



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.12.2019

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD)No.17870 of 2013

and

M.P (MD)No.2 of 2013

WEB COPY

M.Perumal

... Petitioner

vs.

1)State of Tamilnadu represented
by its Secretary,
Department of Municipal Administration and Water Supply,
Fort St.George,
Chennai-9.

2)The Commissioner,
Dindigul Municipality,
Dindigul.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.No.9666/2007/H-2 dated 05.10.2010 passed by the respondent No.2 and quash the same as illegal and consequently direct the respondent No.2 to regularise the petitioner's suspension period i.e., from 09.11.2007 to 31.12.2009 and consider the same as duty period and disburse all consequential benefits within the time stipulated by this Hon'ble Court.

For Petitioner : Mr.T.Lajapathi Roy
For R1 : Mr.S.Dhayalan, Government Advocate
For R2 : Mr.J.Lawrance

ORDER

The prayer in the writ petition is to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.No.9666/2007/H-2 dated 05.10.2010 passed by the respondent No.2 and quash the same as illegal and consequently direct the respondent No.2 to regularise the petitioner's suspension period i.e., from 09.11.2007 to 31.12.2009 and consider the same as duty period and disburse all consequential benefits within the time stipulated by this Court.

2.Learned counsel for the petitioner would submit that the petitioner was appointed as Sweeper in 1981 in the 2nd respondent Municipality and his services were regularised in 1992. On 08.11.2007, a criminal case was registered against the petitioner in Crime No.718 of 2007 under Sections 147, 341, 323 and 506(i) IPC, alleging that he attacked one S.Pandian with regard to



previous enmity and on 09.11.2007, he was arrested and remanded to judicial custody. Thereafter, on 14.11.2007, he was placed under suspension by the 2nd respondent. In the meanwhile, a charge sheet was filed in criminal case and the said case ended in acquittal on 18.11.2009. Pursuant thereto, the petitioner made a representation dated 09.12.2009 to the 2nd respondent to reinstate him into service and the 2nd respondent by order 26.12.2009 allowed the petitioner to join the service from 01.01.2010. While so, on 19.03.2010, the 2nd respondent issued a charge memo against the petitioner alleging his involvement in the criminal case and subsequently appointed one Jeganathan as enquiry officer on 12.07.2013.

3.He would further state that on 16.07.2010, the 2nd respondent sent a communication asking the petitioner to appear for enquiry on 23.07.2010 about 04.00 p.m before the enquiry officer. The petitioner appeared before the enquiry officer and submitted his explanation. After enquiry, the enquiry officer held the charges as not proved. Thereafter, the 2nd respondent passed the present impugned order stating that the enquiry officer's report is not acceptable one and imposed the punishment of stoppage of increment for two years with cumulative effect and further stated that suspension period should be considered as leave on loss of pay. According to the learned counsel, before passing the impugned order of punishment, the petitioner was not given opportunity of hearing or to submit his explanation and therefore, it is violative of principles of natural justice. Thus, he would pray for setting aside the impugned order. In support of the above contentions, he would rely on the judgment reported in (1998) 7 SCC 84, Punjab National Bank vs. Kunj Behari Misra and the decision in W.P(MD)No.48009 of 2006 dated 21.09.2010, R.Sengodan vs. Superintendent of Police, Namakkal.

4.The 2nd respondent has filed counter affidavit. Learned counsel for the 2nd respondent would state that as per the rules, if any worker is arrested and is kept in jail for more than 48 hours, he will be automatically placed under suspension and therefore, there was no irregularity in suspending the petitioner. Though the enquiry officer held the charges against the petitioner as not proved, he opined that the petitioner had indulged in criminal activities. He would further state that the disciplinary authority has power to impose punishment by deviating the enquiry report and after providing all the opportunities to the petitioner and after considering his explanation, enquiry report and also following the due procedure, impugned order of punishment was passed. Thus, he would pray the interference of this Court is not necessary.

5. Heard both sides.



6.Perusal of record shows that the petitioner was placed under suspension by the 2nd respondent on 14.11.2007 citing pendency of the criminal case. In the criminal case, charge sheet was also filed. The petitioner's suspension was not revoked. Finally, the criminal case filed against the petitioner also ended in acquittal on 18.11.2009. After acquittal, on the representation of the petitioner, he was reinstated in service on 01.10.2010. The criminal case is on account of a private complaint between two parties which has nothing to do with the duties of the petitioner who is a last grade employee namely, Sweeper. After acquittal, the 2nd respondent on 19.03.2010 issued a charge memo against the petitioner for his involvement in the criminal case and subsequently, an enquiry officer was appointed who found that after the acquittal in the criminal case, the 2nd respondent ought not to have issued charge memo and accordingly held the charges against the petitioner as not proved, but the 2nd respondent/disciplinary authority resorted to impose the punishment of stoppage of increment for two years with cumulative effect on the petitioner and also treated the suspension period as leave on loss of pay, which is against the settled law. When the enquiry officer is in favour of the delinquent and the disciplinary authority proposes to differ with the said conclusion, then he should provide the delinquent an opportunity of being heard. It will be most unfair and iniquitous that where the charged delinquents succeed before the enquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and while recording a finding of guilt, imposes punishment on the delinquent.

7.Here, such a procedure has not been followed and the petitioner on account of a private complaint, had been suspended as he had been in jail for 48 hours and once when the case itself ended in acquittal, the authority ought to have reinstated him and ought not to have proceeded with any disciplinary proceedings as there is no violation of any duty before the disciplinary authority and the suspension period be regularised by treating it as duty period and in a case of similar nature in W.P.No.48009 of 2006, this Court has held as follows:-

'7.The petitioner was under suspension for the period from 18.01.1991 to 12.05.1996 when he faced criminal prosecution. The criminal prosecution ended in acquittal. Hence as per ruling 9 of the Fundamental Rules 54-B, the petitioner is entitled to regularisation of his period of suspension. The aforesaid ruling 9 of Fundamental Rule 54-B is as follows:

"Where a Government Servant is placed under suspension in view of the fact that complaint against him



of a criminal offence is under investigation or trial, and the Government Servant is subsequently reinstated in service on his acquittal by the Court either on merits or on the ground that the charge against him has not been proved or by giving benefit of doubt or on any other technical ground, he must be regarded as having been prevented from discharging his duties and the period of his absence including the period of suspension shall be treated as duty for all purposes and he shall be paid full pay and allowances which he would have been entitled to, had he not been under suspension, or dismissed or removed or compulsorily retired from service.""

In view of the aforesaid Fundamental Rule, the petitioner is entitled to regularisation of the period of suspension.

8.In the present case, the criminal case filed against the petitioner has ended in acquittal and the disciplinary proceedings have been initiated after the acquittal and though the enquiry officer has found the charges as not proved, the 2nd respondent/disciplinary authority without giving any reason for deviation from the findings of the enquiry officer and without giving opportunity to the petitioner, has imposed the punishment of stoppage of increment for two years with cumulative effect and has also ordered to treat the suspension period as leave on loss of pay which is against Rule 54-B of the Fundamental Rules and also against the principles of natural justice and therefore, I am inclined to interfere with the impugned order.

9.Accordingly, the impugned order in Na.Ka.No.9666/2007/H-2 dated 05.10.2010 passed by the respondent No.2 is quashed and the 2nd respondent is directed to treat the petitioner's suspension period i.e., from 09.11.2007 to 31.12.2009 as duty period as if he has continued in service and disburse all consequential benefits within a period of twelve weeks from the date of receipt of a copy of this order.

With the above direction, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2020

Sub Assistant Registrar (CS)



To

1) The Secretary,
State of Tamilnad,
Department of Municipal Administration and Water Supply,
Fort St.George,
Chennai-9.

2) The Commissioner,
Dindigul Municipality,
Dindigul.

+1 CC to MR.J.LAWRANCE, Advocate (SR-104115[F] dated 10/12/2019)

+1 CC to MR.T.LAJAPATHI ROY, Advocate (SR-104129[F] dated 10/12/2019)

+1 CC to SPL GP (SR-104179[F] dated 10/12/2019)

ORDER MADE IN
W.P(MD)No.17870 of 2013
DATED : 09.12.2019

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