



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 04.12.2019
CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.(MD).No.11719 of 2019

and

W.M.P.(MD)Nos.8888 and 8889 of 2019

R.Selvamani

... Petitioner

Vs.

1.The Principal Secretary to Government,
Govt. Tamil Nadu,
Municipal Administration and Water
Supply (ME.4) Department,
Secretariate, Chennai.

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

3.The Director of Local Fund Audit,
Chennai 600 108.

4.The Regional Director of Municipal Administration,
Tiruneveli.

5.The Municipal Commissioner,
Nagercoil Municipality,
Nagercoil.

6.The Municipal Commissioner,
Colachel Municipality,
Colachel.

... Respondents

PRAYER:Writ Petition filed under Article 226 of the constitution of India to issue a writ of Certiorarified mandamus, to call for the records of the 1st respondent's G.O.(D).No.137, dated 22.03.2019, by giving punishment of compulsory retirement to the petitioner from the cadre of Overseer, Colachel Municipality i.e. 6th respondent and consequential relieving order of 6th respondent in Na.Ka.No.498/2019/C1, dated 22.04.2019 and quash the same and consequently direct the 1st respondent to direct the 6th respondent to reinstate petitioner in service in his original place and to provide him all his service benefits within the period as stipulated by this Court.



For Petitioner : Mr.A.Haja Mohideen
For RR1 to 4 : Mr.M.Jeyakumar
Additional Government Pleader
For RR5 & 6 : Mr.P.Athimoolapandian

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O R D E R

Three charges were framed against the petitioner on 24.10.2010. As per the charges, the petitioner herein while working as a Work Inspector at Nagercoil Municipality, during the period from 08.12.2000 to 16.11.2005, had executed works without calling for tenders, thereby causing huge loss to the tune of Rs.19,38,658/-. The second charge was that he had obtained Rs.5,00,000/- as advance for execution of three works and since the amount was at the disposal of the petitioner, it amounted to temporary misappropriation. The third charge pointed out on various irregularities during the course of execution of various works.

2.The petitioner was subjected to disciplinary action under Rule 8(2) of the Tamil Nadu Municipal Services (Discipline and Appeal) Rules, 1970 and pursuant to the enquiry, all the three charges against the petitioner were held to be "not proved". The finding of the enquiry officer was taken up by the first respondent herein and the impugned order in G.O.(D)No.137, dated 22.03.2019 came to be passed holding that all the three charges are "proved" and accordingly punishment of compulsory retirement was imposed.

3.I have perused the enquiry report, dated 31.07.2014. The report has substantiated the reasons for holding that the petitioner is not liable for the charges. Though the charges seem to be grave in nature, the enquiry officer had come to the conclusion that calling for tenders is under jurisdiction of the Commissioner and that the petitioner herein is only a subordinate under the Municipal Engineer and the Junior Engineer. It was also found that in view of the designation, the petitioner cannot be made liable for not calling for the tenders. Likewise, insofar as the second charge is concerned, the enquiry officer was of the view that the huge advance amount of Rs.5,00,000/- was taken only after proper approval of the Municipal Commissioner and therefore, it cannot be treated as a temporary misappropriation. The third charge of the infirmities was also suitability substantiated by the enquiry officer.

4.While that being so, the Government in its impugned order had simply extracted the charges and the findings of the enquiry officer and had chosen to differ with the same, by a non-speaking order. Though the impugned order runs to about 8 pages, 99% of the order is a mere clerical work of extracting facts from the files. The independent opinion rendered by the Government is in two lines alone, which are as follows:-



"The tender procedure while executing work and in the purchase of materials was not followed. Further huge amount was withdrawn for three works."

5. Apart from these two lines, there is absolutely no justification on the part of the Government for having differed from the findings of the enquiry officer. When the enquiry officer has chosen to give his reasons as to why the charges are held to be "not proved", there was a duty cast on the Government to render their own decisions for the purpose of differing from such findings. A mere statement that the tender procedure was not followed and that huge amount was withdrawn for three works alone will not suffice for the purpose of differing from the enquiry officers categorical findings. While that being so, the punishment imposed therein cannot be sustained.

6. Under Rule 5(5) of the Tamil Nadu Municipal Services (Discipline and Appeal) Rules 1970, the appellate authority is empowered to review the findings of the disciplinary authority wherever charges are dropped and while reviewing the same, reasons are required to be recorded in writing and thereafter, suitable action has to be taken on the proved charges. As observed, while the order of the Government itself is a non-speaking order, the consequential imposition of the punishment of compulsory retirement cannot be sustained. Nevertheless, in view of the fact that this Court finds the order to be non-speaking order, the appropriate remedy would be remand back the matter back to the first respondent herein for further appraisal.

7. At this juncture, the learned counsel for the petitioner would submit that the petitioner herein is due to retire on 31.07.2020 and further remand would cause serious prejudice to the petitioner. Such a submission could be met with if the first respondent herein is directed to complete the proceedings within a stipulated time.

8. In the light of the above observations, the impugned order G.O.(D).No.137, dated 22.03.2019, is set aside and the consequential order passed by the sixth respondent in Na.Ka.No.498/2019/C1, dated 22.04.2019 also stands quashed and the matter is remanded back to the first respondent for fresh consideration. During the course of such consideration, the first respondent herein shall give due opportunity to the petitioner herein to put forth his case and thereafter, pass a reasoned speaking order, by consideration of all the objections raised by the petitioner before the first respondent as well as the earlier objections raised. In view of his forthcoming retirement, the first respondent herein shall strive to complete such proceedings at least within a period of 60 days from the date of receipt of a copy of this order.



8.This writ petition stands allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)

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To

- 1.The Principal Secretary to Government,
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Municipal Administration and Water
Supply (ME.4) Department,
Secretariate, Chennai.
- 2.The Commissioner/Director of
Municipal Administration,
Chepauk, Chennai-600 005.
- 3.The Director of Local Fund Audit,
Chennai 600 108.
- 4.The Regional Director of Municipal Administration,
Tiruneveli.

+1 CC to Mr.A.HAJAMOHIDEEN, Advocate (SR-103430[F] dated
04/12/2019)

+1 CC to SPL GP (SR-103599[F] dated 05/12/2019)

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