

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2019

CORAM

THE HONOURABLE MR.JUSTICE DR.ANITA SUMANTH

W.P.No.9886 of 2017
and
W.M.P.No.10885 of 2017

R.Suresh Kumar

... Petitioner

Vs

1.The Government of Tamil Nadu,
Rep.by its Secretary,
Municipal Administration and
Sewerage and Water Development,
Secretariat, George St.Fort,
Chennai.

2.The Principal Secretary/Commissioner,
O/o of the Commissioner of Corporation,
Greater Chennai Corporation,
Rippon Building, Chennai.

... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for issuance of Writ of Certiorarified Mandamus, calling for the records from 2nd respondent in connection with proceedings of 2nd respondent viz., G.D.C.No.E13/12126/2012 dated 31.07.2015 and the consequential orders passed by the 2nd respondent viz., Po.thu.Na.Ka.No.E13/12126/2012 dated 11.03.2016 and the orders passed by the 1st respondent in G.O.(Ms)No.461 dated 30.11.2016 based on the Charge memo viz., G.D.C.No.E13/12126/2012 dated 22.06.2012 and quash the same and direct the respondents to promote him to the post of Conservancy Supervisor on par with his juniors with all consequential benefits arising there of.

For Petitioner : Mr.V.Prakash
Senior Counsel for
Mr.K.Krishnamoorthy

For Respondents : Mr.Zakkir Hussain,
Government Advocate for R1.

Mr.G.Anandarangan,
Standing Counsel for R2.

O R D E R

The petitioner is a conservancy Inspector and challenges an order passed by the 2nd respondent, the Principal Secretary/Commissioner, imposing a punishment of stoppage of increment for three years with cumulative effect, by order dated 22.06.2012.

2.Charges were framed as against nine individuals on the ground that there was negligence in the conduct of their duty in the Kodungaiyur Dumping Ground ('KDG') between the period 15.02.2012 and 17.02.2012. The nine individuals in respect of whom charges were framed are; K.Varadarajan, Assistant Executive Engineer, M.Dinakaran, Conservancy Inspector, K.Ramadoss, Conservancy Inspector, K.Sundaram, Driver d/d.Conservancy Inspector, K.G.Rajendran, Assistant Executive Engineer, P.K.Harikumar, Conservancy Supervisor, R.Suresh Kumar, Conservancy Inspector, M.Arumugam, Conservancy Inspector and R.Selvaraj, Conservancy Inspector.

3.As far as the petitioner is concerned, he was suspended on 27.03.2012 on the ground that he had manipulated the entries in the log books of the KDG with ulterior motive and falsely recorded the entry of several vehicles into the KDG between the period from 15.02.2012 to 17.02.2012. He was thus placed under suspension by order dated 27.03.2012. Charges were framed as follows:

"Charge No.1: That he has recorded the vehicle entries in the Kodungaiyur Dumping Ground Registers that certain vehicles disposed the garbage in Kodungaiyur Dumping Ground during 15.02.2012 to 17.02.2012 when actually they have not entered the Kodungaiyur Dumping Ground. By this act, he has caused heavy financial loss to the Corporation of Chennai.

Charge No.2: That Vehicle bearing registration number TN 04-B-3419 entered the Kodungaiyur Dumping Ground on 15.02.2012, at 15.20 pm was not recorded in the Register at the Kodungaiyur Dumping Ground and he has failed to record the facts in the register of the vehicles entering the Kodungaiyur Dumping Ground.

Charge No.3: That he has created a disrepute to the Corporation of Chennai by his irregularities in duty.

Charge No.4: That he has violated the Madras Corporation Servants Conduct Bye-laws 1983 to show absolute integrity in his duties."

4.Annexure III to the charge memo states that the list of documents on the basis of which the charges framed are proposed to be sustained include the registers maintained in the KDG regarding the entries of the vehicles as well as the note of the

vigilance officer dated 16.03.2012. No witnesses were arrayed to sustain the charges. On 18.07.2012, an explanation was received by the Commissioner in respect of the charges.

5.As far as the first two charges were concerned, the petitioner pointed out that the same were vague. Further no materials, on the basis of which the charges were framed, were provided to him. He had specifically sought the log registers of vehicles that had entered KDG between 15.02.2012 and 17.02.2012 despite which they had not been furnished. In the absence of the registers and log books he was handicapped and not in a position to explain the charges.

6.An Inquiry Officer was appointed by the proceedings dated 02.08.2013, who caused verification into the charges laid against the petitioner and others. An explanation was furnished to the Principal Secretary/Commissioner. A report was finalised and at Paragraph No.14, the officer states thus:

"Thus concluding from all the observations noted above it prima facie appears that inflated and false entries have been made by conservancy labourers working in the weighbridge section.

a.However as pointed out in Principal Secretary / Commissioner noting a comparison of the logbook was not possible since the same was not submitted by SWM / ME (HQ) department.

b.The role of Thiru K.Varadharaja, Assistant Executive Engineer who was there for just 2 months appears minimal in this inflated and false entries in Perungudi Dumping Ground, since he was specifically sent there for concretization of dumping yard. However no official orders have been issued here.

c.The other Assistant Executive Engineer Thiru K.G.Rajendiran posted have been working in the Kodungaiyur dumping yard for the past 1 ½ years and even though no official duties and responsibilities have been allotted to him through formal orders considering that he had been working there for the past 1 ½ years, the inflated and false entries would be known to him. All the other Conservancy Inspectors and conservancy labourers are directly responsible for this false entries.

d.Apart from these above mentioned delinquent, if the prime motive behind these false entries in the registers is creation of inflated diesel consumption and bogus bills all the drivers of these vehicles should also be held responsible for this false entries.

e.The fact that the computer entries pertaining to the period 15-02-2012 to 17-02-2012 was not available reinforces my observation that wrong entries are happening by conservancy labourers in connivance with the drivers of conservancy vehicles."

7.It is thus clear that the observations made by the Inquiry Officer are only prima facie in nature and not based on materials or proof.

8.The Inquiry Officer summarizes that there was a preponderance of probability as against the delinquents and confirmed the charges against all except one Mr.K.Varadharajan, Assistant Executive Engineer with whom we are not concerned in the present matter. Vide request dated 01.03.2017, the petitioner requested that the copy of the Inquiry report may be given to him and submitted his objections for the same.

9.The proceedings of the Principal Secretary/Commissioner dated 31.07.2015 was adverse to the petitioner and it was held that the charges had been proved as against him. Punishment of stoppage of increment for three years with cumulative effect was ordered.

10. An appeal had been filed before the 2nd respondent seeking to quash the impugned order dated 30.11.2016. The 2nd respondent in the appellate order confirms the findings of the Inquiry Officer and the first and the original order rejecting the appeal. Hence this writ petition.

11.The detailed submissions of Mr.V.Prakash, Senior Counsel for Mr.K.Krishnamoorthy, learned Counsel for the petitioner and Mr.Zakkir Hussain, learned Government Advocate for R1 and Mr.G.Anandarangan, learned Standing Counsel for R2 have been heard. Counter has been filed by the 2nd respondent alone and no counter has been filed by the 1st respondent.

12.As against nine persons against whom action was taken, charges have been dropped in respect of two individuals who were Assistant Executive Engineers. The conservancy Supervisor did not prefer an appeal. As regards the conservancy Inspectors, appeal had not been preferred by two and appeal was preferred by two others, one being the petitioner herein and the second is, one Mr.M.Arumugam. The commissioner has accepted the case of Mr.M.Arumugam on identical facts as the present matter. The order in the case of Mr.M.Arumugam states as follows:

"Order:-

Appointment committee except the commissioner on

careful consideration of the appeal of Mr.M.Arumugam, Conservancy Inspector, Zone-4 (Retired on 31.07.2015 due to superannuation) dated 26.08.2015 against the punishment of stoppage of increment for 3 years with cumulative effect in disciplinary proceedings for causing loss to corporation by lapses in maintaining the entry and exit records of Kodungaiyur Dumping Ground has resolved to cancel the award of punishment considering the explanation of the delinquent officer and the charges.

Hence, in view of the resolution of the appointment committee it is hereby ordered that the punishment of stoppage of increment for 3 years with cumulative effect to Mr.M.Arumugam, Conservancy Inspector, Zone-6 (presently Kodungaiyur Dumping Ground) is cancelled."

13.I am at a loss to understand that how the inquiry officer has arrived at different conclusions in two cases involving identical facts. When a query to this effect was put before the learned Counsel for the 2nd respondent, he is unable to provide any clarity in the matter. But, he fairly does not dispute the position that the allegations, explanations and the facts involved are one and the same.

14.Moreover, the Supreme Court, in the case of Anil Gilurker Vs.Bilaspur Raipur Kshetriya Gramin Bank and another (2011) 14 Supreme Court Cases 379 and Roop Singh Negi Vs.Punjab National Bank and Others (2009) 2 Supreme Court Cases 570 has reiterated the position that any inquiry must be conducted according to the principles of natural justice.

15.Rule 9 (2) of the Greater Chennai Corporation Class III & IV Subordinate Services By-laws, 2009, also requires the principles of natural justice to be followed prior to the imposition of any penalty which is extracted here as follows:

"9(2) In every case, where it is proposed to impose on a member of a service, any of the penalties specified in clauses (iv), (viii), (ix), (x) and (xi) of by-law 5, the grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges which shall be communicated to the person charged together with a statement of the allegations on which each charge is based and of any other circumstances on which it is proposed to take into consideration in passing orders in the case. The person so charged shall be required, within a reasonable time, to put in a written statement of his defence and to state whether he desires an oral

enquiry or only to be heard in person or both. An oral inquiry shall be held if such inquiry is desired by the person charged or is directed by the authority concerned. At the inquiry, oral evidence shall be heard as to such of the allegations as are not admitted, and the person charged shall be entitled to cross-examine the witnesses called, as he may wish, provided that the officer conducting the inquiry may, for special and sufficient reason to be recorded in writing, refuse to call a witness. After the inquiry has been completed, the person charged shall be entitled to put in, if he so desires, any further written statement of his defence. If no inquiry is held and if he has desired to be heard in person, a personal hearing shall be given to him. The proceedings shall contain a sufficient record of the evidence and a statement of the findings and the grounds thereof."

16. In this case, I have no doubt, on the basis of the facts and circumstances before me, that there was a gross violation of principles of natural justice. This is evident from the fact that the registers maintained in regard to the ingress and egress of heavy vehicles have not been furnished to the petitioner despite repeated requests.

17. In view of the apparent violation of the principles of natural justice as well as the inconsistency in accepting the appeal in the case of Mr. M. Arumugam and dismissing the appeal in the case of the petitioner, the impugned order is liable to be set aside and I do so.

18. This writ petition is allowed and consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Municipal Administration and
Sewerage and Water Development,
Secretariat, George St. Fort,
Chennai.

2.The Principal Secretary/Commissioner,
O/o of the Commissioner of Corporation,
Greater Chennai Corporation,
Rippon Building, Chennai.

+1cc to Mr.K.Krishnamoorthy, Advocate, S.R.No. 23467
+1cc to the Government Pleader, S.R.No. 23210

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and
W.M.P.No.10885 of 2017

PMS (CO)
GN(23/04/2019)



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