

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2020

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.12648 of 2007

K.Kumar

...Petitioner

Vs.

1. The Commandant of Town Panchayats,
Kuralagam,
Chennai - 108.
2. The District Collector,
Coimbatore.
3. The Executive Officer,
Periyanaickan Palayam Town Panchayat,
Periyanaicken Palayam, Coimbatore District ...Respondents
(R3-Impleaded as per order dated
22.01.2015 in M.P.No.1 of 2015)

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records connected in Pro.Na.Ka.No.S2/169219/92 dated 22.7.94 passed by the District Collector, Coimbatore and set aside the same and direct the respondent to sanction increment from 1994 onwards and pay arrears.

For Petitioner : ***Mr.G.Elanchezhian**

For Respondents : Mr.K.Magesh
Special Government Pleader

ORDER

This writ petition has been filed challenging the proceedings of the second respondent in Pro.Na.Ka.No.S2/169219/92 dated 22.7.1994.

2. The petitioner joined as a Junior Assistant at Thondamuthu Town Panchayat, Thoundamuthu, Coimbatore. Subsequently, while he was working as Junior Assistant at Kuruchi Town Panchayat, he was served with a charge memo stating

that he intentionally made contrary statement as witness before the learned Chief Judicial Magistrate Court, Coimbatore and thereby helped the accused and also that he is failed to do his duty.

3. After receiving the said charge memo, he offered his explanation to the District Town Panchayat Officer, Coimbatore on 17.05.1993 by denying the charges framed in the charge memo. After receipt of the explanation, the respondent appointed an enquiry officer. The enquiry officer enquired the petitioner and sent his report to the second respondent. The second respondent has passed the impugned order imposing punishment of stoppage of increment for 6 years. Challenging the said order, this petitioner filed an original application before the State Administrative Tribunal. Due to the abolition of State Administrative Tribunal, the matter was transferred to the file of this Court and renumbered as W.P.No.12648 of 2007.

4. The learned counsel for the petitioner would submit that no prosecution witness was examined by the enquiry officer to prove the charges and it is against the rule 17(b) of TNCS (D & A) rules and also against the principles of natural justice. It is also submitted by the learned counsel for the petitioner that the enquiry report was not furnished to the petitioner by the disciplinary authority before imposing punishment and thereby opportunity of submission of further representation was denied which is also against the principles of natural justice.

5. Learned Special Government Pleader appearing for the respondents would submit that the order of punishment was passed on 22.07.1994. However, till the date of retirement, he has not challenged the said order and also not filed any appeal. Instead he challenged the same after his retirement alleging that principles of natural justice has not been followed and the procedure contemplated under Rule 17(b) of TNCS (D & A) rules was also not followed.

6. In response to the submission of the learned Special Government Pleader, learned counsel for the petitioner would submit that the petitioner retired from his service in the year 2003. However, he challenged the order of punishment in the year 1998 with condone delay application before the State Administrative Tribunal and the condone delay application was allowed and the case was taken on file. Due to the abolition of the State Administrative Tribunal, the case was transferred to the file of this Court and renumbered as W.P.No.12648 of 2007.

7. Heard learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents.

8. The enquiry report should be furnished to the petitioner along with second show cause notice and on receipt of the same, the petitioner should submit his explanation. However, on careful perusal of the record, it is seen that the enquiry report was not furnished to the petitioner along with second show cause notice to give further representation, which is mandatory and against the principle of natural justice.

9. Accordingly, the proceedings in Pro.Na.Ka.No.S2/169219/92 dated 22.7.1994 is hereby set aside and direct the respondent to sanction increment from 1994 onwards and pay arrears. This writ petition is allowed. No costs.

-sd-

Assistant Registrar (CS III)
Dated: 19.01.2021

*** Corrected as per letter
given by Mr.G. Elanchezhiyan
dated 17.02.2021
sd/- Assistant Registrar (CS III)
Dated: 22.02.2021**

//True copy//

Sub Assistant Registrar

To

1.The Commandant of Town Panchayats,
Kuralagam,
Chennai - 108.

To be substituted
to the order already
despatched on
17.02.2021

2.The District Collector,
Coimbatore.

3.The Executive Officer,
Periyanaicken Palayam Town Panchayat,
Periyanaicken Palayam, Coimbatore District

+ 1 cc to Mr.G.ELANCHEZHIAN, Advocate SR.NO.40636
+ 1 cc to Mr.K.Magesh, Advocate SR.NO.41065
+ 1 cc To The Government Pleader, High Court Madras SR.NO.41101

W.P.No.12648 of 2007

KK(CO)

RRI (21/01/2021)
SP(22/02/2021)