



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.11.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) No.8672 of 2019

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Tharmaraj

... Petitioner

-Vs-

1.The Additional Chief Secretary to Government,
Department of Highways and Minor Ports,
Secretariat, St. George Fort, Chennai.

2.The Secretary to Government,
Department of Municipal Administration
and Water Supply, Secretariat,
St. George Fort, Chennai.

3.The Commissioner,
Tribunal for Disciplinary Proceedings,
Tirunelveli.

... Respondents

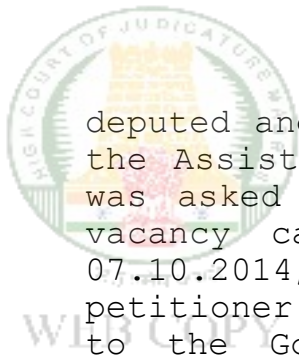
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned punishment order issued by the first respondent herein in G.O.(2D)No.31, Highways and Minor Ports (HL1) Department, dated 12.09.2017 and the consequential order passed in Appeal / Review by the first respondent herein in G.O.(D) No.42, Highways and Minor Ports (HL1) Department, dated 15.03.2019 and quash the same and consequently, direct the respondents to promote the petitioner with due regards to the petitioner's seniority and confer with all other monetary and service benefits.

For Petitioner : Mr.S.Chellapandian
For Respondents : Mr.V.R.Shanmuganathan,
Special Government Pleader.

ORDER

The Government Orders in G.O.(2D)No.31, Highways and Minor Ports (HL1) Department, dated 12.09.2017 and G.O.(D)No.42, Highways and Minor Ports (HL1) Department, dated 15.03.2019 are sought to be quashed in the Writ Petition. Further direction is sought for to direct the respondents to promote the petitioner with due regards to the petitioner's seniority and confer with all other monetary and service benefits.

2.The petitioner was appointed as Assistant Engineer in Highways Department in the year 1998. After promotion, he is now working as Assistant Divisional Engineer (Highways). On 07.09.2011, while he was working as Assistant Divisional Engineer, he was



deputed and posted as Assistant Executive Engineer in the office of the Assistant Director of Town Panchayats, Tirunelveli Zone and he was asked to hold additional charge of Assistant Director in the vacancy caused by transfer. While so, a charge memo, dated 07.10.2014, was issued to the petitioner, alleging that the petitioner and two others caused loss to the tune of Rs.2,00,044/- to the Government in the execution of contract work for the formation of cement concrete road at Mathakovil South Street in Panagudi Town Panchayat in Tirunelveli District, by giving excess payment to the contractor, namely, S.George, who has not done the road work as per the estimate.

3. According to the petitioner, the Inspector of Police, Vigilance and Anticorruption has enquired the complaint of a resident of Panagudi Village and recommended the disciplinary proceedings against the petitioner and others. Without giving any opportunity to the petitioner, the second respondent has accepted the recommendations and referred the matter to the third respondent. The third respondent has issued a charge memo dated 07.10.2014 along with list of documents and witnesses. The petitioner was on the verge of promotion and this Court in the Writ Petition filed by the petitioner, has directed the third respondent to conclude the disciplinary proceedings, within a period of six months from the date of receipt of a copy of the order. The charge memo and some of the documents did not contain the name of the complainant. The third respondent has examined 19 prosecution witnesses and one defense witness and marked 18 documents. The third respondent gave a report that the charge levelled against the petitioner is proved. The petitioner has submitted representations dated 14.12.2016 and 09.03.2017, in response to the explanation sought for by the first respondent. The first respondent, without considering the statements of the petitioner, by four line order in G.O.(2D)No.31, Highways and Minor Ports (HL1) Department, dated 12.09.2017, has imposed punishment of stoppage of increment for two years with cumulative effect and to recover the loss incurred by the Government.

4. The petitioner has filed appeal on 07.11.2017 as per Rule 20 of Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955. The first respondent himself considered the appeal and rejected the same by issuing G.O.(D)No.42, Highways and Minor Ports (HL1) Department, dated 15.03.2019. The petitioner has come out with the present Writ Petition, challenging the said rejection.

5. The learned counsel appearing for the petitioner contended that:-

(i) The first respondent erred in considering the appeal filed by the petitioner and has reviewed his own order and rejected the same.



(ii)The first respondent, independently considering the materials on record and representations dated 14.12.2016 and 09.03.2017, by four line order, has imposed punishment by issuing G.O.(2D)No.31, Highways and Minor Ports (HL1) Department, dated 12.09.2017.

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(iii)The first respondent, without considering the explanation submitted by the petitioner and without giving any independent reason, has imposed punishment.

(iv)The first respondent has failed to see that out of 19 witnesses, 15 witnesses turned hostile and out of four other witnesses, except P.W.19, the other witnesses supported the case of the petitioner. The first respondent did not disclose the name of the complainant and copy of the complaint. The failure on the part of the first respondent is violation of Rule 8(a)(i) of Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules 1955 and entire disciplinary proceedings are vitiated and the impugned orders are liable to be set aside.

(v)The Panagudi Town Panchayat has passed a resolution No.739, dated 14.02.2011 for laying cement road at "Mathang Kovil Street in 9th Ward of Panagudi Town Panchayat" and not at "Mathakovil South Street in 5th Ward".

(vi)The Assistant Director of Town Panchayat, Tirunelveli Zone in his proceedings R.C.No.2813-1/2012/P1, dated 07.08.2012, has revised administrative sanction and ratification for laying cement road at Mathang Kovil Street. The work has been undertaken at Mathang Kovil Street, 9th Ward of Panagudi Town Panchayat and not at Matha Kovil Street in 5th Ward.

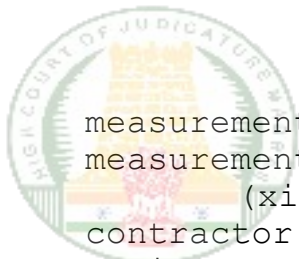
(vii)No work was done in Matha Kovil Street or at Matha Kovil South Street, during the year 2011-2012. The super check measurement was made at Matha Kovil Street instead of Mathang Kovil Street.

(viii)The President of Town Panchayat was not examined and resolution No.739, dated 14.02.2011 was not produced.

(ix)The 9th ward Councilor was examined as P.W.17 and he deposed that he only brought the resolution No.739, dated 14.02.2011, for laying cement road in Mathang Kovil Street.

(x)P.W.18, the then Executive Officer has also deposed that resolution No.739, was passed on 14.02.2011 for laying cement road at Mathang Kovil Street and in administrative sanction there was a printing mistake as Matha Kovil South Street instead of Mathang Kovil Street.

(xi)The Chairman, Panangudi Town Panchayat was examined as P.W.3, who deposed in cross-examination that he was called for re-



measurement of Matha Kovil South Street and that he questioned why measurement should be made in a place, where no work has been done.

(xii)The work in Mathang Kovil Street was completed and contractor was issued cheque on 15.06.2012 and Cheque issued Register was marked as Exs.D.E. 6 and 7.

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(xiii)The third respondent, without considering the resolution No.739, dated 14.02.2011, revised administrative sanction and evidence of witnesses, has erroneously held that charge levelled against the petitioner is proved. The first respondent, without giving any reason, has mechanically, accepted the report of the third respondent and imposed punishment.

(xiv)The first respondent, without measuring the correct road, has framed the charges on a complaint given by a resident of Panagudi, Village, and imposed punishment.

6.The learned counsel appearing for the petitioner relied on the following judgments:-

(i) **2009 1 MLJ 701 (N.Sivakumaran Vs. State of Tamil Nadu, represented by the Secretary to Government, Chennai and others).** The relevant portion of the said judgment reads as follows:-

"32.In the case of an appeal against the order of imposing any penalty under Rules 8 or 9, the appellate authority shall consider as to whether (1) the facts on which the order was passed have been established, (2) the facts established offered sufficient ground for taking action and (3) the penalty is excessive, adequate or inadequate and passed orders confirming, enhancing, reducing or setting aside the penalty or committed remitting the case to the authority of which imposed the penalty, with such direction as it may be deemed fit in the circumstances of the case. Clause ii of Rule 23 (1) states that any error or defect in the procedural violation in imposing penalty may be disregarded by the appellate authority if such authority considers for the reason to be recorded in writing that the error or defect was not material and had neither caused injustice to the person concerned or affect the decision of the case. Powers of the appellate authority are circumscribed by a specific statutory provision which sets out the parameters to be examined by such authority. Unless the appellate authority examines the said aspects and assign brief reasons, mere extracting the views of the Tamil Nadu Public Service Commission does not satisfy the requirements of the statutory rule and that would not amount to giving of reasons. Besides looking into



enjoined with the duty to examine whether there is any procedural defect or violation or error in imposing the penalty and Clause (ii) of Rule 23(1) and discard any error or defect or procedural violation in imposing the penalty, if the authority finds that such error or defect or violation is not material or injustice to the person concerned or affect the decision. A penalty suffered by a government servant affects his service and monetary benefits and casts a stigma in his career. It is well known that penalty suffered by a government servant is counted for promotion to higher posts. Right to consider for promotion has been recognized as a statutory right and therefore, when the authority is vested with the jurisdiction of testing the correctness of penalty, circumscribed by certain parameters, it is imperative that such authority has to scrupulously follow the parameters set out in the rule. All the more, if the government servant is inflicted with a major penalty of removal or dismissal or compulsory retirement, whereby he is deprived of his right to earn through employment, the protection given under Article 311(2) of the Constitution of India, supported by statutory rules, the procedure to be followed and the factors to be taken into account by the disciplinary and appellate authorities cannot be simply disregarded by such authorities to the detriment of the employee....."

(ii) (2011) 14 SCC 379 (**Anil Gilurker Vs. Bilaspur Raipur Kshetriya Gramin Bank and another**). The relevant portion of the said judgment reads as follows:-

"12. We also find that along with the charge-sheet dated 31.1.1989 no statement of imputations giving the particulars of the loan accounts or the names of the borrowers, the amounts of loans sanctioned, disbursed and misappropriated were furnished to the appellant, and yet the disciplinary authority has called upon the appellant to submit his written defence statement in reply to the charges....."

14. This position of law has been reiterated in the recent case of **Union of India Vs. Gyan Chand Chattar** and in para 35 of the judgment as reported in SCC, this Court has observed that the law can be summarised that an enquiry is to be conducted against any person giving strict adherence to the statutory provisions and principals of natural justice and the charges should be specific, definite and giving details of the incident which formed the basis of



charges and no enquiry can be sustained on vague charges."

(iii) **(2006) 5 SCC 88 (M.V.Bijiani Vs. Union of India and others)**. The relevant portion of the judgment reads as follows:-

"While making the enquiry as against the Appellant, the Enquiry Officer made adverse comments about the correctness or otherwise of the statements made by the witnesses examined on behalf of the department without assigning any reasons therefor.....

Evidently, the evidences recorded by the Enquiry Officer and interferences drawn by him were not commensurate with the charges. If it was a case of misutilisation or missappropriation, the Appellant should have been told thereabout specifically. Such a serious charge could not have been enquired without framing appropriate charges. The charges are otherwise vague. We have noticed herein before that the High Court also proceeded on the basis that the non-maintenance of diary amounted to misutilisation of copper wire."

(iv) **(2008) 3 SCC 484 (Moni Shankar Vs. Union of India and another)**. The relevant portion of the said judgment reads as follows:-

"17.The departmental proceeding is a quasi judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The Court exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely - preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality."

(v) **R.Balakrishnan Vs. Food Corporation of India made in W.P.No.20896 of 2003, dated 07.02.2011**. The relevant portion of the order reads as follows:-

<https://hcservices.ecourts.gov.in/hcservices/>



"21. On the facts of the present case, even if it is admitted that the delinquent officer has not denied or even consented for the marking of 54 documents, that itself is not sufficient unless the contents of the said documents are proved in connection with the charges framed against the Petitioner. The entire analysis of the report of the Enquiry Officer shows that the prosecution witness has not proved the contents of the documents exhibited with consent, but the Enquiry Officer has chosen to analyse the defence witnesses for the purpose of arriving at a conclusion, which, in my considered view, cannot be said to be a proper method for arriving at a conclusion and the same is opposed to the basic principles of letting in evidence and arriving at a proof. Even though it is true that in departmental proceedings the provisions of the Indian Evidence Act do not apply in strict sense, there must at least be a semblance of applicability of principles of law, which is the basis of the concept of natural justice."

(vi) **Roop Singh Negi Vs. Punjab National Bank and others made in Civil Appeal No.7431 of 2008, dated 19.12.2008.** The relevant portion of the said judgment reads as follows:-

"17. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-same evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof."

(vii) **P. Thangavel Vs. Director General of Police made in W.P.No.38807 of 2005 dated 31.03.2009.** The relevant portion of the said order reads as follows:-

<https://hcservices.ecourts.gov.in/hcservices/>



"11.6. In an another unreported order in W.P.Nos.29862 and 32581 of 2002, dated 22.02.2005 another Division Bench of this Court held that, "6....It is not in dispute that all the prosecution witnesses except P.W.3, who is none other than the Deputy Superintendent of Police, the other witnesses, viz., P.Ws.1, 2, 4 and 5 turned hostile before the Enquiry Officer and not to supported thier earlier statement made at the preliminary enquiry. The Enquiry Officer having noted the above aspect curiously submitted a report holding that all the three charges levelled against them are proved based on the preliminary enquiry."

7. The respondents have filed counter affidavit and denied various averments made in the affidavit filed in support of the Writ Petition. The learned Special Government Pleader appearing for the respondents contended that:-

(i) as per Section 13 of the Whistle Blowers Protection Act, 2014, identity of the Whistle Blower and complaint cannot be revealed. The said Section over rides Rule 8(a)(i) of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal), Rules, 1955.

(ii) There is no provision for furnishing report of preliminary enquiry, by the Inspector of Police, Vigilance and Anticorruption, since the petitioner has ample opportunity to put forth his case and cross-examine the prosecution witnesses in the domestic enquiry.

(iii) The third respondent has conducted the enquiry, as per the procedures. The petitioner has cross examined the witnesses and also let in both oral and documentary evidence.

(iv) The third respondent, appreciating the materials on record, has properly given a finding that the charge levelled against the petitioner is proved. The first respondent, considering the report of the enquiry officer and explanation submitted by the petitioner, has imposed the impugned punishment, which is valid and legal.

(v) The petitioner, taking advantage of similarity in names of the roads, is trying to contend that the charge levelled against him is not proved.

(vi) The cement road was to be laid only in Matha Kovil Street and the petitioner and others had paid Rs.2,00,044/- to the contractor, when the contractor had not executed the work as per the scheme.



(vii) P.W.1 had measured the work done by the contractor at Matha Kovil South Street and has given a report and deposed before the third respondent. The report and evidence clearly proved the charge levelled against the petitioner.

(viii) The petitioner cannot dictate terms to the first respondent, which witnesses to be examined and documents to be produced. It is for the petitioner to summon the witnesses, whom he wish to examine and produce the documents.

(ix) most of the witnesses turned hostile. Even if one witness deposed about the misconduct committed by the petitioner, it is sufficient to prove the charges levelled against the petitioner.

(x) When the enquiry conducted by the third respondent is fair and proper and is not challenged by the petitioner, the evidence on record, cannot be appreciated in Writ Proceedings.

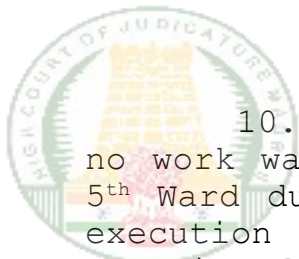
(xi) The petitioner instead of filing appeal against the order of the first respondent, filed review petition to the first respondent. A review petition can be considered and can be decided only by original authority and the first respondent has considered the grounds raised by the petitioner in the review petition properly and rejected the same.

(xii) the first respondent, after obtaining opinion from TNPSC, has rejected the review petition filed by the petitioner.

(xiii) The impugned orders passed by the first respondent are valid and legal and the learned Special Government Pleader appearing for the respondents prayed for dismissal of the Writ Petition.

8. Heard the learned counsel appearing for the petitioner, the learned Special Government Pleader appearing for the respondents and perused the materials available on record carefully.

9. The charge levelled against the petitioner is that without laying cement road at Matha Kovil Street, the petitioner and others paid a sum of Rs.2,00,044/- to the contractors and caused loss to the Government. The said charge was framed based on the report of the Inspector, Vigilance and Anticorruption Department, who investigated the complaint given by one resident of Panagudi. To substantiate the said charge, 19 witnesses were examined by the first respondent, before the third respondent and 18 documents were marked. Except P.W.1, and P.W.19, other witnesses did not support the case of the first respondent. P.W.1 is the person, who measured the work executed at Matha Kovil South Street and gave report. P.W.19 is the Investigating Officer.



10. On the other hand, it is the case of the petitioner that no work was sanctioned and executed at Matha Kovil South Street in 5th Ward during the year 2011-2012. By resolution No.739, work of execution of cement road at Mathang Kovil Street at 9th Ward, was sanctioned. The mistake in administrative sanction was rectified and revised administrative sanction was issued by the Assistant Director of Town Panchayat, Tirunelveli Zone, in his proceedings R.C.No.2813-1/2012/P1, dated 07.08.2012. To substantiate this contention, the petitioner has produced and marked resolution No.739, and revised administrative sanction dated 07.08.2012. The cheque was issued to the contractor on 15.06.2012 and the Cheque issued Register was marked as Ex.D.E 6 and 7.

11. In addition to the above, the 9th Ward Councilor was examined as P.W.17, who deposed that he only brought the resolution No.739 for executing the work of laying cement road at Mathang Kovil Street. Similarly, P.W.18 Executive Officer has also deposed that Resolution No.739, and administrative order were issued for laying cement road at Mathang Kovil Street only. P.W.3 Chairman of Panagudi Town Panchayat deposed that he questioned as to why the Matha Kovil Street was measured, when no work was done in the said street. The third respondent has failed to consider the documents produced by the petitioner to prove that work of laying cement road was sanctioned and executed only in Mathang Kovil Street not Matha Kovil Street. The finding of the third respondent, holding that the charge levelled against the petitioner and others are proved based on the evidence of P.W.1 and P.W.19, is perverse, erroneous and contrary to the evidence on record. When there is a discrepancy with regard to the road, in which cement road was laid, it is for the first respondent to prove by acceptable evidence that work was sanctioned to be executed only at Matha Kovil South Street and the petitioner and two others paid amounts to the contractor, when the work was not executed, as per the schedule. The first respondent has failed to discharge the burden of proof.

12. When the third respondent has given finding without properly appreciating the materials on record, this Court can interfere with such finding, as the same is baseless and of no evidence. In the domestic enquiry, strict proof of charges levelled against the delinquent employee is not necessary as required in the criminal case. But, there must be some acceptable evidence before the enquiry officer. In the present case, most of the witnesses turned hostile and other witnesses, except P.W.1 and P.W.19, supported the contention of the petitioner. The third respondent has not considered the evidence of prosecution witnesses and evidence of witness examined by the petitioner in proper perspective and erroneously, held that the charge levelled against the petitioner and two others, is proved. When there is no acceptable evidence and when no reasonable conclusion has arrived at by the enquiry officer, the Court can interfere with such finding.



13.The first respondent has extracted the charge memo, the explanation of the petitioner, the finding of the third respondent and after explanation of the petitioner, passed the impugned order, without giving any reason. The impugned orders of the first respondent are not speaking orders and are liable to be set aside.

14.For the above reasons, the impugned orders of the first respondent are quashed. In view of quashing the orders of the first respondent, imposing punishment, the other contentions of the learned counsel appearing for the petitioner with regard to non-furnishing the name and complaint of the Whistle Blower and that the first respondent himself has reviewed his own order, imposing punishment, are not decided on merits.

15.In the result, this Writ Petition is allowed as prayed for. No costs.

Sd/-

Assistant Registrar (AD-II)

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Sub Assistant Registrar(CS)

To

1.The Additional Chief Secretary to Government,
Department of Highways and Minor Ports,
Secretariat, St. George Fort, Chennai.

2.The Secretary to Government,
Department of Municipal Administration
and Water Supply, Secretariat,
St. George Fort, Chennai.

3.The Commissioner,
Tribunal for Disciplinary Proceedings,Tirunelveli.

+1 CC to M/s.S.CHELLAPANDIAN, Advocate (SR-102327[F] dated
28/11/2019)

+1 CC to M/s.SPL GP (SR-102832[F] dated 29/11/2019)
SMA/16/12/19/11P/6C

W.P. (MD)No.8672 of 2019

28.11.2019