Kunisetty Satyanarayana, reported in [2006 (12) SCC 28], has held that discretion under Article 226 of the Constitution of India should not ordinarily be exercised by quashing a show-cause notice or charge sheet and no doubt, in some very rare and exceptional cases, the High Court can quash a charge sheet or show cause notice, if it is found to be wholly without jurisdiction or for some reasons if it is wholly illegal."

7. At this juncture, the learned counsel appearing for the appellant would submit that the petitioner is attaining his age of superannuation at the end of April 2020 and the disciplinary proceedings initiated against him may be expedited and also prays for revoking the order of suspension. Reliance was placed on Ajay Kumar Choudhary Vs Union Of India [2015-2 SCALE 432], wherein the Hon'ble Supreme Court of India, has fixed the time limit for suspension period.

8. If the petitioner is so advised, he is at liberty to submit a representation to the sole respondent for revoke the order of suspension and upon receipt of the same, the respondent-Board is directed to consider the said representation on merits and in accordance with law and to give a disposal within a period of four weeks thereafter. The disciplinary proceedings initiated against the appellant/writ petitioner shall also be expedited and concluded prior to his superannuation i.e., before the end of February, 2020. This Court, on an independent application of mind to the entire materials, is of the considered opinion that there is no error or infirmity assigned in the order passed by the learned Single Judge and therefore, the impugned order warrants no interference.

9. In the result, this writ appeal is dismissed confirming the order dated 08.07.2019 passed in W.P.No.19552 of 2019, with the above observations. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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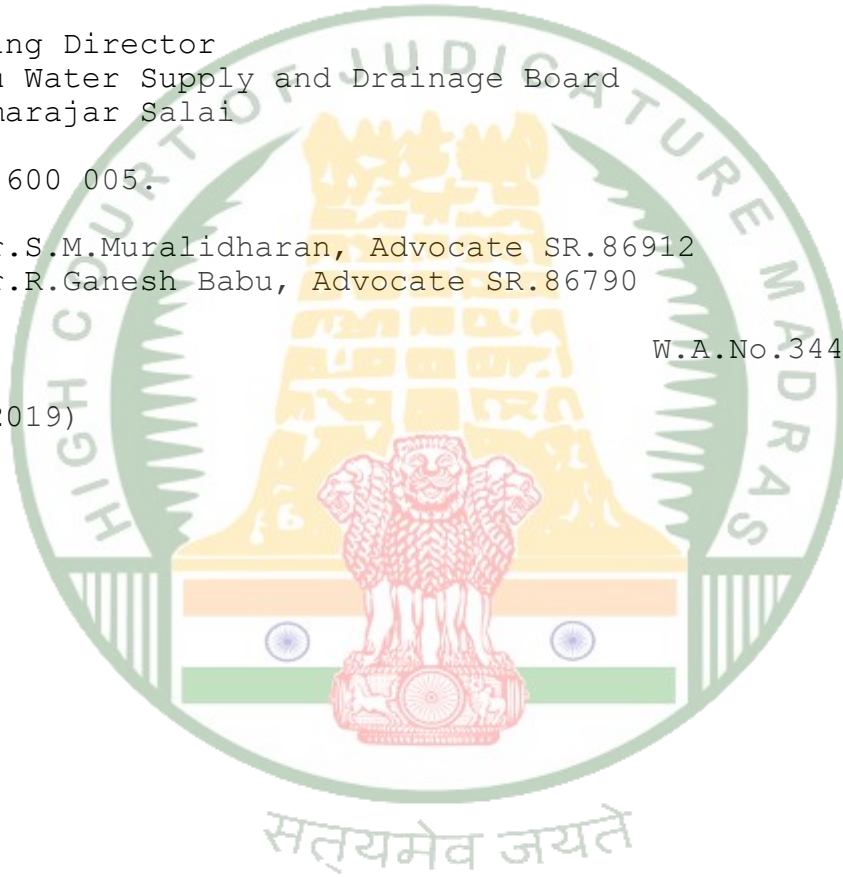
To:

The Managing Director
Tamil Nadu Water Supply and Drainage Board
No.31, Kamarajar Salai
Chepauk
Chennai - 600 005.

+1cc to Mr.S.M.Muralidharan, Advocate SR.86912
+1cc to Mr.R.Ganesh Babu, Advocate SR.86790

W.A.No.3446 of 2019

NMI (CO)
CB(25/11/2019)



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