

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.32878 of 2013

R.Panneerselvam

... Petitioner

Vs

1. The Secretary to Government,
Municipal administration and Water Supply department,
Fort St. George,
Secretariat,
Chennai - 600 009.
2. The Principal Secretary & Commissioner,
Corporation of Chennai,
Chennai - 600 003.
3. The Zonal Officer,
Zone - VI, Corporation of Chennai,
Chennai - 600 023.
4. The Chairman,
Appointment Committee (Appellate Authority),
Corporation of Chennai,
Chennai - 600 003.Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus to call for the concerned records relating to the order of dismissal bearing No.M.A.6.Na.No.A5/8171/2011, dated 20.03.2012, passed by the 2nd respondent and order No.Ma.A.6 Na.Ka.No.A5/8171/2012, dated 17.08.2012 passed by the 3rd respondent and G.O. (Misc) No.490, dated 19.09.2013 passed by the 1st respondent and quash the same and subsequently direct the respondents to reinstate the petitioner in service with all consequential monetary and other service benefits.

For Petitioner : Mr.M.Gnanasekar

For Respondents: Mr.A.N.Thambidurai,
Spl. Govt. Pleader for R1

Mr.R.Gopinath,
Standing Counsel for R2 to R4

ORDER

Petitioner has come up with this Writ Petition seeking to quash the order dated 20.03.2012, passed by the 2nd respondent; the order dated 17.08.2012 passed by the 3rd respondent and the order vide G.O.(Misc) No.490, dated 19.09.2013 passed by the 1st respondent and for a consequential direction to the Respondents to reinstate him in service with all consequential monetary and other service benefits.

2. According to the Petitioner, he was working in the office of the 3rd Respondent/Corporation of Chennai as Gang Mazdoor, since 27.04.1988. While so, he received a Memo on 08.04.2010 from the 3rd Respondent directing him to submit an explanation to the complaint dated 22.03.2010 made by one Thulasi to the Honourable Chief Minister's Cell. The Petitioner submitted his explanation to the same on 12.04.2010 stating that, no marriage was conducted between himself and the complainant, P.Thulasi.

3. It is stated by the Petitioner that, the said P.Thulasi filed M.C.No.403 of 1989 before the Family Court, Chennai and that, he had filed counter Affidavit, denying the averments made by her. As she did not enter appearance, the Family Court dismissed the said Petition on 18.04.1990. According to the Petitioner, even in 1983, the said Thulasi was residing within one Easu and thereafter, she married one P.Perumal and is living with him for the past 20 years.

4. The grievance of the Petitioner is that, in spite of all these, the 3rd Respondent issued a Charge Memo dated 02.12.2010, based on the Vigilance Officer's Report dated 11.10.2010, which was not communicated to him. Charges levelled against the Petitioner are as under:

"(i) Contracting second marriage while the 1st wife is alive, is contrary to the Office Rules.

(ii) Failed to inform the second marriage to the Office, which requires severe warning.

(iii) By your above conduct, you have set a precedent for other employees to follow

(iv) By your conduct, you have brought disrepute to the Corporation."

5. Denying all the charges, the Petitioner made a detailed explanation to the 2nd Respondent. As regards Charge No.1, the Petitioner has stated that, he has not married the said P.Thulasi and he has informed the same in his previous

explanation dated 12.04.2010. Regarding the second Charge, it is stated by the Petitioner that, he married one Marimuthu on 08.02.1982 and the particulars regarding his wife and children are entered in his Service Records. Also, his family details are mentioned in the Star Health Insurance Card issued to him for getting medical treatment. As regards Charge Nos.3 and 4 also, the Petitioner denied the same and has stated that, he has been working for more than 25 years in the Respondent/Corporation, without any room for complaint.

6. It is the case of the Petitioner that, the 3rd Respondent did not conduct any enquiry nor gave any opportunity of hearing to him to produce any witness in the enquiry. In the additional explanation dated 25.11.2011, the Petitioner has stated that, the complainant Thulasi is living with one Perumal at No.245, B-Block, Sivashanmugapuram and suppressing the same, she had filed M.C.No.403 of 1989, claiming maintenance before the Family Court, Chennai.

7. Accepting the Enquiry Report, the 2nd Respondent passed a final order on 20.03.2012 imposing the punishment of dismissal from service. Challenging the same, the Petitioner filed W.P.No.10045 of 2012 and this Court, by an order dated 15.04.2012 disposed of the said Writ Petition with liberty to the Petitioner to file an Appeal against the order dated 20.03.2012, and on filing such Appeal, the Appellate Committee was directed to consider the same and pass orders within a period of four weeks.

8. Pursuant thereto, the Petitioner filed an Appeal before the Appellate committee of the Chennai Corporation on 19.04.2012. However, without giving an opportunity of personal hearing, the 2nd Respondent simply communicated the decision of the 4th Respondent by proceedings dated 17.08.2012, and informed the Petitioner that, he can file a Revision Petition before the Government. Thereafter, the Petitioner filed a Revision Petition before the Government on 06.10.2012 and the same was rejected by the 1st Respondent vide G.O.(Misc) No.490, dated 19.09.2013, and the same is liable to be rejected.

9. Learned counsel for the Petitioner contended that, the Vigilance Officer's Report dated 11.10.2010 was not communicated to the Petitioner and based on false records, the impugned order was passed and the same was confirmed by the Appellate Authority.

10. On the other hand, learned Standing Counsel appearing for the Respondent/Corporation submitted that, except the Vigilance Officer's Report dated 11.10.2010, no other records were available to the Corporation and only based on the same,

the Original Authority has held that, the Petitioner married the complainant Thulasi in 1979. However, he fairly conceded that, this Court may set aside the impugned order and remand the matter to the Original Authority, for fresh consideration.

11. On similar lines, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the 1st Respondent fairly submitted that, the matter may be remanded to the 1st Respondent, for fresh consideration.

12. Heard the learned counsel on either side and perused the material documents available on record.

13. Admittedly, the complainant Thulasi did not produce any document, viz. Ration Card in support of her marriage with the Petitioner herein. The impugned order passed by the Original Authority is only based on the Vigilance Officer's Report dated 11.10.2010. Moreover, the Petitioner has also submitted a detailed explanation to the 2nd Respondent, denying the averments made by the complainant Thulasi. According to the Petitioner, he has not married the complainant Thulasi and that, he had married one Marimuthu on 08.02.1982 and the particulars regarding his wife and children are entered in his Service Records.

14. When the Petitioner/delinquent employee has specifically denied the marriage between him and the complainant Thulasi, the onus lies on the complainant to provide sufficient proof of her marriage with the Petitioner. In the absence any evidence to substantiate their marriage, holding the Petitioner guilty of the charge of 'second marriage' merely based on the Vigilance Enquiry Report dated 11.10.2010, is not acceptable. Hence, this Court feels it appropriate to remand the matter to the Original Authority for fresh consideration.

15. Accordingly, the matter is remanded to the Original Authority for fresh consideration. The Original Authority shall conduct fresh enquiry after giving an opportunity of hearing to the Petitioner within a period of four weeks from the date of receipt of a copy of this order and pass appropriate orders on merits and in accordance with law, within a period of twelve weeks from the date of submitting the Enquiry Report.

This Writ Petition is allowed with the above direction. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

(vsi2/aeb)

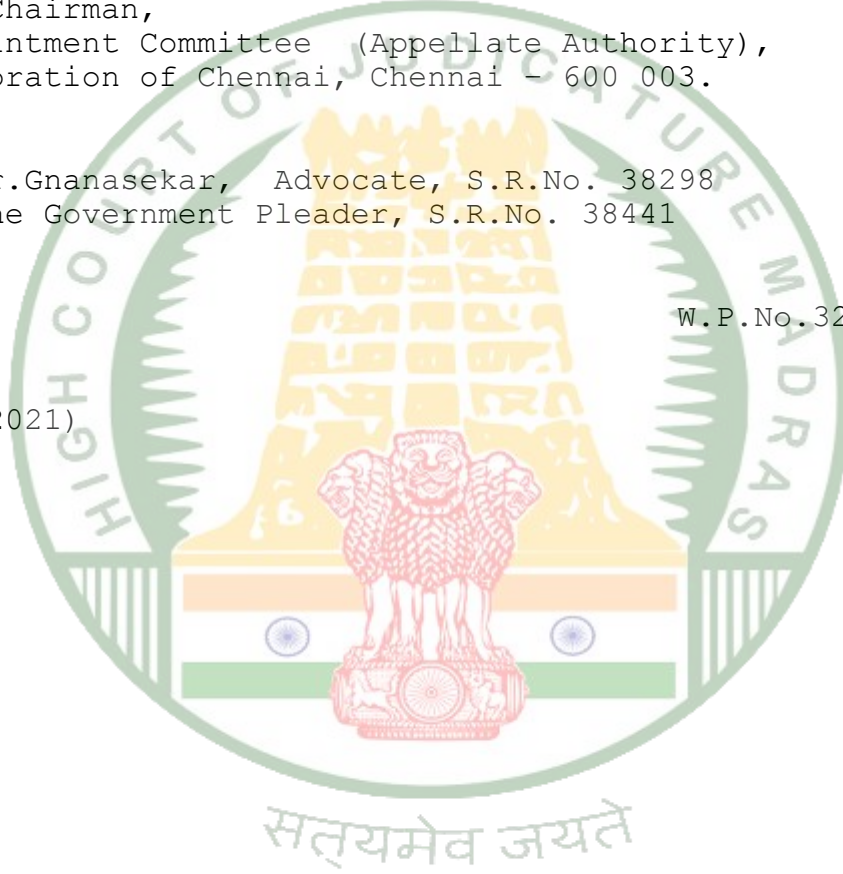
To:

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+1cc to Mr.Gnanasekar, Advocate, S.R.No. 38298
+1cc to the Government Pleader, S.R.No. 38441

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