

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.19622 of 2013

Dr.T.S.Selvavinayagam

... Petitioner

.Vs.

1. Govt. of Tamil Nadu
Represented by Secretary to Government,
Health and Family Welfare Department,
Chennai - 600 009.
 2. The Secretary to the Government,
Municipal Administration
and Water Supply Department,
Secretariat, Chennai - 600 009.
- ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to orders of the second respondent in (1) G.O. (D) No.225, Municipal Administration and Water Supply (MC5) Department, dated 26.04.2013 and (2) G.O.(D) No.413, Municipal Administration and Water Supply (ME-1) Department, dated 10.09.1999 to quash the same and to issue consequential directions to the first respondent to grant consequential benefits to the petitioner herein.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.A.N.Thambidurai
Special Government Pleader

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O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus calling for the records relating to orders of the second respondent in (1) G.O.(D) No.225, Municipal Administration and Water Supply (MC5) Department, dated 26.04.2013 and (2) G.O.(D) No.413, Municipal Administration and Water Supply (ME-1) Department, dated 10.09.1999 to quash the same and to issue consequential

directions to the first respondent to grant consequential benefits to the petitioner.

2.The case of the petitioner is that the Director of Municipal Administration vide charge memo dated 28.12.1996 initiated disciplinary proceedings against the petitioner under Rule 17(b) of the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules in respect of certain lapses alleged to have been committed by the petitioner while he was working as Municipal Health Officer, Tiruvottiyur.

3.It is the further case of the petitioner that the charge alleged against him is that he was responsible for the purchase of an abnormal quality of 3000 liters of Flytox insecticide from Shri Ragaventhira Agencies Chennai - 94 at an exorbitant rates of Rs.76/- per liter and for incurring a huge expenditure of Rs.2,28,000/- in particular item has failed to compare the prevailing market rates before purchase and without adequate Budget provision for this item of expenditure in violation of the orders of Government issued in G.O.Ms.No.330, Finance (B & C) Department dated 22.08.1994 and Section 120 of the T.N.D.M.Act, 1920.

4.It is the further case of the petitioner that the petitioner submitted his detailed explanation dated 02.04.1997 denying the charge framed against him and requested to drop the said charge. Thereafter, an Enquiry Officer was appointed and enquiry was conducted. Thereafter, the Enquiry Officer rendered findings that the charges were proved. Thereafter the petitioner submitted his further explanation dated 10.10.1998, however, the second respondent passed the final order dated 10.09.1999 imposing the punishment of stoppage of increment for a period of six months with cumulative effect and that the punishment will have an effect on inclusive of any period spent on leave during the period of punishment and that it will not affect the petitioner's pension.

5.It is the further case of the petitioner that aggrieved by the said punishment, the petitioner preferred review petition dated 24.01.2000 to the second respondent and since the same was kept pending for a long period, the petitioner filed W.P.No.33293 of 2012 before this Court and pursuant to the order of this Court dated 20.12.2012 made in the said writ petition, the second respondent vide order dated 26.04.2013 rejected the petitioner's review petition dated 24.01.2000. Aggrieved by the same, the petitioner has filed this writ petition.

6.The learned counsel appearing for the petitioner would submit that as per Rule 12 (2) of the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules, the Secretary to Government,

Public Health and Preventive Medicine alone is the competent Authority to impose punishment against the petitioner. The second respondent is neither an Appointing Authority nor the Authority administratively higher to Appointing Authority. He would further submit that the petitioner is vested with the discretion to purchase Flytox insecticide in the interest of public, however, without considering all these aspects, the impugned orders came to be passed. Accordingly, he prayed for allowing the writ petition.

7.The learned Special Government Pleader, pointing out to the counter affidavit filed on behalf of the respondents, would submit that the impugned order dated 10.09.1999 was issued only after following due procedures. He would further submit that the petitioner ought to have adduced proper evidence to thrash out the charge, however, the petitioner could not put forward a well established defence to disprove the charge against him.

8.The learned Special Government Pleader would further submit that the Enquiry Officer in his findings has observed that the defence of the delinquent officer cannot be accepted on the following points, namely, 'abnormal quantity purchased; purchased from dealer and not from manufacturer; rate paid was exorbitant; and no adequate budget provision'. He would further submit that the Government had independently and carefully examined the review petition filed by the petitioner and rightly rejected the same.

9.The learned Special Government Pleader would further submit that as per Rule 9 (A) of the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules, in any case where more than one Government servant of the same Department are involved, the Authority competent to institute disciplinary procedures and impose any of the penalties specified in Rule 8 shall be the Authority in that Department in respect of the Government servant who holds the highest post and the disciplinary proceedings against all of them shall be taken together.

10.The learned Special Government Pleader would further submit that as per Rule 9 (A) of the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules, the Municipal Administration and Water Supply Department may initiate such disciplinary proceedings against the delinquent officers under common proceedings and issue final orders, if the Government servant who holds the highest post in the said proceedings is from the Municipal Administration and Water Supply Department. Hence, the order dated 10.09.1999 issued by the second respondent is in order. Accordingly, he prayed for dismissal of the writ petition.

11. Heard the arguments advanced on either side and perused the materials available on record.

12. It has been the consistent view of the Courts that it is always within the domain of the Appointing Authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the Courts interfere in the same, in exercise of powers under Article 226 of the Constitution of India. The Hon'ble Supreme Court in its decision reported in 2015 (16) SCC 415 (Prem Nath Bali - Vs - High Court of Delhi), has held as under:-

"20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority."

(Emphasis Supplied)

13. Perusal of records reveal that vide charge memo dated 28.12.1996, disciplinary proceedings was initiated against the petitioner under Rule 17(b) of the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules in respect of certain lapses alleged to have been committed by the petitioner while he was working as Municipal Health Officer, Tiruvottiur.

14.Perusal of records further reveal that after following due procedures, Enquiry Officer was appointed and after conducting enquiry, the Enquiry Officer rendered findings that the charges were proved. Thereafter, the second respondent passed the final order dated 10.09.1999 imposing the punishment of stoppage of increment for a period of six months with cumulative effect and that the punishment will have an effect on inclusive of any period spent on leave during the period of punishment and that it will not affect the petitioner's pension.

15.Perusal of records further reveal that aggrieved by the said punishment, the petitioner preferred review petition dated 24.01.2000 to the second respondent and since the same was kept pending for a long period, the petitioner filed W.P.No.33293 of 2012 before this Court and pursuant to the order of this Court dated 20.12.2012 made in the said writ petition, the second respondent vide order dated 26.04.2013 rejected the petitioner's review petition dated 24.01.2000.

16.Though the petitioner preferred review petition as early as on 24.01.2000 to the second respondent, the same was kept pending for a long period. Hence, the petitioner had to file W.P.No.33293 of 2012 before this Court and pursuant to the order of this Court dated 20.12.2012 made in the said writ petition, the second respondent vide order dated 26.04.2013 rejected the petitioner's review petition. Hence, this Court is of the opinion that the punishment imposed on the petitioner has to be modified.

17.Accordingly, the punishment imposed on the petitioner vide order dated 10.09.1999 is modified to that of 'stoppage of increment for a period of six months without cumulative effect and that the punishment will have an effect on inclusive of any period spent on leave during the period of punishment and that it will not affect the petitioner's pension'.

18.The writ petition is accordingly disposed of. No costs.

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Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government,
Health and Family Welfare Department,
Chennai - 600 009.

2.The Secretary to the Government,
Municipal Administration
and Water Supply Department,
Secretariat,
Chennai - 600 009.

+1cc to the Government Pleader, Sr.No.34755

W.P.No.19622 of 2013

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